

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

No. 17-2-32886-3-SEA

Plaintiff,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

v.

TVI, INC., d/b/a Value Village,

Defendant.

This matter was tried before the Court from September 26, 2019 to October 21, 2019. Plaintiff the State of Washington (“State”) was represented by Assistant Attorneys General John A. Nelson, Seann C. Colgan, and Shidon B. Aflatooni. Defendant TVI, Inc. (“TVI”) was represented by James C. Grant, Ross Siler, Sarah Cox, and Max B. Hensley from Davis Wright Tremaine LLP. The Court heard testimony at trial from the following individuals:

1. Mary Beth Haggerty-Shaw (Sep. 26), Verbatim Transcript of Proceedings (hereinafter, “Trial Tr.”) 19-111
2. Eric Martin Peters (Oct. 1), Trial Tr. 226-324
3. Rebecca Hartsock (Oct 1), Trial Tr. 324-348
4. Sara Gaugl (Oct 2-3) Trial Tr. 356-631
5. Anthony Shumpert (Oct 3) Trial Tr. 631-780
6. Kenneth Alterman (Oct 7) Trial Tr. 798-936

- 1 7. Sarah Butler (Oct 8) Trial Tr. 1004-1187
- 2 8. Tracy Bardwell (Oct 10) Trial Tr. 1236-1294
- 3 9. Gene Boes (Oct 14) Trial Tr. 1304-1334
- 4 10. Louis Garcia (Oct 14) Trial Tr. 1334-1391
- 5 11. Stephanie Pope (Oct 14) Trial Tr. 1391-1465
- 6 12. Stephen Nowlis (Oct 16) Trial Tr. 1505-1659

7 In addition, the Court reviewed portions of deposition transcripts of:

- 8 1. Brian Holloway (read into the record Oct 7) Trial Tr. 939-981
- 9 2. Gregory Falk (deposition transcript) Ex. 1076
- 10 3. TVI CR 30(b)(6) (Stephanie Pope) (video played October 10) Ex. 1077
- 11 4. Jean Kantu (deposition transcripts) Ex. 1078
- 12 5. Secretary of State Cr 30(b)(6) (Scott Douglas) (video played October 15, 17) Ex. 2916
- 13 6. Shannon Smith (video played October 15, 16) Ex. 2920

14 The Court admitted approximately 560 exhibits.

15 Based upon the files and records herein and the evidence and testimony at trial, the Court
16 makes the following Findings of Fact and Conclusions of Law. Any oral findings of fact and
17 conclusions of law made on the record at the November 8, 2019 hearing are incorporated herein
18 by reference.

19 I. FINDINGS OF FACT

20 Despite a robust trial with competent, persuasive cross-examination of all the
21 witnesses, the facts in this case are largely uncontested. TVI's business model was made clear
22 to all parties during the trial. TVI's advertising materials were admitted into evidence during
23 the trial. The State has not contested, and does not claim to contest, TVI's business model.
24 The State does not claim TVI's business model is contrary to any law, including the Charitable
25 Solicitations Act (CSA) and Consumer Protection Act (CPA). The Court has reviewed almost
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1 500 pieces of advertising from TVI, and both parties had an opportunity to present whatever
2 advertising it wished to the Court. The advertising is what it is.

3 The divergence between the parties in this case revolves around what inferences the
4 Court should draw about TVI's advertising as it relates to its business model. The hard work
5 in this case is not determining the facts, but determining how those facts apply to the broad
6 Consumer Protection Act statute.

7
8 The only notable exception to this summary is the expert testimony of Mr. Butler and
9 Dr. Nowlis. The parties hotly contest the impact and import of Ms. Butler's two surveys. The
10 State argues that Ms. Butler's work helps prove the elements of deception and materiality,
11 while TVI argues that her work has no impact because her surveys were so terribly flawed.
12 Other than this dispute, which is addressed in these findings of fact and conclusions of law,
13 the Court accepts almost all of the facts provided by each party's witnesses as true.

14
15 The Plaintiff, State of Washington, commenced this action against TVI under the
16 Consumer Protection Act, RCW ch. 19.86 ("CPA"), and the Charitable Solicitations Act, RCW
17 ch. 19.09 ("CSA"). Complaint (Dkt. # 1).

18 Defendant, TVI, Inc., d/b/a Value Village, is a Washington corporation, headquartered
19 in Bellevue, Washington. Amended Answer (Dkt. # 10), ¶ 2.2. During the course of these
20 findings, the Court will refer to TVI interchangeably as "TVI," "Value Village," and, "Savers,"
21 as all names refer to the same business.

22
23 **A. The Court's Summary of TVI's Business Model**

24 1. TVI currently owns and operates approximately 20 thrift stores under the brand
25 name Value Village in the State of Washington. (Shumpert, Trial Transcript [hereinafter "Trial
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1 Tr.”] 637). Headquartered in Bellevue, TVI operates a chain of for-profit thrift stores,
2 including 150 stores in the United States and a total of over 300 stores in the U.S., Canada, and
3 Australia. Dkt. 10 at 3; Trial Tr. 883:15-21 (Alterman); Trial Tr. 526:5-6 (Gaugl); Trial Tr.
4 883:15-21 (Alterman); Trial Tr. 1392:7-11 (Pope); Ex. 2780. In the U.S., TVI operates stores
5 under the brand names Savers and Value Village. Trial Tr. 1392:8-11 (Pope). TVI’s
6 Washington stores are all branded as Value Village. Trial Tr. 361:1-3 (Gaugl).

7 2. TVI’s founder, Bill Ellison, opened his first thrift store in 1954 and opened his
8 first Washington store in Renton in 1966. Trial Tr. 907:2-909:6 (Alterman); Ex. 2780. TVI
9 moved its headquarters to Bellevue, Washington in the early 1970s, and has been based there
10 ever since. Trial Tr. 908:6-12 (Alterman); Ex. 2780.

11 3. TVI operated 24 Value Village stores in Washington as of March 2015 and
12 operates approximately 20 stores in the state today. Exs. 120 at 3-5, 2179, 2840; Trial Tr.
13 519:17-19, 521:5-7 (Gaugl). TVI’s chain of stores is small as compared with the 3,000-plus
14 stores across the country operated by Goodwill, the Salvation Army, and St. Vincent de Paul.
15 Trial Tr. 374:22-375:11 (Gaugl); Trial Tr. 878:23 (Alterman); Trial Tr. 716:4-717:10
16 (Shumpert).

17 **How Donated Clothes and Household Items Become Retail Thrift Inventory**

18 4. A typical retail business obtains its inventory (the items it intends to sell) by
19 purchasing them from businesses who manufacture or wholesale those items. In the thrift
20 market, for-profit credentialed suppliers exist in the market. These credentialed sells used
21 items purchased on second-hand markets to thrift retailers.

22 5. In addition to these credentialed suppliers, the other way thrift stores acquire
23 inventory is through community donations of used goods for resale. This case is about TVI’s
24 use of donated goods to their stores, **not** their use of credentialed suppliers.
25
26

1 6. Donated goods bring both advantages and disadvantages to a business. Such
2 donations assist the thrift store because they generally come at a reasonable price. However,
3 when the public donates to a thrift store, the store has little control over the quality, quantity or
4 usability of the donations. TVI has created a successful business model in an effort to address
5 both the disadvantages and advantages of stocking its inventory with donated goods. It
6 receives saleable goods in two distinct ways:
7

8 a. Many charity organizations raise funds by collecting used clothes and
9 household goods from the general public and then selling them. These charities include
10 organizations such as Big Brothers Big Sisters (BBBS), Northwest Center (NWC), The Arc,
11 and many others. TVI has almost since its inception purchased goods from these charity
12 organizations (referred to by TVI as their “charity partners”). These charity partners regularly
13 solicit donations from the general public, either through fixed-location collection bins or door-
14 to-door solicitations. TVI is not involved in these charities’ direct solicitation operations. Once
15 a charity collects donations from the public, the charity brings the donated items to a Value
16 Village (TVI) store. TVI then pays the charity a set amount of money in exchange for the
17 donated goods based upon contractually-determined per pound prices. After receiving the
18 items, TVI sorts them and determines which of the item it can sell in its store. The unusable
19 items are processed, boxed, and prepared for downcycling and recycling efforts across the
20 globe.
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23 b. For much of its existence, TVI has also received unsolicited used items
24 directly from the public. At most of its stores, TVI would regularly experience members of the
25 public dumping unwanted used items at their back doors. These goods’ dumps were handled
26

1 similarly to items received from charity partners. TVI would sort them, sell the saleable goods,
2 and downcycle the rest. Over the past 20 years, TVI formalized, advertised, and monetized
3 (for charities) these direct community donations. TVI created Community Donation Centers
4 (CDCs) at its stores, soliciting donations from the general public. Moreover, TVI restructured
5 its contracts with its charity partners, agreeing to accept these direct donations (known as On-
6 site Donations, or OSDs), and agreeing to pay its charity partners a contractual amount of
7 money per pound of directly donated goods.
8

9
10 7. Both methods of building inventory have benefitted all involved. The items
11 solicited by charity partners benefit TVI because TVI does not have to waste resources to buy
12 items from for-profit second-hand sellers. Nor must it expend resources to solicit donated
13 goods from the general public. This model also benefits the charities. The charity partners do
14 not need to expend resources sorting usable goods from unusable goods. They do not need to
15 enter the used-goods market overseas to sell the merchandise, and they do not need to worry
16 about recycling or dumping unusable goods. They receive a steady stream of unrestricted
17 funds they can use to support the incredible work each of these charities do. These charitable
18 donations benefit the public by providing simple ways for people to rid themselves of
19 unwanted clothing or household items, allowing citizens to give back and support local
20 charities.

21 8. The OSDs, donated directly by members of the public, benefit TVI because TVI
22 does not have to pay quite as much money per pound to its charity partners, and the goods are
23 delivered directly to the stores. Also, TVI gets to tout its partnership with local charities at the
24 point of donation. The OSDs benefit the charity partner because the charity partner receives
25 cash payment for donations they did not have to expend resources to obtain and deliver. The
26

1 public benefits because TVI provides a convenient location to donate clothes, and the donor
2 need not exhaustively sort items.

3 9. A tiny portion of TVI's retail inventory is purchased from for-profit
4 credentialed buyers. These purchases are a negligible portion of TVI's retail goods, primarily
5 used when TVI stores need to "fill a gap" in its inventory. TVI Vice President Terry Shumpert
6 estimated that credentialed buyer goods make up less than 7% of TVI's inventory. These
7 purchases are not the subject of this litigation and do not constitute the basis of any claim.
8 Moreover, the State does not claim TVI's advertising or marketing is deceptive because of this
9 portion of its inventory. It is a non-issue in this case.

10 10. There is nothing illegal about TVI's business model. The State repeatedly
11 asserted during trial that it did not quarrel with the manner in which TVI receive its inventory.
12 Nor should it. The manner in which TVI obtains used goods is legal, thoughtful, and
13 successful.

14 **How TVI Disposes of Clothing and Household Items It Cannot Sell in Its Stores**

15 11. Approximately one-half of the used goods TVI receives from charities and the
16 public are placed for sale in its thrift store. Of the goods placed in stores for sale,
17 approximately one-half are ultimately sold. (Shumpert Trial Tr. 691). TVI sells used goods that
18 it does not place for sale in its store to recyclers. (Gaugl Trial Tr. 561). These unsold items
19 travel overseas to be sold in third-world second-hand markets, downcycling markets, and
20 recycling markets. Ninety-five percent of goods donated to TVI are resold or recycled in some
21 way. Only the remaining five-percent find their way into a landfill.

22 12. The State does not attack TVI's post-thrift business model. Nothing about what
23 TVI does with the clothing and household items it receives is illegal or unfair. In fact, one
24 could argue that TVI is an effective recycler of used garments, employing a climate-conscious
25 business model.

1 13. TVI's stores place up to 13,000 new items on the sales floor each day. Ex. 650;
2 (Bardwell Trial Tr. 1242). In 2015, TVI averaged between 116,000 and 250,000 retail
3 transactions at each one of its Washington stores. Ex. 122.

4 14. TVI is a for-profit company. (Shumpert Trial Tr. 682). TVI does not pay any
5 portion of the proceeds from sales in its stores to charities or nonprofits. (Shumpert Trial Tr.
6 765). TVI does not make donations to nonprofits. (Shumpert Trial Tr. 777).

7 **Specifics of TVI Business Model and Relationship to Charities**

8 **A. TVI's Washington Operations**

9 15. TVI's stores and operations (selling second-hand goods and accepting donations
10 to charity partners at CDCs) are similar to those of nonprofit organizations such as Goodwill,
11 Salvation Army, and St. Vincent DePaul. Trial Tr. 374:22-375:4, 376:4-9 (Gaugl).

12 16. TVI pioneered the model of purchasing used goods that nonprofit organizations
13 either solicit, collect, and deliver themselves—such as Northwest Center through its familiar
14 “Big Blue Truck” fleet—or that are donated by the public and accepted by TVI on behalf of
15 these organizations at Community Donation Centers (“CDCs”) at TVI stores. Trial Tr. 646:5-
16 647:7 (Shumpert); Trial Tr. 908:17-22, 909:7-16 (Alterman); Trial Tr. 1315:6-12 (Boes); Ex.
17 120 at 7-10. Donations made at CDCs are also referred to as “on-site donations,” or OSDs.
18 Trial Tr. 646:22-647:3 (Shumpert); Ex. 156 at 7.

19 17. TVI has decades-long relationships with the nonprofit organizations it has
20 worked with in Washington, including Northwest Center (52 years), the Arc of Washington
21 State (30 years), and Big Brothers Big Sisters of Puget Sound (“BBBS”) (25 years). Trial Tr.
22 684:9-17 (Shumpert); Trial Tr. 1318:3-9 (Boes); Trial Tr. 1343:15-16 (Garcia); Exs. 2848,
23 2852. TVI refers to these organizations as charity partners; TVI does some work with these
24 organizations to promote their success. Trial Tr. 683:15-684:5 (Shumpert); Trial Tr. 900:25-
25 901:3, 910:3-19 (Alterman); Trial Tr. 1320:16-1321:8 (Boes). Some 80 percent of the used
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1 goods TVI purchases across the company come from charity partners it has had relationships
2 with for 20 years or more. Trial Tr. 910:22-911:14 (Alterman).

3 18. TVI purchases used goods pursuant to contracts with its charity partners. Exs.
4 150, 156, 157, 2388, 2389, 2390, 2391. TVI purchases donated goods without knowing
5 whether any percentage of the goods will be saleable. Trial Tr. 689:18-21 (Shumpert); Trial
6 Tr. 1316:14-16 (Boes).

7 19. TVI can put out for sale in its stores only about half of the used goods it
8 purchases. Trial Tr. 691:8-14 (Shumpert); Ex. 2165 at 4. Unsaleable items can be ripped or
9 broken or otherwise in poor condition. Trial Tr. 1279:3-6 (Bardwell). Of the goods that are
10 put out in stores, only about half actually end up selling. Trial Tr. 691:8-14 (Shumpert); Ex.
11 2165 at 4. Thus, only 25 percent of the used goods that TVI purchases from its charity partners
12 are sold at retail, even though TVI pays charity partners for all goods even if they cannot be
13 sold in stores. Trial Tr. 691:8-14 (Shumpert); Trial Tr. 1316:17-22 (Boes); Ex. 2165 at 4.

14 20. TVI's payments in purchasing used goods provide a valuable source of
15 unrestricted and predictable funds for its charity partners. Trial Tr. 688:13-17 (Shumpert);
16 Trial Tr. 1314:11-16 (Boes); Trial Tr. 1371:2-1372:1 (Garcia); Falk Dep. at 49:25-50:7. For
17 some of its smaller charity partners, TVI's payments provide the majority of their funding.
18 Trial Tr. 688:18-689:3 (Shumpert).

19 21. TVI paid its Washington charity partners approximately \$13 million in 2016 in
20 purchasing used goods. Trial Tr. 564:4-6 (Gaugl); Trial Tr. 686:13-22 (Shumpert); Ex. 2179.
21 TVI has repeatedly asserted that this \$13 million represents about four times more than TVI
22 makes in profit for its Washington operations (\$3 million). Trial Tr. 686:13-22 (Shumpert).
23 However, the Court does not understand the import of this comparison. Oftentimes businesses
24 pay significantly more in business operations than the amount of profit they realize. The
25 comparison of those numbers says nothing about TVI's virtuousness. TVI paid its Washington
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1 charity partners nearly \$125 million between 2006 and 2016. Trial Tr. 560:9-11 (Gaugl); Exs.
2 2165, 2179.

3 22. TVI employs over 1,500 individuals in Washington State, including at its stores,
4 its Fife recycling center, and its Bellevue headquarters. Exs. 2165, 2179. As an example of its
5 Washington stores, TVI employs over 90 people at its Crown Hill (Seattle) location, including
6 50 employees who work in the production room sorting used goods. Trial Tr. 1242:2-4
7 (Bardwell).

8 23. The scope of used goods that TVI processes daily is enormous. TVI puts
9 13,000 new items on the sales floor each day at Crown Hill and has hundreds of thousands of
10 items for sale at any given time in the store. Trial Tr. 1242:5-8, 1242:14-15, 1279:10-16
11 (Bardwell); Ex. 2722. This requires sorting 20,000 pounds of used goods daily just at this one
12 store alone. Trial Tr. 1242:5-8, 1279:13-16 (Bardwell).

13 24. The average price of an item sold at a Value Village store is approximately
14 \$3.80. Trial Tr. 563:23-564:1 (Gaugl); Ex. 2179. Ninety-six percent of goods at Value Village
15 sell for less than \$10. Trial Tr. 564:2-3 (Gaugl); Ex. 2179.

16 **B. TVI's "Savers Cycle"**

17 25. TVI's business model is based on a cycle of donations, sales, and reuse of
18 goods. Trial Tr. 398:11-13 (Gaugl). TVI explains this cycle in numerous signs and other
19 marketing materials as: (1) community members donate items to a nonprofit charity partner
20 (either directly to the charity or through a donation **on behalf of** the charity partner at a Value
21 Village store); (2) TVI buys the goods from its nonprofit partners, providing them funding for
22 their missions; (3) the best items get a chance at a second life by being offered for sale in
23 stores; and (4) the other items are sold in overseas markets or are recycled. *See, e.g.*, Trial Tr.
24 393:60-21, 396:14-397:25 (Gaugl); Trial Tr. 858:5-13, 864:5-19 (Alterman); *also, infra* § F.1.
25 TVI's efforts to describe its business model and cycle have always been part of its marketing.
26 Trial Tr. 468:10-15 (Gaugl).

1 26. TVI is a leader in recycling and reuse efforts, and has been recognized as such.
2 Exs. 2878, 2903. TVI diverts some 50 million pounds of used goods from Washington
3 landfills annually (and 650 million to 700 million pounds of goods nationally). Trial Tr.
4 560:5-8 (Gaugl); Trial Tr. 696:15-20, 696:21-23 (Shumpert); Exs. 2179, 2252, 2755. As part
5 of its Threadcycle program, King County encourages the public to donate used textiles at
6 Value Village stores. Trial Tr. 713:8-16, 714:11-20 (Shumpert); Exs. 2107, 2879.

7 27. TVI is able to reuse or recycle 95 percent of all used goods it purchases in some
8 way. Trial Tr. 694:18-23, 707:18-708:23 (Shumpert).

9 28. TVI has promoted recycling and reuse in its store signage, website, and
10 marketing for more than a decade. Trial Tr. 545:3-6, 562:11-14, 592:14-16 (Gaugl); Exs. 514,
11 515, 860, 861, 862, 874, 890, 899, 2731, 2766.

12 29. Under its model, TVI assumes all risks and enjoys all rewards of running retail
13 thrift stores. Trial Tr. 908:17-22 (Alterman). In other words, once TVI has the donated goods,
14 it is solely responsible for moving them into a market. If it cannot resell those items, it bears
15 the cost of disposing of them. Conversely, TVI reaps the profits from the goods sold and
16 makes many millions of dollars per year. TVI is **not** a charity or non-profit. It does not donate
17 to charities or non-profits out of its own revenues or profits.

18 30. TVI's charity partners in turn receive guaranteed revenue for the used goods
19 they sell. Trial Tr. 908:23-909:1 (Alterman). As officials from TVI's charity partners
20 testified, taking on the responsibility of re-selling the used items they solicited and collected is
21 a difficult and often money-losing proposition for non-profit charitable organizations.
22 Operating independent thrift stores can be a difficult and money-losing business. Falk Dep. at
23 83:17-25, 84:13-14; Trial Tr. 1357:7-17, 1359:2-11 (Garcia).

24 31. **TVI does not pay charity partners a portion of the sales price of goods sold**
25 **in its stores.** TVI additionally does not directly say in its advertising that it is, itself, a charity
26 or nonprofit organization. Trial Tr. 765:11-14 (Shumpert); Trial Tr. 934:18-21 (Alterman);

1 Trial Tr. 1243:18-20 (Bardwell); Smith Dep. at 146:20-147:7; Exs. 726 (p. 11 of 32), 2165,
2 2325 (WA-AG TVI 2010004274), 2586. The State does not contend they do. Rather, the State
3 contends that TVI's advertising and marketing has the capacity to deceive a substantial portion
4 of the public into believing that they are a non-profit or charity. The State further contends
5 TVI knew or should have known their advertising would have this effect.

6 32. Although TVI does not pay its charity partners a portion of the sales price of
7 goods sold in its stores, shopping at Value Village presumably provides an indirect benefit to
8 TVI's charity partners. Trial Tr. 858:2-13 (Alterman). TVI employees testified that the more
9 TVI is able to sell, the more used goods it must then purchase from its charity partners. Trial
10 Tr. 858:5-13, 858:17-859:1 (Alterman). However, the Court approaches this description of
11 their business practice with skepticism. This statement would be true of *every* for-profit
12 corporation who gives any money in any way to any charity, and it would be disingenuous for
13 such organizations to advertise that purchases at their stores directly benefit the charities they
14 support. Certainly, TVI employees are accurate that donating and purchasing used goods
15 benefits the community by keeping those goods out of landfills, a point about which multiple
16 witnesses testified. Trial Tr. 545:10-16, 562:11-14, 564:13-19, 607:5-19, 626:22-627:5
17 (Gaugl); Trial Tr. 682:11-18 (Shumpert); Trial Tr. 864:8-19 (Alterman).

18 33. While charity partners benefit when TVI opens (and keeps open) stores, as they
19 provide CDC locations where consumers can donate goods to charities, there was minimal
20 testimony about what these charity partners do when TVI stores close their doors. The Court is
21 unpersuaded that TVI is single-handedly keeping these charities in business. If TVI closed
22 stores, it is likely these charities would find other purchasers for their goods. It is also clear
23 that the continuous and existing sales pipeline provided by TVI makes life easier for these
24 charities. When TVI closed its Lake City (Seattle) Value Village store, its charity partner at
25 that location (BBBS) lost approximately \$75,000 per year in payments for CDC donations.
26 Trial Tr. 1352:9-19 (Garcia).

1 **C. TVI's Charity Partners in Washington**

2 34. TVI currently has seven Washington charity partners. Trial Tr. 683:8
3 (Shumpert). Two of TVI's largest and longest-tenured Washington charity partners are
4 Northwest Center and BBBS. Trial Tr. 684:9-17 (Shumpert).

5 35. Northwest Center's mission is "to promote the growth and independence of
6 people with disabilities [through] therapy, education, and work opportunity." Trial Tr.
7 1306:23-1307:9 (Boes).

8 36. Northwest Center works with approximately 1,000 Washington employers,
9 including Value Village, to provide work opportunities for thousands of its clients. Trial Tr.
10 1310:5-12 (Boes). Northwest Center additionally provides early intervention programs and
11 early learning school programs for hundreds of developmentally disabled children. Trial Tr.
12 1307:14-1308:18 (Boes).

13 37. Northwest Center was TVI's first Washington charity partner and second
14 charity partner nationally. Trial Tr. 1318:12-15 (Boes). Northwest Center operates a fleet of
15 15 trucks and utilizes over 600 bins to collect the used goods it delivers to TVI. Trial Tr.
16 1318:16-21 (Boes). Northwest Center also receives payment for donations made at Value
17 Village CDCs where it is the designated charity partner. Trial Tr. 1323:2-9 (Boes).

18 38. Northwest Center was able to provide 56,000 job coaching hours, three
19 scholarships to its early learning programs, and 28,000 home therapy hours based on the 2017
20 payments it received from TVI. Trial Tr. 1331:13-19 (Boes). Without TVI's support,
21 Northwest Center would have to cut back on those services. Trial Tr. 1331:20-24 (Boes).

22 39. BBBS provides one-on-one mentoring programs for about 1,500 at-risk children
23 annually. Trial Tr. 1337:2-3 (Garcia). The youths BBBS serves are predominantly from
24 single-parent and low-income households, and BBBS has a waiting list of over 1,000 children
25 hoping to be paired with mentors. Trial Tr. 1337:7-13, 1339:17-23 (Garcia).

1 40. To help fund its programs, BBBS collects 2 million pounds of clothing and
2 household goods annually, which it sells to Value Village. Trial Tr. 1343:17-22 (Garcia); Ex.
3 2848. BBBS maintains some 100 donation bins in the area where it collects used goods to
4 deliver to TVI. Trial Tr. 1344:24-1345:2, 1389:15-18 (Garcia); Ex. 2908. BBBS also receives
5 payment for CDC-donated goods at the Burien and Issaquah Value Village stores where BBBS
6 is the designated charity partner. Trial Tr. 1350:17-18 (Garcia).

7 41. BBBS's relationship with TVI generates approximately 24 percent of BBBS's
8 annual revenue. Trial Tr. 1343:23-1344:1, 1370:16-23 (Garcia); Ex. 2848. If BBBS lost the
9 TVI as a vendor, it would have to cut programs and services to 1,200 to 1,400 children and
10 families in the community. Trial Tr. 1373:5-15 (Garcia).

11 **D. TVI's Interactions with the Attorney General and Secretary of State**

12 42. For over a decade between 2002 and 2013, the Secretary of State periodically
13 reached out to TVI and inquired about its business model and operations. After receiving
14 information from TVI, the Secretary of State told TVI that it did not believe TVI needed to
15 register as a commercial fundraiser under the Charitable Solicitations Act ("CSA"), RCW
16 19.09. Trial Tr. 1394:13-19 (Pope); Ex. 2563 at 12-13 (Answers to RFA Nos. 23-25)

17 43. The purpose of the CSA is to provide Washington citizens with information
18 about entities engaged in charitable fundraising to "prevent ... deceptive and dishonest
19 practices in the conduct of soliciting funds for or in the name of charity" and to "[i]mprove the
20 transparency and accountability of organizations that solicit funds from the public for
21 charitable purposes." RCW 19.09.010(1)-(2).

22 44. When an entity is a commercial fundraiser, that entity must file solicitation
23 reports regarding its fundraising activities to be made publicly available. RCW 19.09.079.
24 The entity must also post disclosures at the point of solicitation, identifying the charities on
25 whose behalf the entity was soliciting for donations, and providing access to more information
26 through the Secretary of State's website. RCW 19.09.100.

1 45. The U.S. Supreme Court has held that registration-and-disclosure schemes like
2 the CSA are the constitutionally permissible means for states to regulate commercial
3 fundraisers and First Amendment-protected charitable solicitations. *See Riley v. Nat'l Fed'n of*
4 *the Blind of N.C., Inc.*, 487 U.S. 781, 800 (1988) (“[A]s a general rule, the State may itself
5 publish the detailed financial disclosure forms it requires professional fundraisers to file. This
6 procedure would communicate the desired information to the public without burdening a
7 speaker with unwanted speech during the course of a solicitation.”).

8 46. In 2002, 2010, and 2013, the Secretary of State (“SOS”) examined TVI’s
9 business model, practices, and relationships with charity partners, and each time provided TVI
10 with an opinion that it was not required to register under the CSA. Trial Tr. 1394:23-1395:6,
11 1396:6-1397:1 (Pope); Exs. 2611-2628, 2563 at 12-13 (Answers to RFA Nos. 23-25).

12 47. In 2002, the SOS wrote to TVI, stating that TVI “may be required to register ...
13 as a ‘Commercial Fund-raiser.’” Ex. 2611. After TVI’s counsel responded and explained
14 TVI’s business model, Exs. 2612, 2614, the SOS concluded that TVI did “not meet the
15 definition of a ‘commercial fundraiser’ and [was] therefore not required to register as such
16 pursuant to RCW 19.09.” Douglas Dep. at 59:3-67:20; Exs. 2615, 2563 at 13 (Answer to RFA
17 No. 24).

18 48. In 2010, the SOS again contacted TVI regarding CSA registration. Ex. 2616.
19 TVI responded and requested to speak with the SOS and AGO to discuss the CSA’s
20 applicability to TVI’s operations. Exs. 2617-2619. After speaking with TVI’s counsel, an
21 attorney representing the SOS informed TVI that TVI did “not act as a ‘commercial
22 fundraiser’” and therefore did not have to register under the CSA. Exs. 2619, 2563 at 13
23 (Answer to RFA No. 25); Douglas Dep. at 69:5-84:13.

24 49. The SOS confirmed this determination in a December 8, 2010, email from
25 attorney Jeffrey Even to TVI counsel: “Yes, and I have discussed it with the Secretary[] [of
26 State’s] office. I gather that they haven’t responded to you directly, but I think you can

1 consider that I'm speaking for them as well as for myself at this point." Ex. 2619 at OSOS-
2 001394.

3 50. The SOS revisited the issue in 2013 after receiving inquiries about TVI from a
4 freelance reporter. Ex. 2621; Douglas Dep. at 95:7-10. TVI provided the SOS and AGO a
5 letter summarizing the SOS's and AGO's 2010 analysis, which the SOS accepted and put in its
6 file on TVI. Trial Tr. 1396:16-1397:1 (Pope); Exs. 2624, 2563 at 13 (Answer to RFA No. 25);
7 Douglas Dep. at 97:20-101:22. The SOS's representative wrote to TVI counsel on October 3,
8 2013: "Thank you for providing this information. We have updated our records accordingly
9 and placed this information in TVI, Inc./Value Village's file. Nothing further is needed at this
10 time." Ex. 2624.

11 51. In November 2014, the SOS reversed its position. Ex. 2627. A media inquiry
12 from an entity called InvestigateWest prompted the Attorney General's Consumer Protection
13 Division to investigate TVI. Smith Dep. at 23:1-12; Smith Dep. at 25:9-11.

14 52. TVI's conclusion that the facts above show that the AGO has acted nefariously,
15 is a conclusion to which this Court disagrees. It unnecessarily conflates two different issues. In
16 deciding whether TVI was a commercial fundraiser, the SOS analyzed TVI's business model,
17 how it collected donations, and how it paid its charitable partners. The SOS decision about
18 whether to designate TVI as a commercial fundraiser was made independently of the manner in
19 which TVI advertises to the public about itself. In other words, one can conform to the CSA
20 commercial fundraiser requirements and still deceptively advertise to the public. A business
21 can fail to register as a commercial fundraiser and also violate the Consumer Protection Act by
22 falsely advertising in a myriad of ways. A business can also fail to register as a commercial
23 fundraiser and otherwise abide by the Consumer Protection Act (other than the per se CSA
24 violations) by accurately advertising its business.

25 53. The CPD attorneys who demanded TVI register as a commercial fundraiser in
26 2014 did not speak with either the SOS or Mr. Even, the deputy solicitor general who

1 determined TVI did not need to register in 2013 and 2010, as to why they previously came to
2 the opposite conclusion.

3 54. The Attorney General is an agency that provides legal services to many
4 agencies and entities within Washington State. In carrying out its mission, the AGO represents
5 many clients, including the Secretary of State. The Office of the Secretary of State is elected
6 every four years. *See*, Website, Secretary of State of Washington,
7 <https://www.sos.wa.gov/office/office.aspx>. The primary functions of the Secretary of State
8 include chief elections officer and chief corporations' officer. These responsibilities also
9 require the SOS to register individuals, organizations and commercial fundraisers involved in
10 charitable solicitations. Lawyers within the AGO represent the SOS, just as lawyers at the
11 Attorney General's Office represent every state entity in Washington.

12 55. The Consumer Protection Division of the Attorney General's Office does not
13 speak for the Secretary State's Office, and vice versa. These are two different agencies with
14 different missions. They are each run by a separate elected official. Nothing legally prevents
15 the CPD from having a different legal opinion about an issue than the Secretary of State. As
16 an analogy, lawyers with the Civil Division of the King County Prosecutor's Office represent
17 each of the separately elected King County Judges. However, this fact does not mean that the
18 King County Prosecutor's enforcement arm cannot have a different legal position than those
19 lawyers in the same office representing their client judges, and vice versa.

20 56. Based up on the deposition testimony of SOS and AGO witnesses, this Court
21 infers that the about-face in the State's position on TVI's requirement to register as a
22 commercial fundraiser came about as follows: The AGO CPD was beginning to investigate
23 TVI. Because of this investigation, they took a closer look at TVI's business model. Upon
24 taking that closer look, they realized that TVI's OSD program placed TVI in the position of
25 directly soliciting for donations on behalf of their charity partners. It is clear from the
26 testimony that the SOS did not fully understand the import and impact of these facts in 2002,

1 2010, and 2013. Whether this occurred because they made an error or because they
2 misunderstood TVI's business model has no relevance to the issues in this case.

3 57. The AGO's demand that TVI register in 2014 was contrary to the position
4 expressed by current CPD chief Shannon Smith in 2010, that the CPD "would not bring an
5 action unless the SOS said that [an] organization should register" as a commercial fundraiser.
6 Exs. 2473 at 1, 2573 at 2 (May 3, 2010 email); Smith Dep. at 78:4-80:15, 80:25-81:16, 83:2-
7 84:12. True to this assertion, the State has not pursued claims against TVI for any CSA
8 violations occurring before 2015, and the Court does not make any findings about CSA
9 violations alleged to have occurred prior to 2015.

10 58. The State's CSA claims arise from alleged disclosure violations occurring
11 during years when the State had informed TVI it now needed to register as a commercial
12 fundraiser (and submit the public financial reports and make the point-of-solicitation
13 disclosures that registration would have required). The State also agreed that registration under
14 the CSA is intended to promote transparency and prevent deceptive practices in charitable
15 fundraising, through the reports and disclosures that registered commercial fundraisers must
16 make. Smith Dep. at 42:20-43:25, 103:23-104:7, 106:18-107:15.

17 59. Contrary to TVI's arguments during trial, the facts above do not prohibit the
18 State's causes of action. Whether or not TVI was required to register as a commercial
19 fundraiser between 2002 and 2015, it was (and is) *always* required to avoid net deception in its
20 advertising under the CPA. While it would not have been required to make the point-of-sale
21 disclosures and keep the registration records required by the CSA, it would still have been
22 required to comply with the Consumer Protection Act's prohibition against deceptive
23 marketing. One does not control the other.

24 60. TVI registered as a commercial fundraiser following the State's November 2014
25 demand. Trial Tr. 1393:2-4 (Pope); Pope Dep. at 34:24-35:13; Exs. 2478, 2875. TVI then
26 repeatedly sought to meet with the AGO in 2015 to discuss its compliance with the CSA, the

1 State's investigation, and changes TVI intended to make to its business practices. Trial Tr.
2 1399:2-6, 1429:10-14

3 61. In a letter dated January 8, 2015, TVI's in-house attorney, Bradley Whiting,
4 wrote to the AGO and SOS to provide copies of TVI's Washington charity partner contracts.
5 Ex. 2577. Mr. Whiting expressed in his letter that TVI "would appreciate the opportunity to
6 work with your office to ensure that TVI, Inc. is fully compliant with the requirements of the
7 Charitable Solicitations Act, RCW 19.09." *Id.* at 2. Mr. Whiting requested meetings with both
8 the SOS and the AGO. *Id.*

9 62. The State did not meet with TVI throughout 2015, despite TVI's repeated
10 requests and expressed desire to comply with the CSA. Smith Dep. at 110:7-111:4, 113:19-
11 115:16.

12 63. The Court does not assign any bad faith to the State's decision in this regard.
13 The State was in the midst of a compliance investigation. Discussions with the target of that
14 investigation may have had a negative impact on the State's ability to conduct the
15 investigation. The Court infers from the record that this concern is what motivated the State's
16 decision to ignore TVI's requests to meet. Conversely, however, if the purpose of the CPA is
17 to prevent public harm before it occurs, or as early as possible, the State's decision not to
18 communicate with TVI conflicts with this purpose. Its non-communication also undoubtedly
19 slowed down TVI in its CSA disclosure compliance changes.

20 64. By letter dated July 10, 2015, TVI's counsel informed the State that TVI would
21 be changing certain practices in its contracting with charity partners, including discontinuing
22 its use of a blended rate for payment and its practice of pooling credit for CDC goods among
23 charity partners in certain markets. Ex. 633 at 8-9. TVI requested a meeting with the State "to
24 discuss with you the upcoming changes and to get your input in that regard." *Id.* at 9.

25 65. The State again refused to meet with TVI, contending that such a meeting
26 would be "premature." Ex. 2579.

1 66. TVI made the changes it described without the State providing any requested
2 feedback. Trial Tr. 1411:24-1412:19 (Pope); Pope Dep. at 35:14-22. The State acknowledged
3 that it had made no decision about whether to bring claims against TVI when TVI made these
4 changes and it did not file suit for another two years. Smith Dep. at 116:5-117:22. TVI knew
5 they were investigating, however.

6 67. TVI has renewed its commercial fundraiser registration every year since 2015
7 and submits its charity partner contracts annually. Trial Tr. 1400:4-15, 1401:18-23 (Pope).
8 Neither the SOS nor AGO has raised any issue with TVI's commercial fundraiser registration
9 since 2015, nor with any of the disclosures that TVI has made since registering (including the
10 number and prominence of these disclosures). Trial Tr. 1402:7-10, 1436:21-1437:11 (Pope).

11 68. The State investigated TVI for nearly three years before it brought suit in
12 December 2017. Trial Tr. 1403:4-5, 1462:9-12 (Pope).

13 **B. State's Cause of Action**

14 69. The State has pled six claims for unfair or deceptive acts or practices under the
15 CPA, RCW 19.86.020, alleging that TVI's advertising and marketing had the capacity to
16 deceive a substantial portion of the public. In addition, the State has pled one claim under the
17 CSA, RCW 19.09.100, alleging that TVI operated as a commercial fundraiser under the Act,
18 without making required disclaimers at the point of solicitation.

19 **Cause of Action #1**

20 70. In the first cause of action, the State claims that between 2009 and 2019, TVI
21 knew or should have known that its advertising and marketing had the capacity to create the
22 deceptive net impression among a substantial portion of the public that TVI was a charity or
23 non-profit organization.

1 **Cause of Action #2**

2 71. In the second cause of action, the State claims TVI knew or should have known
3 that TVI misrepresented to the public that purchases at TVI stores such as Value Village
4 benefitted charities when, in fact, 100% of the revenue for such purchases were kept by TVI.

5 **Cause of Action #3**

6 72. In the third cause of action, the State claims TVI knew or should have known
7 that TVI misrepresented to the public that TVI paid non-profits every time a consumer
8 donated. The State alleges that, in truth, because of the manner in which TVI structured its
9 contracts with charitable suppliers, it did not pay a non-profit for every donation made.

10 **Cause of Action #4**

11 73. In the fourth cause of action, the State alleges that TVI knew or should have
12 known that it misrepresented to the public that TVI paid particular named charities for
13 donations made at particular stores. In truth, the State alleges, TVI paid money to a panoply of
14 charities for on-site donations made by members of the public. They based these payments on
15 contracts between themselves and their charity partners in a pooled agreement.

16 **Cause of Action #5**

17 74. In the fifth cause of action, the State argues that TVI knew or should have
18 known that it misrepresented to the public that it paid the Rypien Foundation for each on-site
19 charitable donation when, in fact, no particular donation would have any impact on money paid
20 to the Rypien Foundation. The State argues that TVI had entered into a licensing agreement
21 with the Rypien Foundation, and payment was untethered from the amount of any donations
22 made.

23 **Cause of Action #6**

24 75. In the sixth cause of action, the State argues that TVI knew or should have
25 known that it misrepresented to the public that it paid the Moyer Foundation for each on-site
26 charitable donation when, in fact, no particular donation would have any impact on the money

1 paid to the Moyer Foundation. Instead, the State argues, TVI had entered into a personal
2 services contract with Mr. Moyer which untethered the amount of any donation from the
3 money paid to the foundation.

4 **Cause of Action #7**

5
6 76. The State claims that TVI violated the Charitable Solicitations Act, RCW
7 19.09.100, alleging that TVI operated as a commercial fundraiser between December 15, 2014
8 and June, 2015, without making required disclaimers at the point of solicitation.

9 **C. TVI's Advertising and Marketing**

10
11 77. TVI's advertising and marketing in Washington is done primarily through in-
12 store signage and collateral (brochures and flyers), as well as online marketing through its
13 website, www.valuevillage.com, and social media. Trial Tr. 518:18-519:6 (Gaugl). Because
14 TVI's sales are through Value Village stores and OSDs occur at CDCs located at these stores,
15 customers and donors necessarily are exposed to signage, advertising, and other materials at
16 these locations. Trial Tr. 590:18-591:6 (Gaugl).

17
18 78. TVI spends less than \$600,000 annually on advertising and marketing for its 20
19 Value Village stores in Washington, and this amount encompasses everything from advertising
20 to store signage. Trial Tr. 519:11-19, 520:11-15 (Gaugl). Ninety percent of TVI's advertising
21 and marketing budget promotes shopping and retail sales (as opposed to donating), and one-
22 third of this amount is specifically dedicated to Halloween. Trial Tr. 519:11-19, 520:11-15
23 (Gaugl). *See also* Trial Tr. 527:6-10 (Gaugl); Trial Tr. 1257:19-21, 1266:11-13 (Bardwell);
24 Exs. 510, 645 (p. 1 of 41), 2664, 2723, 2731, 2732, 2737-2744, 2766 (examples of Value
25 Village signage and materials that do not reference charity partners or donating).

26 79. When signage and brochures reference donations and charity partners, they are
mainly focused on OSDs rather than delivered goods. Trial Tr. 551:9-11, 552:3-5, 556:20-23

1 (Gaugl); Exs. 2048, 2051, 2067, 2077. This makes sense given that TVI is not involved in
2 soliciting goods in the community. They rely on their charity partners to conduct advertising
3 and marketing of the community for direct donations to those charities.

4 80. Although TVI often uses the same or similar signs at stores and CDCs, the
5 signage and the number and locations of signs can vary by store because stores have different
6 layouts and each locality has different regulations concerning permissible signage. Trial Tr.
7 522:10-523:4, 523:5-10, 523:19-24, 584:11-20 (Gaugl).

9 81. TVI changes many signs and promotional materials in its Washington stores on
10 a frequent basis, as advertising campaigns and themes change. Trial Tr. 525:4-14 (Gaugl).

11 82. Value Village customers are loyal and tend to shop at Value Village stores at a
12 much higher frequency than customers of other retailers. Trial Tr. 523:11-18, 524:21-525:3
13 (Gaugl); Trial Tr. 897:16 (Alterman). Value Village's loyal shoppers account for 70 percent of
14 its revenues, and they visit the stores seven to ten times a year, with some visiting upwards of
15 50 or 60 times a year. Trial Tr. 523:11-18, 524:18-525:3 (Gaugl); Trial Tr. 896:24-897:2,
16 897:13-22 (Alterman).

18 83. Since launching its social media accounts, TVI has largely relied on outside
19 agencies to post updates on these accounts. Trial Tr. 481:18-22 (Gaugl). TVI has guidelines
20 on how employees and outside agencies should represent its business model. Trial Tr. 517:15-
21 518:2, 585:15-22, 586:7-24, 589:14-17 (Gaugl). These guidelines currently include referring
22 to donating goods "at" instead of "to" Value Village and providing links to the Value Village
23 website in social media posts for additional information about TVI's business model. Trial Tr.
24 586:16-24, 586:25-587:4 (Gaugl).

1 84. TVI regularly included shortened links in its social media posts that consumers
2 could follow to learn more about its business model and cycle. Exs. 738, 744, 759, 786, 832.
3 These links lead to pages on the Value Village website offering additional information about
4 the business model and cycle. Exs. 2894, 2895.

5
6 85. Because of TVI's position in the market, as one of the few large for-profit thrift
7 department stores, members of the public sometimes confuse its corporate structure with that
8 of its main rivals – non-profit, charitable thrift entities such as Goodwill, Salvation Army, and
9 St. Vincent DePaul. Aside from any advertising that might occur, TVI's market position and
10 business model can make it appear to the public as a non-profit.

11 86. TVI has known this for many years. It is undoubtedly one of the reasons it
12 maintains policies that require employees to describe donating *at* rather than *to* Value Village.
13 Ms. Bardwell testified that employees are trained on how to address this very uncertainty.

14
15 87. TVI's advertising and marketing has taken many forms during the relevant time
16 period, including: signs on the exterior and in the interior of Value Village stores; advertising
17 collateral of many types, e.g., flyers, brochures, door hangers, posters, etc., which are handed
18 out or made available in store, and also distributed in the local community; announcements
19 over in-store public address systems; stamp cards and coupons that reward making donations at
20 Value Village stores with discounts for in-store purchases; online advertising and marketing,
21 including on Value Village's website, through social media, and paid online advertising; and,
22 radio and television commercials.
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1 88. The evidence presented at trial included scores of signs, advertising, and other
2 representations by TVI explaining its business model and charity partner relationships to
3 customers and donors, including the following:

- 4 a. A sign the size of an entire wall at the Tukwila store, using stick figures and
5 explaining that “items donated to nonprofits are purchased by Value Village,”
6 which provides “essential support for nonprofits,” and “unsold items are
7 recycled.” Ex. 2830; Trial Tr. 608:13-20 (Gaugl).
- 8 b. A full-wall sign in Issaquah, explaining that items are “purchased from our non-
9 profit partners,” the “best items hit the racks,” and “unsold items get recycled,”
10 and inviting shoppers to “visit valuevillage.com to learn more about our
11 business model.” Ex. 645.
- 12 c. Signs explaining the cycle and how it works, including a chalkboard-style
13 illustration, *see* Ex. 2714, an illustration posted above in-store donation bins,
14 *see* Exs. 641, 649, and an illustration paired with the tag-line “Way to Go Mary
15 Jo” posted on a table holding additional trifold brochures and flyers, *see* Ex.
16 642.
- 17 d. Large signs explaining how Value Village has, “for over 60 years,” “helped
18 charities, communities, and the planet prosper through the power of reuse.”
19 Exs. 2730, 2813; Trial Tr. 609:9-18 (Gaugl); Trial Tr. 1252:9-23, 1264:25-
20 1265:24, 1285:18-1286:6 (Bardwell). These signs further state: “Our charity
21 partners sell us goods they collect for reliable revenue that helps fund their
22 missions.” Exs. 2730, 2813.
- 23 e. Links from the front page of Value Village’s website to explanations of the
24 Savers cycle. Exs. 2325, 888. The website also contains (and has contained)
25 visual and written explanations of the model. Exs. 2894, 706, 853, 866, 880,
26 895.

1 f. Signs and flyers explaining TVI's commitment to Washington communities,
2 stating that Value Village's Washington stores provide an opportunity to reuse
3 9,000 items per day, divert 50 million pounds from landfills per year, employ
4 1,500 Washingtonians, and paid \$125 million over 10 years to Washington
5 charities. Exs. 2165, 2677, 2692. *See also* Trial Tr. 563:10-22, 565:7-22,
6 619:12-16, 620:1-5 (Gaugl); Exs. 2179, 2693, 2752, 2753.
7

8 89. TVI makes it a point to extensively explain its business model and relationships
9 with charity partners in store signage, advertising, brochures, online, and in other materials.
10 Trial Tr. 516:7-15 (Gaugl); Trial Tr. 935:9-14 (Alterman).

11 90. TVI additionally trains employees to provide information about its business
12 model and charity partner relationships to shoppers and donors. Trial Tr. 516:7-15 (Gaugl);
13 Trial Tr. 1240:18-21, 1277:18-1278:5 (Bardwell); Exs. 2689, 2690. The necessity of this
14 training is evidence that TVI knew it had, and was, creating confusion about their status as a
15 for-profit rather than non-profit/charity.
16

17
18 **1. Exterior Store Signs**

19 91. Photographs of the Lacey, Washington Value Village store, taken March 4,
20 2013, show a large banner over the front entrance of the store which reads "Donate here. Every
21 time you donate, we pay local nonprofits," with a graphic depiction of a picture frame. An
22 additional, large sign on the front of the store, beside the main entrance, covers four window
23 panels, and includes the logo of "The Arc" (a charity), the words "Community Donation
24 Center" on a separate window panel, and "Around Back" on another panel. An additional sign
25
26

1 on the front of the store reads “Donations Benefit The Arc.” The front of the store also has two
2 signs advertising a senior discount and savings passes.
3



15 Ex. 726.

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92. The photographs of the Lacey store were taken on March 4, 2013, and provided to the State Attorney General’s Office with a letter signed by TVI’s Director of Communications, Sara Gaugl, on March 5, 2013. Ex. 726; (Gaugl Trial Tr. 379).

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93. Ms. Gaugl testified that the multi-window panel sign directing customers to the Community Donation Center was “fairly standard in our stores from 2009 and ’10 on.” (Gaugl Trial Tr. 380-81). Ms. Gaugl also testified that each Value Village store has a “primary” charity associated with that particular store, which is featured in the advertising for that store. (Trial Tr. 378). For example, the Lacey store features The Arc in its front window signs, because that is the primary charity for that store. (Trial Tr. 378-79).

1 94. Ms. Gaugl's letter was written in response to a consumer complaint made by a
2 Washington resident to the Attorney General's Office, which was forwarded to TVI on
3 February 4, 2013, and which stated:
4

5 My problem is perception.

6 The impression any donor or customer receives is that Value Village (Savers) is
7 a nonprofit giving most of their profits to xyz charities...

8 Value Village stores have huge signs in their parking lots, plus on their store
9 fronts and windows.

10 For example, at the Lacey location, they have the following large and larger signs
11 visible from outside:

12 Donate here

13 Every time you donate, we pay local nonprofits

14 Donations benefit The Arc (two signs)

15 Community Donation Center (words on huge banner in window plus on huge
16 building sign plus parking lot sign)

17 Inside the store, there are more signs, in addition to canned announcement every
18 few minutes plus bookmarks scattered everywhere.

19 Ex. 726. In TVI's response to the Attorney General's Office, Ms. Gaugl stated as follows:
20

21 Value Village agrees with [the consumer]'s position and importance of educating
22 the community about the impact their donations of clothing and household goods
23 have on the nonprofits we work with on a daily basis. However, we believe the
24 foundation of [the consumer]'s complaint is a result of her misunderstanding of
25 our model. While we can appreciate that some consumers and donors perceive all
26 thrift retailers to be owned and operated by charitable organizations, Value
27 Village is a for-profit company and we have always positioned our business as
28 such.

29 Ex. 726.

30 95. The same letter also attached a photograph of the "Community Donation
31 Center" (CDC) area on the exterior of the Lacey store, which shows a large sign over the door
32 with the charity logo of the "The Arc" and the words "Community Donation Center." On the
33 bottom of the same sign is the statement: "Value Village pays local nonprofits every time you
34

1 donate. Thank you!” In addition, there are two signs shown to the right of the CDC door. The
2 top sign, which is partially obscured, states, at the bottom: “**DO FAVORS DO GOOD DO**
3 **YOUR PART DONATE**”. The bottom sign states: “Donations at this Location also Benefit”
4 and lists three charities. The bottom sign also contains the same ‘DO FAVORS...’ etc.
5 statement as the top sign. Ex. 726.

6 96. TVI also provided, with the same letter, illustrations of its exterior “signage
7 package,” which was created at the corporate level and distributed to all of its stores, and
8 which Ms. Gaugl testified was “fairly consistent” across all stores. (Gaugl, Trial Tr. 377, 379).

9 97. The signage package shows the same multi-panel window display, seen on the
10 front of the Lacey store, which features the logo of the “The Arc.” Running along the bottom
11 of the sign, are the following statements:

12 **DO SOMETHING GREAT DO GOOD DO YOUR PART DONATE**

13 **DO A GOOD DEED DO FAVORS DO YOUR PART DONATE**

14 Value Village pays local nonprofits every time you donate. **Thank you!**

15 Ex. 726.

16 98. The signage package also shows the signs for the CDC area that are consistent
17 with the photograph of the Lacey CDC area, including the same over-the-door sign, and the
18 two smaller signs to the right. The topmost of the two signs to the right of the door, which was
19 partially obscured in the photograph, reads: “We need your good quality Clothing, Books,
20 Housewares, Furniture” and lists the Donation Hours, in addition to the ‘DO FAVORS...’ etc.
21 language seen in the photograph. Ex. 726. Ms. Gaugl testified that, other than the specific
22 charity logos for each store’s “primary” charity, the signage package was fairly consistent
23 across all Value Village stores. (Trial Tr. 379).

24 99. Photographs of the Spokane Value Village store, taken October 7, 2013, show
25 the same, large “Donate here” sign over the front entrance, with a graphic of a picture frame, as
26 seen on the Lacey store, as well as the same, large multi-window sign on the front of the store

1 featuring a charity logo (again, The Arc) and the words “Community Donation Center.” A
2 large “Donation Center” sign on the exterior of the store is also shown. Ex. 909.

3 100. Photographs of the Spokane Valley Value Village store, taken September 23,
4 2013, show the same, large, multi-window sign on the front of the store, as well as a sign
5 reading: “Community Donation Center Now Open.” Ex. 909. The CDC area of the Spokane
6 Valley store is also shown in photographs taken October 10, 2013, with the words
7 “Community Donation Center” over a drive-up area, and signs consistent with those seen in
8 the CDC area of the Lacey store. Ex. 909. The photographs of both Spokane stores were taken
9 by an employee of the Arc of Spokane, Brian Holloway. (Holloway Trial Tr. 952).

10 101. Photographs of the Burien Value Village store, taken by the State’s investigator
11 on November 24, 2014, show the same, large multi-window sign on the front of the store
12 featuring a charity logo (“Big Brothers Big Sisters”), the words Community Donation Center,
13 and the statements “**DO FAVORS DO SOMETHING GREAT DO A GOOD DEED DO**
14 **YOUR PART DONATE**” and “Value Village pays local nonprofits every time you donate.
15 **Thank you!**” as seen in the photographs of the Lacey and Spokane area stores, and in TVI’s
16 signage package. The front of the Burien store also has a sign in the window stating
17 “DONATIONS BENEFIT” with the charity logo of Big Brothers Big Sisters, and the words
18 “DONATE HERE”. Photographs of the CDC area, consistent with those of the Lacey and
19 Spokane-area stores, show a large “Donation Center” sign mounted on the roof overhang, and
20 signs consistent with those seen at the other stores. Ex. 642; (Haggerty-Shaw Trial Tr. 26-27)

21 102. Additional photographs of the exterior of Value Village stores in Washington,
22 taken by the State’ investigator on September 3 & 4, 2015, are consistent with those taken of
23 the Lacey, Spokane-area, and Burien stores. Ex. 645 (Issaquah); 647 (Marysville); 649 (Mr.
24 Vernon); 650 (Puyallup). (Haggerty-Shaw Trial Tr. 37, 43-44).

25 103. In December 2014, TVI registered as a commercial fundraiser under the
26 Washington Charitable Solicitations Act. Ex. 1077 (Defendant Dep Tr.), pp. 34-35; (Pope Trial

1 Tr. 1397). Beginning in October 2015, TVI added disclosures concerning its commercial
2 fundraiser status to some of its advertising and marketing. Ex. 1077, p. 36; (Gaugl Trial Tr.
3 440). A photograph of the Value Village Issaquah store, taken by the State’s investigator on
4 March 7, 2017, shows the same large, three-window panel sign present on the front of the store
5 on September 4, 2015, with the addition of the commercial fundraiser disclosure. Ex. 646
6 (March 7, 2017), 645 (September 4, 2015). (Haggerty-Shaw Trial Tr. 37, 51-52). A photograph
7 of the Burien store, taken by the State’s investigator on January 27, 2016, likewise shows the
8 same large, three-window sign present on the front of the store on November 24, 2014, with
9 the addition of the commercial fundraiser disclosure. Ex. 641 (January 27, 2016), 642
10 (November 24, 2014). (Haggerty-Shaw Trial Tr. 26-27, 46-48).

11 104. Photographs of the Value Village Crown Hill store taken by TVI in July 2019
12 show a large banner over the front entrance with the words “Donate to a nonprofit here” and
13 “Clothing + Household items”. On the same sign, in smaller, non-bolded print, are the words
14 “Value Village is a for profit professional fundraiser.” Ex. 2681. Additional photographs show
15 the same, multi-window panel sign with a charity logo (Northwest Center), the words
16 “Community Donation Center” and the slogans “**DO SOMETHING GREAT DO GOOD DO**
17 **FAVORS DONATE**” and “Value Village pays local nonprofits every time you donate. **Thank**
18 **you!**” seen on exterior store signs dating back to 2013, which Ms. Gaugl testified was standard
19 on TVI’s stores from 2009-10 onwards, with the addition of the commercial fundraiser
20 disclosure language TVI began adding in late-2015. Ex. 2669, 2670, 2685.

21 105. Photographs of the Value Village Crown Hill store taken by TVI in July 2019
22 also show the CDC area, on the side of the store, which has a large “Community Donation
23 Center” sign over the drive-up area, and a standing “Donation Drop Spot” sign, as well as signs
24 consistent with those seen in store photographs dating back to 2013, and in TVI’s signage
25 package, with the addition of a commercial fundraiser disclosure. Ex. 2672, 2676, 2683. Also
26

1 shown is a standing sign titled "Committed to Washington State Communities," which states
2 facts and figures about TVI's business operations in Washington. Ex. 2677.

3 106. In addition, the State introduced into evidence two photographs of a very large
4 store sign in the parking lot of the Crown Hill store, next to the street which runs in front of the
5 store, and which states "Value Village" and "Community Donation Center." Ex. 1083, 1084;
6 (Bardwell Trial Tr. 1291-94).

7 **2. Interior Store Signs**

8 107. Photographs taken of the interior of Value Village stores in Washington taken in
9 2013, 2014, and 2015 show signs with the following slogans:

10 DONATIONS BENEFIT The ARC

11 Ex. 909, Spokane Valley 2013.

12 MAKE ROOM FOR ALL YOUR NEW STUFF. DONATE TODAY!

13 YOU'LL LOVE HOW DONATING MAKES YOU AND EVERYONE ELSE FEEL!
14 In our community, your donations help support: [charity logos]

15 DONATIONS BENEFIT Big Brother Big Sisters

16 Ex. 642, Burien 2014.

17 Thank you for shopping and donating. Your support helps benefit: [charity logos]

18 DONATIONS BENEFIT Northwest Center

19 Donate reusable clothing and household items. Value Village. Good deeds. Great deals.

20 Value Village pays local nonprofits every time you donate. Northwest Center.

21 Ex. 643, Capitol Hill 2015.

22 These racks support more than just clothes. By shopping and donating at this store, you
23 support: [charity logos] Value Village good all around.

24 Donate here. Sight Connection.

25 Ex. 644, Crown Hill 2015.

26 Unsold items become world travelers. Developing nations benefit though our wholesale
and philanthropic efforts.

1 Help Your Neighbors. Help The World. Shop and Donate.

2 Every secondhand item in this store was purchased from a non-profit partner including
3 [listed charities].

4 Ex. 645, Issaquah 2015. Some of the same signs are shown in 2015 photographs of the
5 Marysville, Mount Vernon and Puyallup stores. Ex. 647, 649, 650.

6 108. A photograph of the interior of the Crown Hill store, taken in 2019, shows a
7 sign which reads: “For over 60 years, Value Village has helped charities, communities and the
8 planet prosper through the power of re-use. Our charity partners sell us goods they collect for
9 reliable revenue that helps fund their missions.” Ex. 2729. Ms. Bardwell testified that this sign
10 is present in the same place in the Crown Hill store where, in September 2015, the sign reading
11 “These racks support more than just clothes” (Ex. 644) was present, but could not say when—
12 between September 2015, and November 2017, when she started at the Crown Hill store—that
13 the new sign went up. (Bardwell Trial Tr. 1284-85).

14 109. A 2013 sign stated: “For each donation we receive, we pay local nonprofits ...
15 helping to support their vital community programs. We also give reusable items a second life.
16 Every year, we repurpose more than 600 million pounds of clothing and household items. By
17 shopping and donating at Value Village, you make a difference!” Ex. 2039.

18 3. Advertising Collateral

19 110. TVI’s advertising and marketing during the relevant time period included use of
20 advertising “collateral,” i.e., brochures, flyers, bookmarks, and other advertising typically in
21 paper form. (Gaugl, Trial Tr. 383).

22 111. TVI attached examples of its advertising collateral to the letter it sent to the
23 State on March 5, 2013, including advertising with the slogan “It’s time for you to go!
24 Goodbye clutter. Hello good deeds.”, over the phrases “Value Village pays local nonprofits
25 every time you donate” and “Donate and Make a Difference!” The same piece of collateral
26 states the hours for the Lacey Value Village store, as well as the address and a small map

1 showing the location of the store, and states “Your donations benefit: The Arc. In addition, it
2 contains the Value Village logo with the tagline “Good deed Great deals.”, in large lettering,
3 and also states: “For more information on how to donate at a Community Donation Center
4 located at Value Village visit valuevillage.com and click “donating.” Ex. 726.

5 112. An identical version of the same advertising collateral, except referencing the
6 Burien Value Village store, rather than Lacey, and Big Brothers Big Sisters, rather than The
7 Arc, was also introduced into evidence. Ex. 594. TVI’s Director of Communications, Ms.
8 Gaugl, testified that TVI produced multiple versions of the same advertising collateral for
9 different Value Village stores. (Gaugl Trial Tr. 401). The version of this advertisement for the
10 Burien store also bears a notation “REV. 1/2013,” which Ms. Gaugl testified indicates the date
11 the collateral was produced. (Gaugl Trial Tr. 402).

12 113. Another piece of advertising collateral introduced into evidence features a
13 graphic of two shirts, hanging on a clothes line, with the arms of the shirts wrapped around
14 each other, and the slogan “Good deeds for the good of everyone.” Underneath the slogan is a
15 section with the header “Value Village is about giving back and helping others, too.”, after
16 which it states: “That’s why you’ll find a Community Donation Center at every store. For each
17 donation we receive, we pay local nonprofits ... helping to support their vital community
18 programs. We also give reusable items a second life. Every year, we repurpose more than 600
19 million pounds of clothing and household items. By shopping and donating at Value Village,
20 you make a difference!” It also states “In this area your donations support: Northwest Center”
21 and “To learn more about our nonprofits, visit valuevillage.com.” Ex. 2076.

22 114. Another piece of advertising collateral introduced into evidence features a
23 photograph of a woman holding a purse, and the slogan “PROUD OF YOU SUE! You Just
24 Donated at Value Village,” beneath which it states: “You did it. You donated clothing and
25 household items and now your donation becomes funding for a local nonprofit. Feels good
26

1 right? We know!” It also states, “In our community, your donations benefit: Northwest Center”
2 and “To learn more about our nonprofits, visit valuevillage.com.” Ex. 2077.

3 115. Another piece of advertising collateral introduced into evidence features a
4 graphic of houses and hearts, with the slogan “Do Good In Your Neighborhood. Donate!”,
5 beneath which it states: “Your donation of clothing and household items becomes funding for a
6 local nonprofit.” The reverse side of the same collateral states “Donate local. Support local.”,
7 and “Thank you for dropping off your clothing and household items on behalf of local
8 nonprofits at the locations listed below.” Two locations are listed, as is one charity. Similar to
9 other collateral, it states that more information on donating may be found at valuevillage.com.
10 Ex. 467.

11 116. Numerous exhibits contain advertising collateral similar to those items already
12 discussed were introduced into evidence. Ex. 457, 468, 528, 531, 2033, 2039, 2056, 2115,
13 2196.

14 117. In addition to advertising collateral of the type already discussed, TVI utilized
15 more informational materials, for example a tri-fold brochure, which was included with TVI’s
16 March 5, 2013, letter to the State. The front panel of the brochure states the slogan “Donate
17 and make a difference,” with Value Village pays local nonprofits every time you donate”
18 underneath, and the Value Village logo with “Good deeds. Great deals.”, and the Value Village
19 website below. The two other exterior panels state that “Our featured nonprofit at this location
20 is: [The Arc charity logo]” and “Donations made at this location also benefit: [additional
21 charity logos].” The back-panel states hour and location information for the Lacey store. Each
22 of the other panels also, like the front panel, includes the Value Village logo with “Good
23 deeds. Great deals.”, and the Value Village website below. The revision date is 3/2012. Ex.
24 726.

25 118. The interior of the brochure contains a visual depiction of, and statements
26 concerning, what the brochure identifies as “The Savers Cycle.” The brochure shows six logos,

1 with statements underneath each one, for the Savers Cycle, as follows: **Local residents** donate
2 reusable items at Value Village stores or directly to its nonprofit partners (logo of shopping
3 bag with word “donate” on it); Value Village pays **local nonprofits** every time you donate
4 (logo of dollar bills); Donations are sorted and the highest **quality items** are value priced and
5 places on the sales floor (logo of household goods and clothing); Shoppers find unique items at
6 a **great value** (logo of shopping cart); Unsold items are **recycled** or sent to developing
7 countries rather than landfills (logo of the earth, with recycling symbol); Value Village **creates**
8 **jobs** and helps support local communities”. Ex. 726.

9 119. The interior of the brochure also has a section with the header “You’ll love how
10 donating makes you (and everyone) feel.”, with the following paragraph underneath:

11 It’s true that Value Village offers the best selection and shopping experience of
12 any thrift store. After all, each store puts out more than 5,000 fresh items every
13 day. But here’s something you might not know: we partner with local nonprofits
14 and pay them for all the goods donated at our stores. The more you donate and
15 shop at Value Village, the more your community benefits!

16 Ex. 726. Below that section is another section with the header: “Did you know?”, with the
17 following bullet point underneath:

- 18 ➤ Value Village has been in the business of recycling and supporting
19 communities for nearly **60 years**.
- 20 ➤ Over the past 10 years, we’ve paid over **140** nonprofit offices **\$1.5 billion**
21 which helps fund their community programs and services.
- 22 ➤ We’re doing our part to protect the planet. Value Village is one of the
23 largest recyclers of used goods in the world, saving more than **600 million**
24 **pounds** of quality merchandise from landfills each year.
- 25 ➤ Value Village is a growing company. Currently, we have more than **285**
26 locations in the U.S., Canada and Australia which employ over **17,500**
people.

120. The interior of the brochure also contains another section, titled “Community
Donation Center,” which states “Community Donation Centers are conveniently located at
every Value Village,” as well as “Donations can be dropped out during our regular store
hours,” and “We welcome donations of good quality: [listed items].” At the bottom of that

1 section, the brochure also states: “For more information on how to donate and to find a
2 location near you visit valuevillage.com.” The interior of the brochure, like the exterior,
3 includes the Value Village logo with “Good deeds. Great deals.”, and the Value Village
4 website below.

5 Ex. 726.

6 121. The brochure also included a visual depiction in red of Value Village’s business
7 model of donations, purchases, and reuse. Id. Other examples of such informational
8 advertising collateral were also introduced into evidence. Ex. 2037, 2051, 2058, 2059, 2194.

9 122. In another brochure Value Village provided a visual depiction of its cycle under
10 the heading “How Your Donations Help This Community And Beyond.” The cycle included
11 graphic icons and explained

12 [1] LOCAL RESIDENTS donate reusable items to local
13 nonprofits at Value Village stores or arrange for a free home
14 pickup → [2] Value Village pays LOCAL NONPROFITS every
15 time you donate → [3] Donations are sorted and the HIGHEST
16 QUALITY items are value priced and placed on the sales floor →
[4] Shoppers are able to find AFFORDABLE ITEMS for their
family and home → [5] Unsold items are RECYCLED or sent to
developing countries rather than landfills → [6] Value Village
CREATES JOBS and helps support local communities.

17 Ex. 2051 (“Do Good in Your Neighborhood” trifold).

18 123. A 2016 brochure included a visual depiction of the business model and cycle
19 under the header “Why On Earth Should You Donate.” The brochure explained (using stick
20 figures) “[h]ow it all works” and “(1) Items donated to nonprofits are purchased by Value
21 Village. → (2) Providing essential support for nonprofits in your community and the nation. →
22 (3) The best items get a second chance at life in our stores. Unsold items are recycled.
23 650,000,000 pounds were kept out of landfills this year.” Ex. 2232.
24
25
26

1 124. During the relevant time period, TVI's corporate marketing department
2 produced marketing "playbooks" which instructed store managers how it could implement its
3 various marketing materials, including advertising collateral and signs. Ex. 326, 502, 508, 510,
4 514, 515.

5
6 125. The playbooks show that advertising collateral could be conveyed via posters,
7 shopping bags, bookmarks, brochures, flyers, dressing room signs, in-store "category" signs,
8 register pole signs, stickers, and door hangers, which were made available to pick up, given to
9 shoppers to donors, and distributed in the surrounding community. *Id.* Value Village's 2014
10 Earth Month playbook, for instance, lists the following types of collateral, with the amount of
11 each to be sent to every Value Village store:

12
13 INTERIOR SIGNAGE AND COLLATERAL:

- 14 • 2,000 CDC Brochures (DISTRIBUTE UPON RECEIPT - until supply is gone)
- 15 • 2,000 CDC Flyers (DISTRIBUTE UPON RECEIPT - until supply is gone)
- 16 • 2,000 CDC Bookmarks (PLACE IN PURCHASED OR DONATED BOOKS)
- 17 • 2,000 CDC Doorhangers (For local store efforts within the surrounding
18 community)
- 19 • 2,000 30% off donation coupons (DISTRIBUTE April 18 - May 3, 2014 with
20 every donation of two boxes or bags - coupons are valid thru May 10, 2014)
- 21 • Donation kiosk sign (DISPLAY IN KIOSK UPON RECEIPT)
- 22 • 6 Cash Register Pole signs (DISPLAY UPON RECEIPT - using adhesives on
23 cash register poles)
- 24 • 60 Category Sign Stoppers (DISPLAY THROUGHOUT STORE BETWEEN
25 TWO CATEGORY SIGNS - CDC message pops out of category sign holder)
- 26 • Three hanging banners (DISPLAY UPON RECEIPT - at your entrance)

- 1 • Green plastic shopping bags (USE UPON RECEIPT - in place of beige shopping
- 2 bags until your supply is gone)
- 3 • Dressing rooms signs (DISPLAY UPON RECEIPT - Display within fitting room
- 4 sign holder OR on fitting room doors.)
- 5 • 22 x 28 Bulletin "Donation Drive" Sign (DISPLAY WHEN YOU ARE HAVING
- 6 A DONATION DRIVE - use pocket for store specific drive information)
- 7 • One Table Top recycle sign (DISPLAY UPON RECEIPT - on your CDC table)
- 8 • Door Clings (DISPLAY UPON RECEIPT - one cling on entrance door, one on
- 9 exit)

10 Exterior SIGNAGE:

- 11 • Exterior Banner (DISPLAY UPON RECEIPT - exterior of your building)
- 12 • Light Pole Signs (DISPLAY UPON RECEIPT - on parking lot light poles)
- 13 • Shaker Signs (TEAM MEMERS TO SHAKE ON BUSY STREET CORNERS)
- 14 • Stake Signs (DISPLAY ALONG HIGHLY TRAFFICKED STREETS)
- 15 • Window Clings (DISPLAY UPON RECEIPT- one cling per window)

16 Ex. 514. Ms. Gaugl testified that these amounts were “a starting place,” and stores could re-order
17 additional materials. (Gaugl Trial Tr. 408).

18 126. Ms. Gaugl also testified that, as stated in the playbooks themselves, some items
19 were made available on information tables, some were handed out to customers in the CDC
20 area or when checking out, some (bookmarks) were pre-stuffed into items for sale, others were
21 distributed at community events, and some were given to Value Village’s charity suppliers to
22 distribute in the community. (Gaugl Trial Tr. 409-11).

23 127. Photographs of information tables inside Value Village stores in Burien (2014),
24 Capitol Hill (2015), and Crown Hill (2015), with advertising collateral available for pick-up,
25 were also introduced into evidence. Ex. 642, 643, 644. The tables were covered with a green
26 tablecloth with the slogan “Donate and Make a Difference,” accompanied by the Value Village

1 “Good deeds. Great deals.” logo and website. Each table also included an upright sign with an
2 advertising graphic and slogan (“LOOK AT ALL THE GOOD YOUR GOODS JUST DID!”;
3 “Thanks for Donating! Your Donations Help the Community and Beyond”), and a visual
4 depiction of the “Savers Cycle” graphic contained in the information, tri-fold brochure. *Id.*; Ex.
5 726.

6 128. There are many additional examples of how TVI consistently included
7 explanations about, and visual depictions of, its business model in numerous signs, brochures,
8 and collateral material at its Washington Value Village stores. See, e.g., Trial Tr. 536:24-
9 537:3, 539:24-540:13, 541:5-7, 542:14-16, 546:7-10, 547:14-20, 556:17-19, 566:19-23, 573:4-
10 8 (Gaugl); Trial Tr. 913:14-16, 914:9-15 (Alterman); Trial Tr. 1245:6-9 (Bardwell); Exs. 22
11 (pp. 7-8, 11 of 11), 595, 644 (pp. 4-5 of 42), 645 (pp. 14, 16 of 31), 2033, 2037, 2039, 2051,
12 2068, 2898, 2899. See also Trial Tr. 1248:21-24 (Bardwell); Pope Dep. at 40:20-41:11; Exs.
13 2095, 2098, 2103, 2232.

14 129. Signage at TVI stores identify that donations at CDCs benefit specific charity
15 partners. Window signs at the front of Value Village stores identify the charity partner for the
16 CDC at the store and point to the location of the CDC (usually at the side or back of the store).
17 See, e.g., Exs. 2659 (window sign with large Northwest Center logo next to words
18 “Community Donation Center”); 2669 (same); 2675 (two window signs at the CDC with large
19 Northwest Center logos); 2318 (“Donations at this location benefit: Northwest Center[,] Sight
20 Connection[,] Big Brothers Big Sisters of Puget Sound[,] The Arc of Washington State (Pierce
21 County)”); 2772 (CDC with signage including BBBS logo and list of additional charities
22 benefited by donations); 2892 (exemplar of pooled market CDC signage); 573 (Spokane-area
23 pooled-market CDC signage including Rypien and Northwest Center logos); 578 (“The Moyer
24 Foundation *Helping Children in Distress* Community Donation Center”).

25 130. TVI identifies and features its charity partners in collateral materials available at
26 Washington Value Village stores. Examples include **bookmarks**, see, e.g., Exs. 2033

1 (including logos of six Puget Sound charity partners), 2068 (“Community Donation Center ...
2 In this community, we accept donations on behalf of [logo for Sight Connection]”), 2103
3 (same for BBBS); **trifold brochures**, *see, e.g.* Exs. 2051 (stating “Your donation of clothing
4 and household items just became funding for a local nonprofit” and listing logos and mission
5 statements for five Puget Sound charity partners), 2098 (“Your donations of clothing and
6 household items at the locations listed below benefit [logo for Sight Connection]”), 2232 (same
7 for BBBS); **flyers**, *see, e.g.*, Exs. 2107 (“As always, your donation of reusable, or recycled,
8 clothing benefits local nonprofits, including [logos for Northwest Center, Sight Connection,
9 and BBBS]”); 531 (“In this area, your donations benefit [Moyer Foundation logo]” and
10 describing Moyer Foundation’s mission); 594 (“Your donations benefit [BBBS logo]”) **and**
11 **other in-store signage**, Exs. 2039 (sign stating “In this area, your donations support Big
12 Brothers Big Sisters of Puget Sound. To learn more about our nonprofits, visit
13 valuevillage.com” and including BBBS logo); 2585 (“In our community, your donations help
14 support [logos for Sight Connection, BBBS, Northwest Center, and the Arc of Washington
15 State]”); 641 (image of Value Village Cycle including BBBS logo).

16 131. Value Village highlighted its charity partners on its website and social media
17 pages. *See, e.g.*, Exs. 860 (valuevillage.com excerpt from 2008 identifying charity partners);
18 691 (Facebook post highlighting partnership with Northwest Center).

19 132. According to its charity partners, TVI’s promotion of them has “significant” and
20 “extremely valuable” benefit to the charity partners in increasing awareness about the
21 organizations and their community missions. Trial Tr. 1322:6-9, 1323:10-18 (Boes); Trial Tr.
22 1361:22-25, 1363:2-6 (Garcia).

23 4. Donation Cards and Coupons

24 133. During the relevant time period, TVI distributed “Hero Cards” to customers as a
25 reward for donating, which read “Yay! You’ve made a difference in our community.” Ex. 326,
26 641, 643, 647, 649. Ms. Gaugl testified that consumers who donated at Value Village stores

1 received stamps on their cards, which could then be redeemed for discounts up to 30% of
2 purchases in Value Village stores. (Trial Tr. 425-426). Donation cards were an ongoing
3 promotion, that ran throughout the year, beginning in January 2015, and every year thereafter.
4 (Trial Tr. 426).

5 134. During the relevant time period, TVI also distributed stamp cards, which
6 similarly rewarded consumers with stamps towards an in-store purchase discounts for shopping
7 or donating at Value Village. Ex. 592; (Gaugl Trial Tr. 428-429).

8 135. During the relevant time period, TVI also distributed coupons for in-store
9 purchase discounts as a reward for donating at Value Village stores, by handing out such
10 coupons in its stores. Ex. 519; (Gaugl Trial Tr. 429-430). These coupons were also handed out
11 with tax receipts, and in many instances, with the coupon attached to the tax receipt, Ex. 293,
12 643, 644, 650.

13 136. During the relevant time period, TVI also distributed "Valpak" coupons in the
14 neighborhood of Value Village stores, which provided in-store purchase discounts as a reward
15 for donating at Value Village stores. Ex. 299; (Gaugl Trial Tr. 431-33). The Valpak coupon
16 introduced at trial was sent to 70,000 households. Ex. 299.

17 **5. In-Store Announcements**

18 137. During the relevant time period, Value Village also advertised utilizing in-store
19 public address (PA) announcements, read by employees, for example:

20 Most of the merchandise sold at our stores was purchased from a local not-for-
21 profit organization. Partnership like these will raise over \$100 million this year
22 to help fund non-profit programs in this community and others. So, don't worry
if the Flying Squirrels Foundation didn't get your check this year. You're helping
a great organization by just shopping with us.

23 When you donate your reusable items here at our store, we pay it forward to others
24 in a big way! Your donations mean support for local nonprofits - helping to fund
vital programs right here in our community. Pretty awesome, huh?

1 Ex. 371, 559. Ms. Gaugl testified that the messaging in these announcements was typical of
2 Value Village's PA announcements, and contained the same themes seen in Value Village's
3 other advertising concerning donating and supporting local nonprofits. (Trial Tr. 443-44).

4 138. Photographs of scripts from the Burien Value Village store in-use in 2015
5 provide more specific examples of how this messaging integrated references to particular,
6 featured charities:

7 Did you know when you donate your reusable items at the Burien Value Village;
8 you're helping our nonprofit partners like Big Brother and Big Sister. Now you
9 can receive a shopping discount every time you donate! You can save up to 30%
with the new Donor Discount Card. Thank you and have a great _____.

10 Attention Shoppers!! Did you know that for every donation you make here at our
11 Community Donation Center, we pay our non-profit partners, Big Brothers / Big
12 Sisters? Thanks to the generosity of people like you, we are able to make a
difference in our community. So, the next time you are cleaning out your closets
or trying to get rid of your unwanted items, think about us ... Value Village ...
your community donation center.

13 Did you know that you can earn coupons, support your community AND recycle
14 your reusable items right here in our store?!? Value Village pays our non-profit
15 partners, Big Brothers / Big Sisters for every donation of quality clothing,
housewares and furniture items. Every donation helps fund their important
community programs. So, shop often and donate often !!! It's tax deductible and
16 the payoff for everyone is priceless.

17 Ex. 1082. The Value Village Burien production manager (2013), and then store manager from
18 2014 through 2017, Ms. Bardwell (who moved to the Crown Hill store in November 2017),
19 testified that store announcements were read over the PA every 15 to 20 minutes. (Trial Tr.
20 1289).

21 139. In addition to employees reading scripts over the PA, Value Village stores
22 played radio-style, pre-recorded announcements, for example:

23 We love this neighborhood so much that we partner with non-profits in this very
24 community. You're helping too you know. Your donations and purchases help us
fund their programs and services. How's that for shopping with a smile?

25 Ex. 368. Ms. Bardwell testified that this particular announcement was played in the Burien store
26 "a lot ... maybe a couple times an hour." (Trial Tr. 1290).

1 140. Other examples of pre-recorded announcements were also introduced into
2 evidence:

3 Tis the season of giving. Remember to donate your quality clothing and
4 household items at the Community Donation Center located at our store before
5 the end of the year for your 2012 tax break. We pay our nonprofit partners every
6 time you donate. Thank you, and happy holidays

7 Ex. 366. Ms. Gaugl testified that this announcement was likely played in Value Village
8 stores during the 2012 holiday season. (Trial Tr. 435).

9 Come celebrate our 60th anniversary and get a 30 percent off purchase with your
10 completed savings pass. Every \$5 you spend or bag of reusable items you donate
11 earns you a stamp. 15 stamps get you 30 percent off. Be sure to ask for your
12 savings pass today. Offer good while supplies last. See pass for details.

13 Ex. 367. Ms. Gaugl testified, regarding this announcement, that Value Village's 60th
14 anniversary was five or six years ago, i.e., 2013 or 2014. (Trial Tr. 436).

15 Do you have a case of too many things and nowhere to put it all? We've got just
16 the place. Our open arms. Pack up your unused or gently used items and donate
17 them here. You'll keep them out of landfills and help neighborhood nonprofits.

18 Ex. 369.

19 You're our hero. You shop at our store and hopefully donate here. We'd like to
20 say thank you every time you donate by offering you a reward when you shop.
21 Ask about our donor rewards program today, and let the benefits begin.

22 Ex. 370. Ms. Gaugl testified that Ex. 369 and 370 were also both played inside Value Village
23 stores. (Trial Tr. 440, 442).

24 6. Store Audits

25 141. Audits of advertising and marketing materials at the Lacey and Burien Value
26 Village stores provide an overview of all of the different types of in-store advertising utilized
by TVI at its Washington stores. Ms. Gaugl testified that the audits were carried out in the fall
of 2015. (Trial Tr. 612).

142. The Lacey store audit lists the following materials, with images of each one:

CDC Signs

- Window Graphics

- 1 • CDC Nonprofit Sign
- 2 • Exterior NPP Wall Sign
- 3 • Exterior Wind Sign
- 4 • Sandwich Board
- 5 • Large Outdoor Banner [two different types]
- 6 • CDC Hours Sign
- 7 • CDC "Benefits" Sign
- 8 • CDC Donation Bin
- 9 Collateral
- 10 • Hero Card
- 11 • CDC Bookmark [two different types]
- 12 • CDC Brochure [two different types]
- 13 • CDC Door Hanger
- 14 • CDC Flyer [three different types]
- 15 • Stake Signs [two different types]
- 16 • CDC Light Pole Sign
- 17 • CDC Bubble Sticker
- 18 • Savers Pays Button
- 19 • Feather Banner
- 20 • G.U.T.S. Poster
- 21 • Tax Receipt [including whether it has a coupon]
- 22 • CDC Vest/Apparel
- 23 Interior Signage & Materials
- 24 • Entry Way Mural
- 25 • Front of Store Mural
- 26 • Changing Room Sign

- 1 • Flyer – “Give it up for good”
- 2 • “Fill this bag” Sign
- 3 • Donation Bag
- 4 • Earth Day Shopping Bag (green)
- 5 • Pole Sign at Register [two different types]
- 6 • Hero Card Sign
- 7 • Door Decal
- 8 • 3 Hanging Entrance Banners
- 9 • Magnetic Kiosk - Do Good
- 10 • Magnetic Kiosk - Thanks for Donating
- 11 • Savers Cycle Flyer - Thanks for Donating
- 12 • “Savers Cycle - large, hard plastic (2-sided)”
- 13 • Savers Cycle Tent Sign
- 14 • Info Desk Tablecloth
- 15 • NPP Supplied Brochure
- 16 • Donation Bin w/ Label
- 17 • Careers Brochure
- 18 • Perimeter Sign [five different types]
- 19 • Other exterior or interior signs

20 Ex. 449.

21 143. The Burien store audit, which Ms. Bardwell conducted (Trial Tr. 1247-48),
22 likewise identifies advertising and marketing materials that were present at the Burien store at
23 that time, with the addition of photocopies of PA announcement that were read in the store. Ex.
24 429, 1082; (Trial Tr. 1287-89).

25 144. The store audits show that, as of late-2015, the advertising at Washington Value
26 Village stores included many of the elements introduced through other evidence, such as:

1 large-multi-panel signs on the front of the store and CDC-area signs; large outdoor banners,
2 including the “Donate here” banner with a graphic of a picture frame seen in the 2013
3 photographs of the Lacey and Spokane-area stores; and, advertising collateral in all the forms
4 listed in the playbooks (including collateral with the “Do Good In Your Neighborhood.
5 Donate!” and “Proud of You Sue!” advertising themes), as well as Hero Cards. Ex. 467, 468,
6 642, 643, 644, 647, 649, 650, 726, 909, 2051, 2056, 2059.

7 145. Additional forms of advertising in use in late-2015 are also documented in the
8 store audits, including “Bubble Stickers” with the phrase “Yay Me! I Donated and Helped A
9 Local Nonprofit. Value Village” and “Savers Pays Buttons” with the phrase “Saver pays local
10 nonprofits every time you donate. **Thank you!**” Ex. 429, 449.

11 7. Advertising Beyond the Stores

12 146. Value Village also advertised and marketed online, through its own website,
13 social media channels, and paid advertising. Throughout the relevant time period, Value
14 Village has maintained its own website, utilizing some of the same advertising content on its
15 website as in its in-store advertising collateral. For example, on November 24, 2014, the home
16 page of the Value Village website featured the “Proud of You Sue! You Just Donated at Value
17 Village” advertising (and related “Way To Go Mary-Jo!” and “Good Job Bob!” versions) that
18 was utilized in multiple forms of advertising collateral during the relevant time period. Ex.
19 2325. As another example, Ex. 880 (website) and 595 (advertising collateral) use the same
20 advertising image of a woman seated on a couch with boxes of used goods and the slogan:
21 “Give it up ... **for good.**” As another example, Ex. 882 (website) uses the same graphic of a
22 woman holding up used goods as is shown in a marketing playbook for use on a donation kiosk
23 (Ex. 515). The website version has the slogan: “You got the stuff **good deeds** are made of.”

24 147. Other, similar advertising was present on Value Village’s website during the
25 relevant time period, for example: a photograph of woman with the slogan “shopping. great
26 deals and good works all in one outfit” (Ex. 864); a graphic of blue jeans with the slogan

1 “These Pants Say ‘I’m Giving Back’” (Ex. 875); and, a graphic of donated goods with the
2 slogan “Help a local nonprofit and **Save 30% when you donate!**: (Ex. 891).

3 148. TVI also maintained an active Value Village Facebook page during the relevant
4 time period, which likewise used the same advertising material that was disseminated in-store
5 and via the website. *E.g.*, Ex. 694 (“Good Job Bob!”), Ex. 729 (“Proud of You Sue!”), 740
6 (advertising stamp pass); 744 (“Give it up ... **for good**”); 748 (“These Pants Say ‘I’m Giving
7 Back’”); Ex. 754 (“Way To Go Mary-Jo”); 731 (advertising 30% off coupon for donating).

8 149. TVI also maintained an active Savers/Value Village Twitter page during the
9 relevant time period, which likewise used the same advertising material that was disseminated
10 in-store and via the website. *E.g.*, Ex. 768 (advertising savings pass); Ex. 772, 777, 778, 779,
11 834 (advertising 30% off coupon for donating); Ex. 787 (advertising coupon book for
12 donating); Ex. 789 (advertising tax break for donating); Ex. 801 (advertising 30% off with hero
13 card for donating); Ex. 822 (“Donate and make a difference”); Ex. 825 (“donating... does a
14 world of good”); Ex. 826 (“Way to Go Mary-Jo”); Ex. 829 (“Give it up... for good...”); Ex.
15 832 (“Good Job Bob!”).

16 150. Value Village also purchased online advertising on different websites, for
17 example AccuWeather.com during the relevant time period utilizing the same advertising (*e.g.*,
18 “Proud of You!”) that was disseminated via other means. Ex. 315; (Gaugl Trial Tr. 464-66).

19 151. In addition to online advertising, TVI also ran television and radio advertising
20 in Washington during the relevant time period. TVI ran a television advertisement in
21 Washington featuring a talking dog that tells his owner that the owner is a ‘good boy’ for
22 donating at Value Village. Ex. 1068; Ex. 315; (Gaugl Trial Tr. 462-63). TVI also ran radio ads
23 on NPR in Washington, during the relevant time period. Ex. 315; (Gaugl Trial Tr. 463-64).

24 152. Throughout the relevant time period, TVI utilized a short slogan or tagline as
25 part of its Value Village logo. The slogan and logo were present on virtually every webpage on
26 its website (*e.g.*, Ex. 2325), and on many pieces of its advertising collateral (*e.g.*, Ex. 531, 594,

1 595). It also served as TVI's company letterhead during the relevant time frame. Ex. 726. The
2 slogan paired with the Value Village logo changed over time, however, as follows:

- 3 • Pre-2009: Value Village "the ultimate treasure hunt" (Ex. 859);
- 4 • 2009 to mid-2010: Value Village "good all around" (Ex. 863, 873);
- 5 • Mid-2010 to 2016: Value Village "Good deeds. Great deals." (numerous);
- 6 • 2016 to present: Value Village "Shop. Reuse. Reimagine." (Ex. 897).

7 Ms. Gaugl confirmed that the slogan 'Good All Around' was in effect from 2009 to 2010, that
8 'Good Deeds, Great Deals' was in effect from 2010 until 2016, and that 'Shop, Reuse, Reimage'
9 was in use thereafter, and that all three logos were used in the same general way, on marketing
10 materials and online, whenever the Value Village name was included. (Trial Tr. 616).

11 **8. TVI's Market Research**

12 153. TVI commissioned several market research studies during the relevant time
13 period. TVI's research found the primary motivation for donors is having too much stuff and
14 wanting to clean out a closet. Ex. 3 at 7. Convenience of donating is critically important as
15 well. Trial Tr. 528:7-16 (Gaugl); Ex. 3 at 7. Wanting to benefit nonprofits, supporting
16 recycling and reuse efforts, and hoping to give used goods a second life are also donor
17 motivations. Ex. 3 at 7.

18 154. This emphasis on convenience of donation led TVI to begin opening CDCs at
19 its stores in approximately 2004 or 2005. Trial Tr. 717:18-21 (Shumpert); Trial Tr. 849:15-16
20 (Alterman); Ex. 2780. Prior to opening these CDCs, TVI had no formal program for receiving
21 donations at stores. Some donations were dropped off at backdoor areas of TVI's stores, but
22 this included significant dumping. Trial Tr. 847:1-11 (Alterman).

23 155. OSDs represent a lower cost of goods for TVI, because there are no costs for
24 collection efforts. Trial Tr. 845:19-846:1 (Alterman). But OSDs are also particularly
25 important to TVI's charity partners because they receive payments for these goods, and
26 although the payment rates are less than for delivered goods, they provide revenues to the

1 charity partners without having to incur solicitation or collections expenses. Trial Tr. 845:22-
2 846:1 (Alterman); Trial Tr. 1315:13-22 (Boes).

3 156. In late-2013, TVI's then Chief Marketing Officer, Karin Koonings,
4 commissioned focus group research from a firm called Research360 (Pigram) in connection
5 with a planned new store design initiative. (Gaugl Trial Tr. 486). Ms. Gaugl testified that TVI
6 was seeking to refresh its brand tag lines, and looking at consumer mindsets, and how to grow
7 its customer base. (Trial Tr. 487).

8 157. The results of the study were contained in a Research360 report titled "Savers.
9 Qualitative Brand Positioning Research with Thrift Shoppers, Donors & Prospects," dated
10 April 23, 2014. Ex. 25. The report was presented to several of TVI's executives on the same
11 day, April 23, 2014. *Id.*; (Gaugl Trial Tr. 489-90).

12 158. Mr. Pigram's report reflected that his focus groups predominantly included
13 individuals with little to no familiarity with TVI or Value Village. Trial Tr. 603:2-5 (Gaugl).
14 TVI did not know how many people participated in Mr. Pigram's focus groups, but believed it
15 was fewer than 100. Trial Tr. 603:6-8 (Gaugl). Two of the three focus-group markets were in
16 Boston and Toronto. Ex. 25 at 5.

17 159. The Research360 study presented "positioning statements" to focus groups,
18 include a statement titled "S2 Community," which read:

19 At Savers, some people shop our stores to save money. Some others donate goods
20 to save their closets from overcrowding. But no matter why they shop or give to
21 Savers, they're helping save their communities one shirt, lamp, or stuffed animal
at a time.

22 That's because we pay local non-profits for the merchandise we sell in our stores.
23 In the last 10 years, the company has paid its non-profit partners over \$1.5 billion,
ensuring they can thrive and provide tangible help and services to people in
communities where we operate.

24 Ex. 25.

25 160. Ms. Gaugl testified that this positioning statement contained points of similarity
26 with Value Village's actual advertising and marketing during the relevant time period,

1 including paying local nonprofits, use of the term nonprofit partner, and references to local
2 communities. (Trial Tr. 488). However, there were significant differences, such as use of the
3 term in Pigram’s report about donors, “giving to,” Savers/ValueVillage rather than giving to
4 charity partners AT a Savers/VV. TVI claims it would never use such language in its
5 advertising.

6 161. Research360 reported the responses of research participants to this statement as
7 follows:

8 Mixed reactions to the following two claims:

9 – *‘We pay non-profits for the merchandise we sell’*

- 10 • Some confusion created by Savers paying non-profits. This is a
11 key because, importantly, some shoppers and donors felt that
Savers itself is a non-profit.

12 – *‘In the last 10 years, the company has paid its non-profit partners over \$1.5
13 billion’*

- 14 • Positive reactions:

15 – “I’m impressed at ‘the cycle’ and how they donate to the
community” Prospect, Seattle

16 – “it’s OK to be a non-profit and give this amount to the
17 community” Donor, Seattle

18 Ex. 25 (emphases in original). The same report found that the positioning statement that TVI
19 “paid its non-profit partners over \$1.5 billion” spoke to “the size, scope and generosity of
20 Savers.”

21 162. Ken Alterman, who was Value Village’s President, and then CEO, from 2003-
22 2004 until February 2017 (Trial Tr. 800-802), testified that, during his tenure as CEO, he
23 personally reviewed the Research360 report, including the findings that research participants
24 thought Savers/Value Village was itself a non-profit. (Trial Tr. 878). He also testified that was
25 not the first time the issue of donors viewing Savers/Value Village as a non-profit came to his
26 attention (Trial Tr. 878), stating: “The first time you pay sales tax in our store, if you think

1 we're a nonprofit, it's we're not a nonprofit. So, we're aware of it when someone checks out
2 and says 'Why is there tax?' We say, 'Because we're a for-profit company.'" (Trial Tr. 879).

3 163. That "some" unspecified shoppers and donors expressed "some" unspecified
4 confusion about whether Savers was a nonprofit was Mr. Pigram's characterization. Trial Tr.
5 605:4-20, 623:18-624:2 (Gaugl).

6 164. Another report titled "Savers Brand Strategy Recommendation" was prepared
7 for TVI by Tesser, which was hired to execute the design and development of TVI's store
8 redesign, in 2013 or 2014. Ex. 94; (Gaugl Trial Tr. 616-18). The Tesser report summarized
9 "Findings from Research" as follows (emphases in original):

10 Some clarity on where NOT to go:

- 11 "*pays local non-profits*" ➤ This model is confusing and without detailed
12 explanation creates more questions than
assurances
- 13 "*paid non-profit partners*
14 *over \$1.5 billion...*" ➤ Large numbers, while impressive, don't make an
emotional connection; in some cases, they invite
15 further questions about how much money Savers
has made, and whether or not it is for-profit or
non-profit
- 16 "*sold to developing nations*" ➤ Confusion and irritation over donated items being
17 "sold."

18 165. Mr. Alterman testified that he reviewed this report, and these specific findings,
19 during his tenure as CEO. (Trial Tr. 881-82). He testified that TVI did not make any specific
20 changes as a result of this research (Trial Tr. 882), stating: "the signs say it in the store, that we
21 pay local nonprofits for this merchandise when you donate, that's pretty clear. So, I don't know
22 how much clearer you can make it." (Trial Tr. 883).

23 166. In November 2014, TVI sent a Request for Proposal for 2014-2015 Creative
24 and Media Services to advertising agencies, which stated under a section entitled "Insights on
25 Thrift Shoppers": "There is confusion surrounding the brand. Owing to Savers (often) large
26 store size and advertising presence, some feel it is a 'for profit corporation' with 'suspicious

1 motives.’ Others feel that Savers is itself a non-profit, as opposed to an organization that
2 benefits non-profits.” Ex. 1071; (Gaugl 610-61).

3 167. In 2016, TVI commissioned a consumer survey from Edelman Intelligence,
4 which surveyed 3,097 adults in the United States and Canada to “gather insights into consumer
5 perceptions and behaviors about reuse.” Ex. 3. (Gaugl Trial Tr. 492). The “Key Findings” set
6 forth in the State of Reuse Report include the following: “Nearly half of North Americans say
7 they would donate more if they knew their donation would help nonprofits they support.” Ex.
8 3. The Report also found, in a section entitled “Why they give: helping others”, as follows:
9 “Once people do make the decision to donate, helping others outweighs convenience, sparing
10 landfills or even tax write-offs. Sixty-four percent of Canadian respondents and 59 percent of
11 U.S. respondents donate goods to benefit nonprofit organizations.” Ex. 3. Findings in the same
12 section repeated the “Key Finding” regarding helping nonprofits, and added: “Helping others
13 was a more compelling reason than knowing more about the environmental impact of the
14 water, energy and chemicals that go into making clothes – only 12 percent of respondents
15 chose that reason.” Ex. 3.

16 168. In 2017, TVI commissioned a similar survey from Edelman Intelligence which
17 surveyed 2,006 adults in the United States and Canada, as well an additional sampling of
18 consumers in 5 key markets, including Seattle (505 adults) to “learn more about how
19 consumers perceive and deal with ‘stuff’ and its overall role in their community and the
20 environment.” Ex. 23; (Gaugl Trial Tr. 494). The Report found, in a section entitled “We’re
21 Thinking Locally”, that “Despite lingering misconceptions about reuse, people do understand
22 the impact of their donations. 76 percent consider donating clothing and home goods as a form
23 of charitable giving and 85 percent say it is important to them to give back to their
24 community.” Ex. 23. A “key takeaway” in the same section found that “people consider
25 community impact to be more important than environmental impact when it comes to their
26 decision to donate used items. While 51 percent donate used clothing and household goods to

1 help their local community, only 13 percent do so to help the environment. This gap is even
2 further pronounced when respondents were forced to choose whether their donations should
3 benefit the community or the environment. 78 percent wanted their donations of used goods to
4 benefit their community compared to the 22 percent who wanted their donations to benefit the
5 environment.” Ex. 23.

6 **9. TVI Statements about its For-Profit Status**

7 169. Value Village is a for-profit company. It has not, over the years, prominently
8 displayed this information on the signage that covers its stores and website. However, if a
9 consumer wished to learn of TVI’s corporate structure, TVI makes this information available
10 to consumers.

11 170. In those instances where TVI identifies its corporate structure, it has never
12 identified itself as a nonprofit company or a charity, but has said the opposite, that it is a “for-
13 profit thrift store chain.” Ex. 853 (Value Village website from 2006); *see also* Trial Tr.
14 596:25-597:4 (Gaugl); Exs. 22 (pp. 7-8, 11 of 11), 726 (p. 11 of 32) (signage at Lacey store
15 from 2013 identifying Value Village as a for-profit business), 2325 (screen shots of Value
16 Village website in November 2014 in which Value Village explained that “Our for-profit
17 company partners with local nonprofit agencies to make sure the funds stay local.”).

18 171. Since registering under the CSA, TVI has also posted numerous required,
19 additional disclosures that it is a for-profit commercial fundraiser soliciting donations on behalf
20 of specific charity partners at given CDCs.

21 172. The disclosures state that “TVI, Inc., d/b/a Value Village, is a for-profit
22 commercial fundraiser, accepting donations of secondhand clothing and household goods on
23 behalf of [CHARITY PARTNER] of [CITY]. The required registration is on file with the
24 Secretary of State’s charity program. Additional financial disclosure information is available
25 by calling the Secretary of State at 1-800-332-4483.” *See, e.g.*, Ex. 2912.

1 173. As of Summer 2015, the disclosures are set forth in signage at stores, at CDCs,
2 and in any materials mentioning donating. Trial Tr. 1435:16-1436:15 (Pope); *see also* Trial Tr.
3 1260:14-19, 1260:20-1261:9, 1262:6-8, 1267:17-21, 1269:10-13, 1270:24-1271:2, 1275:1-9
4 (Bardwell).

5 174. Value Village's Crown Hill Store features a 27-foot exterior banner that hangs
6 below the store marquee in which Value Village informs consumers that they can donate to a
7 non-profit at the store and that Value Village is a for-profit professional fundraiser. Exs. 2682,
8 2914.

9 175. The Crown Hill store additionally features commercial fundraiser disclosures
10 posted at eye level for customers walking in front of the main store windows, as well as a
11 disclosure on the automatic sliding door to enter the store. Trial Tr. 1256:20-24, 1258:12-14,
12 1258:21-23, 1260:11-13 (Bardwell); Exs. 2659, 2660, 2685, 2912, 2914.

13 176. Value Village also posts commercial fundraiser disclosures at the Crown Hill
14 checkout registers. Trial Tr. 1267:7-16 (Bardwell); Exs. 2746, 2747. Crown Hill employees
15 additionally make PA announcements regularly, and in doing so, are instructed to read scripts
16 that reference Value Village as a for-profit commercial fundraiser. Employees do not deviate
17 from these scripts in making announcements. Trial Tr. 1266:14-1267:6 (Bardwell); Ex. 2745.

18 177. Value Village now additionally informs consumers that it is a for-profit
19 commercial fundraiser through brochures, fact sheets, and bookmarks available at the
20 information table inside the Crown Hill store. Trial Tr. 1267:22-1269:23 (Bardwell); Exs.
21 2749, 2755, 2752, 2753. Value Village also posts signs at the CDC drive-through visible to
22 drivers with information about its business model and its Washington fact sheet. Trial Tr.
23 1273:14-1274:5 (Bardwell); Ex. 2677. If Crown Hill donors have questions about Value
24 Village's business model or relationship with Northwest Center, Value Village provides copies
25 of its Washington fact sheet to these donors. Trial Tr. 1274:14-25 (Bardwell); Exs. 2692,
26 2693.

1 **10. Consumer Surveys**

2 178. Testimony was introduced at trial concerning consumer surveys performed by
3 the parties' respective experts.

4 179. The State's expert, Sarah Butler performed a consumer perception survey of
5 Value Village's advertising. Ms. Butler is a Managing Director with NERA Economic
6 Consulting, where she is the chair of the company's survey and statistical sampling practice,
7 and has conducted numerous consumer surveys. (Trial Tr. 1005). The vast majority of Ms.
8 Butler's professional work involves survey research. She holds master's degrees in philosophy
9 and applied sociology, which studies quantitative methods of social science research. (Trial Tr.
10 1008). She has authored academic papers in the area of survey research, has presented at
11 academic conferences, is a member of the American Statistical Association and the American
12 Association for Public Opinion Research, and has taught college-level classes, including
13 undergraduate statistics courses and graduate courses in research methodology. (Trial Tr.
14 1008-1009).

15 180. Ms. Butler conducted a survey that purported to test (1) the reasons individuals
16 shopped or donated goods at Value Village stores and (2) the perceptions of respondents as to
17 whether Value Village was a charity or nonprofit based on test and control CDC window signs
18 and store PA announcements. Trial Tr. 1050:8-25, 1055:15-21 (Butler).

19 181. Ms. Butler conducted a second survey in 2019 that purported to test whether
20 consumers who had heard of Value Village believed it was a charity or nonprofit. Trial Tr.
21 1060:2-1062:5 (Butler). This second survey did not test any advertising or marketing
22 materials. Trial Tr. 1060:11-13, 1061:24-1062:2 (Butler). It also did not reflect whether
23 survey-takers who had heard of Value Village had ever shopped or donated at Value Village or
24 had any familiarity with its model.

25 182. TVI engaged Dr. Stephen Nowlis of Washington University in St. Louis to
26 analyze Ms. Butler's report and opinions, and to conduct a rebuttal survey. Trial Tr. 1511:4-

1 1512:20 (Nowlis). Dr. Nowlis's rebuttal survey analyzed whether the advertising
2 representations tested by Ms. Butler (and one additional representation referenced by the State)
3 had any material impact on consumers' decisions to shop or donate goods at Value Village
4 stores. Trial Tr. 1557:13-1558:10 (Nowlis). Dr. Nowlis opined that Ms. Butler's surveys were
5 significantly flawed. The Court agrees they were imperfect.

6 183. The Court finds there were significant problems with Ms. Butler's survey. The
7 Court further finds there were significant problems with Dr. Nowlis' coding of Ms. Butler's
8 surveys and thus his rebuttal to the survey. The court finds that neither expert witness moved
9 the ball forward in any meaningful way. Commonsense, the reports from 360 and Tesser, the
10 consumer complaint, and some general observations about the surveys make clear that TVI has
11 known for a while that its business model is subject to confusion with its main competition –
12 nonprofits such as Goodwill and Salvation Army. Consumers are provided with advertising
13 which, while purporting to explain the business model, often serves to confuse the issues for
14 typical members of the public who have neither the time nor inclination to spend the minutes
15 necessary to truly understand the full scope of the Savers Cycle, the TVI business model, or the
16 fact that TVI itself is a for-profit corporation. It is confusing. The advertising does not help –
17 it hinders.

18 184. Dr. Nowlis criticism of Ms. Butler's survey – that its primed people to believe
19 TVI was a non-profit because of the language used in the advertising she provided, is precisely
20 what TVI does to the consuming public with the combination of its position in the market and
21 its advertising. Whether they say it directly or not, the public is primed to believe TVI may be
22 a nonprofit.

1 **D. TVI's Contractual Relationships with Charities**

2 **1. Blended Contracts for Delivered Goods**

3 185. During the relevant time period, TVI purchased used goods from charities
4 pursuant to supply contracts. The contracts provided for purchases of "cloth" or "soft" goods,
5 as well as for categories of "hard" goods, including "miscel", meaning smaller hard goods, and
6 Furniture and Other Large Items, or FOLI, meaning larger hard goods. (Shumpert Trial Tr.
7 644, 659).

8 186. Value Village offers tax receipts for the "primary" or "promoted" charity at
9 each of its stores to consumers who donate at the store. (Shumpert Trial Tr. 649-52).

10 187. Prior to 2015, TVI's contracts with its charity partners required that TVI pay for
11 used goods through a blended rate, based on poundage of cloth goods provided, with the per-
12 pound rates set to incorporate payment for miscellaneous items and furniture (commonly
13 referred to as "hard goods") as well. Trial Tr. 723:18-23, 723:24-724:4 (Shumpert); Trial Tr.
14 830:5-10, 831:4-6 (Alterman); Trial Tr. 1347:18-1348:10 (Garcia); Falk Dep. at 18:10-20:6;
15 21:5-13 This practice of paying for all goods based on a blended rate applied to the volume of
16 cloth goods is the industry standard, which has been used for decades. Trial Tr. 732:13-19
17 (Shumpert); Trial Tr. 830:9-10 (Alterman). The rates TVI paid its charity partners were higher
18 than the commercial market, sometimes by as much as double. Trial Tr. 732:24-733:5
19 (Shumpert); Trial Tr. 1356:22-1357:11 (Garcia); Second Kantu Dep. at 23:10-12; Ex. 156,
20 157, 150, 65, 62, 61; (Shumpert Trial Tr. 657-58, 660). Specifically, TVI paid a specific price-
21 per-pound for cloth goods, which price included purchases of hard goods. *Id.*

22 188. The contracts included delivery expectations for cloth goods, expressed as a
23 volume of cloth pounds, as well delivery expectations for hard goods, expressed as a
24 percentage of the cloth pounds volume. Ex. 156; (Shumpert Trial Tr. 658-59). To illustrate
25 this relationship, if the volume expectation for cloth goods was 100 pounds, and the contract
26 called for hard goods to be delivered at a rate of 40%, the volume expectation for hard goods

1 would be 40 pounds. (Shumpert Trial Tr. 661-62). The percentage hard goods expectation was
2 thus incorporated into the negotiated price per pound for cloth goods. (Shumpert Trial Tr. 662).
3 This type of provision was typical of TVI's contracts with charities until late 2015. *Id.*

4 189. Pre-2015 contracts between TVI and charity partners expressly stated: "Miscel,
5 Books, Furniture, and OLI [Other Large Items] are included in Cloth pricing," reflecting that
6 the blended rate provided payment for all types of goods. Exs. 150 at 8, 156 at 7, 157 at 8.
7 The agreements also stated that TVI would not pay "separately" for hard goods, as the goods
8 would be "accounted for, and paid for," in accordance with the contracts' payment schedules,
9 i.e., the blended rate. Exs. 150 § 2(c), 156 § 2(c), 157 § 2(c).

10 190. Essentially, TVI paid a higher per-pound rate for cloth goods than they
11 otherwise would have, in order to account for the hard goods it received. The per-pound cloth
12 rate varied among TVI's charity partners based on the historical volume of hard goods
13 provided by the charity partners. Trial Tr. 660:9-23, 662:17-20, 729:9-730:20, 731:17-732:5
14 (Shumpert); Falk Dep. at 18:10-20:6, 30:19-25; Second Kantu Dep. at 35:15-36:21, 37:8-12.

15 191. TVI's pre-2015 contracts contained expected minimum volumes of hard goods
16 that each charity partner would deliver from its own collection efforts. See, e.g., Exs. 150 at 7
17 & 156 at 6; see also Trial Tr. 661:12-21, 737:22-738:1 (Shumpert). These projected volumes
18 did not apply to OSDs, only to the goods these charities collected on their own and delivered to
19 Value Village stores. Exs. 150 at 7, 156 at 6. They were premised on the overall volume of
20 soft goods each charity partner was expected to deliver on an annual basis. Trial Tr. 737:22-
21 738:16, 739:12-740:2 (Shumpert). TVI did not reduce payments or otherwise penalize charity
22 partners when they failed to reach the expected hard goods minimums in given weeks or
23 months. Trial Tr. 662:9-16, 739:12-740:2, 740:7-16 (Shumpert); Falk Dep. at 35:4-11.

24 192. TVI's billing summaries to charities illustrate how this pricing arrangement
25 worked by showing that weekly variation in the percentage of hard goods did not change the
26

1 amounts paid, which were based solely upon cloth goods volume. Ex. 2527; (Shumpert Trial
2 Tr. 663-64).

3 193. The same contracts, in the pre-late 2015 era, used the same blended rate
4 payment structure for on-site donations. Ex. 156; (Shumpert 664).

5 194. Gregory Falk, who was executive director of The Arc of Spokane until
6 December 2015, testified that The Arc did not receive any extra payment once the supply
7 threshold for “miscel” was reached. Ex. 1076 (Falk Dep. Tr.), pp. 35, 88-89. Jean Kantu, who
8 was the Vice President of Northwest Center until March 2015, likewise testified that Northwest
9 Center would sometimes turn down donations, since it would not be paid for supplying goods
10 above quota. Ex. 1078 (Kantu Dep. Tr.), pp. 79-80.

11 **2. On-site Donation (OSD) Contracts for Public’s Donations at CDCs**

12 195. TVI began using a pooling arrangement for crediting CDC-donated goods to its
13 charity partners in certain markets in approximately 2006. Trial Tr. 656:13-22 (Shumpert).
14 Under the pooling or shared-market arrangement, credits for OSDs were shared
15 proportionately among the charity partners based on the delivered goods each provided in
16 those markets—i.e., a charity partner that delivered 40 percent of the goods in a market
17 received credit for 40 percent of the OSDs in the market. Trial Tr. 653:5-25 (Shumpert); Trial
18 Tr. 1350:24-1351:6 (Garcia).

19 196. In Washington, the pooling arrangements were used in the Puget Sound and
20 Spokane markets from approximately 2006 or 2007 until 2015. Trial Tr. 656:13-23
21 (Shumpert). The percentage of credit charity partners received for CDC-donated goods under
22 the pooling arrangement changed monthly based on the percentage of delivered goods each
23 charity partner provided that month. Trial Tr. 747:5-14 (Shumpert).

24 197. While the pooling arrangement existed, TVI included in its brochures,
25 bookmarks, and store signage the logos and mission statements of all of the charity partners
26 sharing credit for CDC donations. Trial Tr. 536:16-23, 539:19-21, 547:5-13, 582:14-20

1 (Gaugl); Exs. 22 (pp. 6, 8 of 11), 468, 644 (pp. 4, 16 of 42), 649 (p. 23 of 46), 650 (p. 7 of 31),
2 2033, 2037, 2051, 2056, 2585.

3 **3. TVI's 2015 Changes**

4 198. In late-2015, TVI reformed all of its charity contracts so that, going forward,
5 charities were paid separately for donations of soft and hard goods, both as to delivered goods
6 and on-site donations. (Shumpert Trial Tr. 676-77). TVI made those changes to provide “more
7 clarity” concerning its business operations.

8 199. While the parties sparred during trial about whether the Court should introduce
9 evidence that TVI made these changes after it was sued by the Minnesota Attorney General,
10 the Court finds that the existence of the Minnesota lawsuit has no bearing on the parties’
11 actions in this case. The fact that TVI changed its practice does not mean that what it had done
12 before was violative of the CPA. This Court knows nothing about the circumstances of the
13 Minnesota lawsuit except for broad outlines. Every case is different. The Minnesota suit has
14 zero impact on any evidentiary finding in this case.

15 200. With its revised 2015 contracts, TVI began providing specific per-pound and
16 per-item payments for all types of used goods. Trial Tr. 677:1-9 (Shumpert); Trial Tr. 1348:4-
17 10 (Garcia); Exs. 2388-2391. The per-pound and per-item payments applied to both delivered
18 and OSD goods. Trial Tr. 761:16-25 (Shumpert).

19 201. In making this change, TVI effectively reverse engineered its contracts using
20 the blended rate to establish per-pound and per-item amounts that would provide the same
21 compensation to charity partners if they continued to deliver the same quantities of goods as
22 before. Trial Tr. 762:1-20 (Shumpert). TVI also ensured that its charity partners would not
23 lose any funding as a result of these changes. Trial Tr. 750:21-751:9 (Shumpert); Trial Tr.
24 1350:7-12 (Garcia).

25 202. In ending the pooling arrangement, TVI designated a featured charity partner
26 for each CDC, with the charity partners receiving credit for all donations at that CDC. To do

1 this, TVI had to determine the previous quantities of OSDs each charity partner had received
2 under the pooling arrangement and apportion individual CDCs that received approximately the
3 same amounts of OSDs. Trial Tr. 750:3-20 (Shumpert); Exs. 2388-2391.

4 **4. The Rypien Foundation**

5 203. After The Arc of Spokane (a longtime TVI charity partner) decided in 2013 to
6 open its own thrift store and end its relationship with TVI, TVI entered into a new relationship
7 with the Rypien Foundation (“Rypien”). Trial Tr. 752:9-13 (Shumpert); Ex. 56. Mark Rypien,
8 the former Super Bowl-winning quarterback, launched his foundation to help families of
9 children battling cancer. Trial Tr. 754:18-24 (Shumpert).

10 204. In February 2014, TVI entered into a Licensing Agreement with the Rypien
11 Foundation, which provided that TVI would pay \$4,000 per month for the right to use
12 Rypien’s charity logo. Ex. 56. The parties performed consistently with the payment term of the
13 Agreement, and the contract continued in effect until late-2015, when TVI adjusted all of its
14 charity contracts. (Shumpert Trial Tr. 667).

15 205. This \$4,000 monthly payment was calculated based on historic volumes of
16 OSDs in the market and TVI’s previous payments to The Arc of Spokane. Trial Tr. 752:21-
17 753:3, 753:22-754:6, 760:5-10 (Shumpert). It was intended to provide Rypien with predictable
18 funds during the first year of the new relationship with TVI. Trial Tr. 753:7-18 (Shumpert).
19 The parties agreed on this amount to compensate Rypien for its share of OSDs at the Spokane
20 CDCs. Trial Tr. 667:20-668:8, 752:16-20, 753:19-21 (Shumpert).

21 206. TVI and Rypien transitioned to a standard contract in 2015 in which TVI paid
22 Rypien for used goods based on per-pound and per-item amounts. Trial Tr. 754:10-16
23 (Shumpert).

24 207. TVI featured Rypien’s charity logo in its advertising and marketing, including
25 representing to consumers that donations at its Spokane-area stores or donation drop boxes
26 benefitted the Rypien Foundation. Ex. 468, 528, 573, 574, 692, 897. A Value Village Facebook

1 post dated October 10, 2014, stated: “When you donate and recycle your unneeded items, they
2 will be made available at affordable prices at local Savers stores, and a percentage of the
3 revenue will be donated to the Rypien Foundation and Northwest Center.” Ex. 692.

4 208. Mr. Shumpert testified, based upon a billing summary titled “OSD Shared
5 Market Allocation,” that for a ten-month period in 2014, Rypien’s share of goods donated at
6 the Spokane-area stores would have equaled a payment of \$39,129.29, as opposed to the
7 \$4,000/month payment it did receive (equal to \$40,000). Ex. 1005; (Trial Tr. 759-60).

8 **5. The Moyer Foundation**

9 209. From 2005 until 2015, Moyer was a TVI charity partner for OSDs at Value
10 Village CDCs in Edmonds and Marysville. Ex. 51. This relationship came about because of
11 Ken Alterman’s (TVI’s former CEO) friendship with Jamie and Karen Moyer and efforts to
12 support the foundation they created to help children in difficult family situations (e.g., because
13 of the loss of a parent, drug abuse in the family home). Trial Tr. 918:11-20 (Alterman); Pope
14 Dep. at 75:6-15.

15 210. In 2005, TVI entered into a Personal Service Purchase Agreement with the
16 Moyer Foundation. The contract is legal and binding. The Moyer Foundation benefitted from
17 the contract because used goods donated by the public at the Marysville, Edmonds, and Everett
18 Value Village stores would result in TVI paying the Moyer Foundation \$0.043 per pound for
19 cloth used goods. The Moyer Foundation also benefitted because TVI prominently displayed
20 the Moyer Foundation logo at its stores’ CDCs. In exchange, the Moyer Foundation made Mr.
21 Moyer available to Value Village stores for personal and radio appearance advertising. Ex.
22 166; (Alterman Trial Tr. 828-29). Unlike TVI’s other contracts with charities, the Moyer
23 contract did not state that payment for hard goods was included in the cloth goods price. Ex.
24 166; (Alterman Trial Tr. 829-31).

1 211. The 2005 agreement had a stated end date of December 31, 2006, Ex. 166, but
2 the parties orally continued the agreement and their relationship thereafter. Ex. 51; Trial Tr.
3 831:17-19, 832:16-833:2, 920:12-921:13 (Alterman); Pope Dep. at 79:15-18.

4 212. In 2009, the parties orally agreed to shift the arrangement so that, instead of
5 paying money to the Moyer Foundation for publicly donated goods at designated stores, TVI
6 verbally agreed to credit the costs of those on-site donation amounts which the Moyer
7 Foundation could then “call-in” when it wanted TVI to sponsor Moyer fundraising events.
8 These events included annual golf tournaments and fundraising luncheons. Trial Tr. 920:14-
9 921:22 (Alterman); Pope Dep. at 73:7-17, 74:4-12, 85:11-16, 93:11-20, 98:15-99:4, 100:10-21.
10 Thus, TVI was no longer making direct cash payments to the Moyer Foundation in exchange
11 for donated goods.

12 213. In 2016, Value Village and Moyer entered into a settlement agreement and
13 ended their business relationship. In this settlement, the parties agreed that the Moyer
14 Foundation had built up \$125,000 in credits for donated goods which they had not cashed in
15 with sponsorships. Ex. 51; (Alterman Trial Tr. 841). The agreement also stated that TVI had
16 paid Moyer \$318,000 in sponsorship costs for events between 2009 and 2015. Trial Tr.
17 926:22-25 (Alterman); Ex. 51 at 1.

18 **E. The Investigation**

19 214. TVI spent a good deal of this trial attacking the breadth and depth of the State’s
20 investigation. While the parties can haggle over what the State should have done and how the
21 State accomplished what it did, the Court has the results of that investigation. The Court has
22 500 pieces of evidence related to advertising. The Court understands that it does not have
23 every piece of advertising from every time period for every store in which the State alleges
24 CPA violations. The State did not interview consumers. The State’s investigator did not take
25 every piece of collateral or advertising available to her during her visits to TVI stores. The
26 State did not meet with TVI for 18 months.

1 215. It is also true that TVI has had every opportunity to complete and correct any
2 misunderstanding that the State’s alleged incomplete investigation might leave in the mind of a
3 fact-finder. The Court has a full picture of what advertising was available to the public, and
4 what a consumer might see at any given time when they arrived at a Value Village store in
5 Washington.

6 216. Thus, much of the attack on the investigation is subsumed within the evidence
7 the Court actually received, and the evidence the Court did not receive.

8 **F. TVI’s Registration Under the Charitable Solicitations Act**

9 217. The Washington Secretary of State is the governmental agency designated to
10 register charities and commercial fundraisers under the Charitable Solicitations Act. Ex. 2916
11 (Douglas Dep. Tr.), pp. 25-26. The Secretary of State serves a ministerial function in this
12 regard. It makes entities aware that they may need to register under the CSA, however that
13 determination is ultimately up to the entity itself. *Id.*, p. 26.

14 218. In November 2014, the Attorney General’s Office for the State of Washington
15 sent TVI a letter requesting that it register as a commercial fundraiser under the CSA. Ex.
16 2478. The letter also stated: “Our review of Value Village’s business practices has raised
17 additional concerns, including ... concerns that statements Value Village makes to
18 consumers—in solicitations for charitable contributions and advertisements for its retail
19 stores—may be misleading or deceptive and therefore violate the Consumer Protection Act.”
20 Ex. 2478; (Pope Trial Tr. 1457-58)

21 219. TVI decided to follow the Attorney General’s request. TVI registered as a
22 commercial fundraiser under the CSA in late-2014/early 2015. (Pope Trial Tr. 1392-93). TVI
23 subsequently started making disclosures required under RCW 19.09.100 of the CSA at its
24 Washington store in October 2015. Ex. 1077 (Def. Dep. Tr.), p. 36. TVI did not start the
25 process of preparing disclosures until it reformed its existing charity contracts, which it did not
26 commence until mid-2015. (Pope Trial Tr. 1447-48).

1 220. In December 2014, the Consumer Protection (CP) Division of the Attorney
2 General's Office issues a Civil Investigative Demand to TVI, commencing an investigation. In
3 October 2015, the CP Division responded to TVI's request for a meeting by stating it would be
4 happy to meet once the investigation was completed. Ex. 2491, 2493. Following completion of
5 the State's investigation, CP Division attorneys met, in person, with representatives of TVI and
6 its counsel five times between July 2016 and the filing of the Complaint in December 2017.
7 (Pope Trial Tr. 1462-63).

8 9 II. CONCLUSIONS OF LAW

10 Having entered the foregoing Findings of Fact, the Court makes the following
11 Conclusions of Law.

12 A. Consumer Protection Act Standards

13 1. The Consumer Protection Act forbids "unfair or deceptive acts or practices in the conduct
14 of any trade or commerce." RCW 19.86.020. The Legislature intended that the CPA be "liberally
15 construed that its beneficial purposes may be served." *Id.* The Washington Supreme Court has
16 reiterated this liberal construction directive in order to ensure protection of the public and the
17 existence of fair and honest competition. *Thornell v. Seattle Serv. Bur., Inc.*, 184 Wn.2d 793,
18 799, 363 P.3d 587 (2015). The State may bring an action to enforce the CPA "in the name of
19 the state, or as *parens patriae* on behalf of persons residing in the state." RCW 19.86.080(1).
20 Under this provision, the State may seek relief only on behalf of Washington residents. The
21 Court incorporates its October 7, 2019 ruling on the State's authority in this regard. Trial Tr.
22 808:3-815:4.

23 2. A CPA claim brought by the State requires proof of three elements: (1) an unfair or
24 deceptive act or practice; (2) occurring in trade or commerce; (3) that affects the public interest.
25 *State v. Kaiser*, 161 Wn. App. 705, 719, 254 P.3d 850 (2011); *see also Hangman Ridge Training*
26 *Stables, Inc., v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 719 P.2d 531 (1986). Unlike private

1 plaintiffs, the State is not required to prove causation or injury. *Id.* Whether a particular act is
2 unfair or deceptive is a question of law. *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 47,
3 204 P.3d 885 (2009). A plaintiff need not show that the act in question was intended to deceive,
4 only that it had the capacity to deceive a substantial portion of the public. *Id.*

5 3. “The purpose of the capacity-to-deceive test is to deter deceptive conduct before
6 injury occurs.” *Hangman Ridge*, 105 Wn.2d at 785. In evaluating this question, the Court
7 “should look not to the most sophisticated [consumers] but rather to the least.” *Panag*, 166
8 Wn.2d at 50 (quoting *Jeter v. Credit Bur., Inc.*, 760 F.2d 1168, 1174 (11th Cir. 1985)). This is
9 because the CPA, like other consumer protection laws, are “not made for experts but to protect
10 the public,— that vast multitude which includes the ignorant, the unthinking and the credulous,
11 who, in making purchases, do not stop to analyze but too often are governed by appearances and
12 general impressions.” *Aronberg v. Fed. Trade Comm'n*, 132 F.2d 165, 167 (7th Cir. 1942).

13 4. Advertising or marketing has the capacity to deceive consumers under the CPA
14 if the net impression it creates is deceptive. Even a truthful communication can be deceptive if
15 the net impression it conveys is deceptive. *Panag*, 166 Wn.2d at 50 (citing *F.T.C. v.*
16 *Cyberspace.com LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006)); *see also State v. Living Essentials,*
17 *LLC*, 436 P.3d 857, 873 (Wash. Ct. App. 2019), *review denied*, 97324-5, 2019 WL 4898617
18 (Wash. Oct. 3, 2019) (“[T]he trial court did not err by concluding that the net impression from
19 the “Ask-Your-Doctors” ad was deceptive.”); *State v. LA Inv'rs, LLC*, 410 P.3d 1183, 1194
20 (Wash. Ct. App. 2018), *review denied*, 190 Wn.2d 1023, 418 P.3d 796 (2018) (“Based on the
21 net impression conveyed by the mailer, an ordinary consumer could reasonably have been misled
22 to believe it was a government document.”); *State v. Mandatory Poster Agency, Inc.*, 199 Wn.
23 App. 506, 523, 398 P.3d 1271, 1279 (2017), *review denied*, 189 Wn.2d 1021, 404 P.3d 496
24 (2017) (“Consumers are likely misled by the net impression that CRS is associated with the
25 government and that consumers are required to return the completed form with a fee.”). When
26 determining whether an act or practice has the capacity to deceive, courts have held that

1 “Deception may be by innuendo rather than outright false statements. *Nat'l Bakers Servs., Inc.*
2 *v. F.T.C.*, 329 F.2d 365, 367 (7th Cir. 1964).

3 5. While the State need not prove actual harm under typical CPA standards, it must
4 establish that TVI’s representations or practices had at least a “reasonable possibility of causing
5 harm.” *State v. Pac. Health Ctr., Inc.*, 135 Wn. App. 149, 173-74 (2006).

6 6. In *Panag*, the Washington Supreme Court held that actionable deception exists
7 where there is a practice likely to mislead a “reasonable” or “ordinary” consumer. *Id.* at 50. The
8 capacity to deceive test does not require that every consumer be deceived:

9 “The capacity of a marketing technique to deceive is determined with reference
10 to the least sophisticated consumers among us. The FTC has noted that on-line
11 consumers do not read every word on a webpage and advises advertisers that they
12 must draw attention to important disclosures to ensure that they are seen. . . . This
is particularly important when the consumer has no reason to be looking for, and
therefore is not expecting to find, a disclosure.”

13 *Keithly v. Intelius, Inc.*, 764 F. Supp. 2d 1257, 1268 (W.D. Wash. 2011).

14 7. Because the CPA is designed to prevent harm before it occurs, Washington courts
15 hold that the existence of consumer complaints is not a required element under the Act. *See*
16 *State v. LA Inv'rs, LLC*, 410 P.3d 1183, 1194 (Wash. Ct. App. 2018), *review denied*, 190 Wn.2d
17 1023, 418 P.3d 796 (2018) (“Even assuming [TVI’s] factual assertions are accurate [that the
18 State received few consumer complaints], they are irrelevant to whether the State has met its
19 burden under the CPA. The State is not required to prove actual deception nor to quantify the
20 exact number of consumers that were deceived.”).

21 8. Deceptive acts, for purposes of CPA liability, must be “material,” which means,
22 in this context, that they “could be of material importance to a customer’s decision to purchase
23 the company’s services.” *Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington,*
24 *Inc.*, 162 Wn.2d 59, 78, 170 P.3d 10, 19 (2007) (finding surcharge labeled as a PICC charge was
25 deceptive as matter of law because label could be of material importance); *see also Panag*, 166
26 Wn.2d at 47 (notices to consumers were deceptive as matter of law because they looked like

1 collection notices and “may induce people to remand payment under the mistaken belief they
2 have a legal obligation to do so”).

3 9. “[D]isclaimers do not always cure the potential for deception.” *State v.*
4 *Mandatory Poster Agency, Inc.*, 199 Wn. App. 506, 523, 398 P.3d 1271, 1279 (2017), *review*
5 *denied*, 189 Wn.2d 1021, 404 P.3d 496 (2017). “Disclaimers are inadequate unless they are
6 “sufficiently prominent and unambiguous to change the apparent meaning of the claims and to
7 leave an accurate impression.” *State v. LA Investors, LLC*, 410 P.3d 1183, 1195 (Wash. Ct. App.
8 2018), *review denied*, 190 Wn.2d 1023, 418 P.3d 796 (2018); *see also Removatron Int’l Corp. v.*
9 *F.T.C.*, 884 F.2d 1489, 1497 (1st Cir. 1989); *F.T.C. v. Commerce Planet, Inc.*, 878 F. Supp. 2d
10 1048, 1065 (C.D. Cal. 2012) (citing *F.T.C. v. Gill*, 71 F. Supp. 2d 1030, 1044 (C.D. Cal. 1999),
11 *aff’d*, 265 F.3d 944 (9th Cir. 2001)); *F.T.C. v. Brown & Williamson Tobacco Corp.*, 778 F.2d
12 35, 42-43 (D.C. Cir. 1985) (affirming finding that an advertisement’s description of cigarette tar
13 content was deceptive despite the fine print truthfully explaining how the tar content was
14 measured); *Floersheim v. F.T.C.*, 411 F.2d 874, 876-77 (9th Cir. 1969); *Standard Oil Co. of Cal.*
15 *v. F.T.C.*, 577 F.2d 653, 659 (9th Cir. 1978) (affirming for substantial evidence the FTC’s finding
16 that the predominant visual message of an advertisement was misleading and that it was not
17 corrected by the accompanying verbal message in the advertisements).

18 10. On an issue of first impression, in its Order on Motions in Limine, the Court held
19 that, in cases where charitable solicitations are implicated, a CPA plaintiff must prove “that the
20 TVI engaged in practices or acts that they knew or should have known would be deceptive or
21 misleading, or at least have a deceptive net impression.”

22 11. The Court based its ruling primarily on *Illinois ex rel. Madigan v. Telemarketing*
23 *Associates, Inc.*, 538 U.S. 600 (2003), which involved an Illinois fraud statute that required
24 proof of intentional actions designed to deceive. The Court explicitly noted that it did not read
25 *Madigan* as requiring that standard here. The Court therefore declined to require the State to
26

1 show intent, instead adopting “known or should have known” standard, to meet the “meaningful
2 mens rea requirement” in *Madigan*.

3 12. Knowledge/“known or should have known” standards do not require proof of
4 intent. *See, e.g., U.S. v. FMFG, Inc.*, 2006 WL 2639366, at *3 (D. Nev. Sept. 13, 2006) (where,
5 to establish individual liability, FTC must prove that individual defendants knew or should have
6 known about deceptive practices of corporation, “it is not required to prove subjective intent to
7 defraud”).

8 13. A “should have known” requirement is an objective—rather than subjective—
9 standard, under Washington law. *See, e.g., State v. Lien*, 195 Wn. App. 1039 (2016) (“But when
10 determining whether the routine booking question exception applies, the court applies an
11 objective test to whether the questioner should have known that the question was reasonably
12 likely to elicit an incriminating response.”); *In re Forfeiture of One 1970 Chevrolet Chevelle*,
13 166 Wn.2d 834, 841, 215 P.3d 166 (2009) (holding that while “actual knowledge” is a subjective
14 standard, having “reason to know” is an objective standard); *Cloud v. Summers*, 98 Wn. App.
15 724, 731, 991 P.2d 1169 (1999) (recognizing the objective nature of whether a plaintiff should
16 have known of an injury); *Hamel v. Emp’t Sec. Dep’t of State of Wash.*, 93 Wn. App. 140, 147,
17 966 P.2d 1282, 1286 (1998) (applying “the objective, ‘should have known’” standard when
18 determining whether an employee engaged in misconduct by willfully disregarded an employer’s
19 interests).

20 14. “Should have known” suggests something less than actual knowledge. *Coleman*
21 *v. United States*, 202 A.3d 1127, 1143 (D.C. 2019) (“A ‘should have known’ standard . . . is
22 necessarily objective; when applying such a standard, we assume that the defendant did not know
23 a particular thing, and we determine whether he *should have* known that thing by reference to
24 whether someone else (a reasonable person) who is aware of the same facts and circumstances
25 as the defendant *would have* known it.”) (emphasis in original) (Interpreting standard under
26 criminal statute for stalking).

1 15. An unfair or deceptive act must impact the public interest to constitute a CPA
2 violation. RCW 19.86.920. In determining public interest impact, “[t]he factors to be considered
3 will depend upon the context in which the alleged acts were committed.” *Stephens v. Omni Ins.*
4 *Co.*, 138 Wn. App. 151, 177, 159 P.3d 10, 24 (2007), *aff’d sub nom. Panag*, 166 Wn.2d 27, 204
5 P.3d 885 (2009). Where the acts complained of involve “essentially a consumer transaction,” the
6 following five factors are relevant:

- 7 (1) Were the alleged acts committed in the course of defendant's business? (2)
8 Are the acts part of a pattern or generalized course of conduct? (3) Were
9 repeated acts committed prior to the act involving plaintiff? (4) Is there a real
10 and substantial potential for repetition of defendant's conduct after the act
11 involving plaintiff? (5) If the act complained of involved a single transaction,
12 were many consumers affected or likely to be affected by it?

13 *Id.* (quoting *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 790,
14 719 P.2d 531, 538 (1986)). No one factor is dispositive, nor is it necessary that all be present. *Id.*

15 16. “[I]t is the likelihood that additional plaintiffs have been or will be injured in
16 exactly the same fashion that changes a factual pattern from a private dispute to one that affects
17 the public interest.” *Travis v. Washington Horse Breeders Assn, Inc.*, 111 Wn.2d 396, 407, 759
18 P.2d 418, 423 (1988). Thus, acts affecting only one consumer may have a public interest impact
19 if they are capable of repetition. *See Id.* at 407 (finding public interest impact where other
20 consumers, in addition to plaintiff, could be affected).

21 17. The CPA prohibits unfair or deceptive acts in the conduct of “any trade or
22 commerce.” RCW 19.86.060. Trade and commerce are defined terms under the CPA, as follows:
23 “‘Trade’ and ‘commerce’ shall include the sale of assets or services, and any commerce directly
24 or indirectly affecting the people of the state of Washington.” RCW 19.86.010(2). Assets, in
25 turn, is defined as follows: “‘Assets’ shall include any property, tangible or intangible, real,
26 personal, or mixed, and wherever situate, and any other thing of value.” RCW 19.86.010(3).

1 18. Further, the CPA “incorporate[s] a yardstick of reasonableness by providing that
2 practices which are ‘reasonable in relation to the development and preservation of business or
3 which are not injurious to the public interest’ are not violations.” *Stephens v. Omni Ins. Co.*, 138
4 Wn. App. 151, 170 (2007) (quoting RCW 19.86.920), *aff’d sub nom. Panag*, 166 Wn.2d 27.
5 “[A]cts or practices which are reasonable business practices or which are not injurious to the
6 public are not the kind of acts sought to be prohibited,” as courts must recognize that “businesses
7 need some latitude within which to conduct their trade.” *State v. Black*, 100 Wn.2d 793, 802-03
8 (1984); see also *Travis v. Wash. Horse Breeders Ass’n, Inc.*, 111 Wn.2d 396, 408 (1988)
9 (reasonableness defense applies in cases involving alleged misrepresentations).
10

11 19. Violations of the Charitable Solicitations Act are deemed, by statute, to be unfair
12 or deceptive acts in trade or commerce, which affect the public interest, for purposes of applying
13 the CPA. RCW 19.09.340. The CSA requires entities that solicit for charitable contributions
14 from the public, including commercial fundraisers, to make clear and conspicuous disclosures at
15 the point of solicitation. RCW 19.09.100(1), (2).
16

17 20. Under RCW 19.86.080, the prevailing party may “recover the costs of said action
18 including a reasonable attorney’s fee.” In a lawsuit filed by the State that alleges multiple
19 violations of the CPA, the State is the prevailing party when it proves at least one violation of
20 the act. *State v. Living Essentials, LLC*, 436 P.3d 857, 876, *review denied*, 449 P.3d 658 (2019).
21 (“That the State originally alleged more violations of the CPA than were ultimately found at trial
22 does not change the fact that the State was successful in proving that [defendant] had violated
23 the CPA.”). Awarding the State its attorney fees and costs are consistent with the underlying
24 purpose of the CPA because it, “encourages the Attorney General’s active role in CPA
25
26

1 enforcement actions, which in turn will help to protect the public from untrue and deceptive
2 advertisements.” *Id.*

3 **B. Cause of Action #1 - TVI’s Advertising and Marketing Created the Deceptive**
4 **Net Impression that It, Itself, Is a Non-profit Entity**

5 21. The Court finds that TVI’s advertising and marketing, detailed above, had the
6 capacity to deceive ordinary and reasonable consumers into believing the TVI itself was a
7 nonprofit corporation. For purposes of determining liability, the Court need only determine
8 whether TVI’s advertising and marketing had such capacity to deceive at any point during the
9 relevant time period. Particularly prior to 2016-2017, TVI’s advertising and marketing was
10 focused on promoting its relationship with charities and encouraging donations of used goods at
11 its stores—acts or practices that had the capacity to deceive consumers as to its for-profit status.
12 This type of messaging was ubiquitous in TVI’s advertising and marketing, which took many
13 forms, from exterior and interior store signage, to in-store advertising on posters, flyers,
14 brochures, bookmarks, and numerous other advertising collateral, to in-store announcements
15 read or played every 15 to 20 minutes, to donation and stamp cards which conflated donating to
16 charities with shopping in Value Village’s stores, to Value Village’s online presence through its
17 website, social media, and paid advertising, to radio and television commercials, and even to the
18 slogans Value Village utilized in its corporate logo during the relevant time period. Value
19 Village’s advertising and marketing consistently, and overwhelmingly, created the impression
20 that it was a charitable or nonprofit organization. This impression was created both by Value
21 Village’s ‘do-good, feel-good’ descriptions of its own business operations, as well as its constant
22 conflating of itself with the charity suppliers with whom it contracted for supplies of used goods
23 to sell in its stores.

24 22. The “Do Good, . . . Donate here” series of signs and messages reinforced the idea
25 that folks were donating to Value Village. The “These racks support more than just clothes”
26 series of signs posted inside Value Village stores gives the impression that purchasing at Value

1 Village provides a direct benefit to charities, thereby conflating Value Village with a charity.
2 There is no direct benefit to any charity when a person buys something at Value Village. Those
3 purchases become revenue for TVI. TVI does not donate any of its revenues to any charity.

4 23. Signs or announcements that said, “Thank you for shopping and donating. Your
5 support helps benefit [a charity]” were not accurate and made it appear that Value Village was
6 charitable. The “Good Deeds. Great Deals” marketing campaign conflated shopping and charity,
7 which is inaccurate. Advertising that said, “Developing Nations benefit through wholesale and
8 philanthropic efforts,” makes consumers believe that Value Village is a philanthropy. It is not.
9 It **sells** unusable items overseas, and those sales are designed to help the bottom line.

10 24. In-store intercom messages were often repeated. They included insinuations that
11 purchasing at TVI was charitable.

12 25. These concerning messages, when combined with the overall message of “Doing
13 good deeds,” had the capacity to leave consumers with the deceptive net impression that Value
14 Village was a non-profit doing charitable work. Thus, it violates the CPA.

15 26. The Court also notes that, prior to late-2015, TVI’s advertising and marketing
16 rarely, if ever, described itself as a for-profit entity. While TVI’s advertising did, at times, include
17 descriptions of its business model—the so-called Savers Cycle—these descriptions did not
18 disclose TVI’s for-profit status, and themselves had the capacity to deceive consumers, as they
19 described TVI’s business in terms that TVI’s own market research found were deceptive and
20 confusing. Accordingly, the Court finds that TVI’s descriptions of its business model were not
21 sufficient to change the deceptive net impression caused by its advertising and marketing, and
22 that any disclosures of its for-profit status made during this time period were not sufficiently
23 prominent to dispel the deceptive net impression caused by its advertising and marketing.

24 27. The Court further finds that, even after TVI began making CSA-required
25 disclosures in late-2015, the disclosures were not sufficiently prominent to dispel the deceptive
26 net impression caused by its advertising and marketing.

1 28. The Court also finds that TVI knew or should have known that its advertising had
2 the capacity to deceive consumers concerning its for-profit status. Market research studies
3 commissioned by TVI in 2013 and 2014 found that consumers were confused by TVI's
4 marketing, and, specifically, that some consumers believed TVI was a non-profit. The specific
5 findings in those studies were reviewed by TVI's executives, including its CEO, Ken Alterman.
6 A Request for Proposal issued by Value Village to advertising agencies in 2014 likewise stated
7 that some customers believe TVI is a non-profit. In addition to all of the evidence in these
8 findings, the Court is also persuaded by TVI's own actions with its employees – its insistence
9 on being clear about donating “at,” rather than, “to” a Value Village and its need to train
10 employees about its status as a for-profit – make clear that they knew it was confusing.

11 29. In February 2013, TVI also received a consumer complaint from a Washington
12 resident, forward by the Attorney General's Office, which stated that TVI's exterior and interior
13 store advertising, including signs, advertising collateral, and store announcements, created the
14 impression that TVI is a non-profit. TVI's Director of Communications, Sara Gaugl, provided a
15 detailed response to the complaint.

16 30. In addition, Mr. Alterman testified that he was aware, apart from the research
17 findings, that some customers believe TVI is a nonprofit, because they express surprise upon
18 purchasing items and discovering that they are charged sales tax. Ms. Gaugl similarly wrote in
19 her response to the consumer complaint that TVI is aware some customers believe all thrift stores
20 are nonprofits. TVI's knowledge concerning consumers' pre-existing beliefs thus establishes
21 that it should have known its advertising and marketing had the capacity to deceive consumers,
22 in addition to the actual knowledge of consumer deception provided by its research studies.

23 31. TVI was capable of successfully advertising without any reference to its business
24 model. Nobody required TVI to focus on its business model as part of its marketing. Pre-2009
25 marketing focused on thrift benefits such as price and the possibility of finding a great bargain.
26

1 By inundating consumer with its connection to charities without a clear explanation of its
2 position as a business who *gave* nothing to charities, TVI was deceptive.

3 **C. Cause of Action #2 - TVI's Advertising and Marketing Created the**
4 **Deceptive Net Impression that In-Store Purchases Benefit Charities**

5 32. Numerous elements of TVI's advertising and marketing discussed above had the
6 capacity to deceive consumers into believing that their purchases in Value Village stores
7 provided a direct benefit to charities. Statements contained in signs, advertising collateral, and
8 in-store announcements encouraging customers to shop in order to benefit charities created this
9 deceptive net impression. Specific examples include the "Good Deals, Good Deeds," advertising
10 and the intercom announcements detailed above.

11 33. Whether this was true in the abstract, i.e., "by purchasing at a Value Village, you
12 keep Value Village in business which then benefits charities because they continue to get paid
13 for delivering goods," it was not true in the way an average consumer would understand the
14 message delivered by TVI. In addition, TVI's advertising and marketing conflated donating to
15 charities at Value Village stores with shopping in Value Village stores by offering donation cards
16 and stamp cards that rewarded donations with discounts for in-store purchases, as well as
17 offering purchase discount coupons for donating.

18 34. Value Village's official corporate slogan from 2010 to 2016 ("Good deeds. Great
19 deals."), which was ubiquitous in its advertising and marketing, assisted in creating the
20 impression that shopping at Value Village was a "good deed," a phrase that was also frequently
21 used to describe donating to charities in TVI's advertising.

22 35. While the Court does not take the results of Ms. Butler's survey to have much
23 evidentiary value, certainly responses from some of the survey-takers indicate that this confusion
24 was very real. In-store intercom messages discussed doing good by donating **and** purchasing,
25 clearly misinforming buyers that their purchases assisted a non-profit.

1 36. The Court also finds that TVI’s descriptions of its business model were not
2 sufficient to change the deceptive net impression caused by its advertising and marketing, and
3 that any disclosures were not sufficiently prominent to dispel the deceptive net impression
4 caused by its advertising and marketing.

5 37. The Court also finds that TVI knew or should have known that its advertising had
6 the capacity to deceive consumers concerning its for-profit status. CEO Mr. Alterman’s
7 testimony that customers expressed surprise upon finding that their purchases were not tax-
8 deductible shows TVI’s knowledge that shoppers, in particular, expected that their purchases
9 directly benefitted charities. The February 2013 consumer complaint, which Ms. Gaugl
10 responded to, also specifically stated that the “impression any donor or customer receives is that
11 Value Village (Savers) is a non-profit giving most of their profits to xyz charities.” In addition,
12 marketing research commissioned by TVI found “confusion created by Savers paying non-
13 profits,” and that the statement TVI “paid its non-profit partners over \$1.5 billion” impressed
14 focus group respondents with “how they donate to the community” and “spoke to the size, scope
15 and generosity of Savers”—comments indicating consumer misperception about in-store
16 purchases. In general terms, TVI was well-aware that its business model and advertising created
17 significant confusion amongst consumers. As such, it bore the responsibility take care with its
18 communications to the public. It bore the responsibility to sacrifice some of its enthusiasm for
19 describing its business model and flouting its good behavior by making clear precisely where
20 consumers’ money was going. It’s failure to make this clear in the context of purchases
21 constitutes a violation of the CPA.

22 **D. Cause of Action #3 - Prior to Late-2015, TVI’s Advertising and Marketing**
23 **Did Not Create a Deceptive Net Impression About How Charities Were Paid**
24 **for Donations**

25 38. Prior to late-2015, TVI’s contracts with charities for the supply of donated goods
26 to Value Village stores utilized a “blended rate” payment structure. Value Village paid its charity

1 suppliers a price per pound for “cloth” or “soft” used goods, but did not separately pay for
2 categories of “hard” goods. The contracts recited that payment for hard goods was included in
3 the soft goods rate, and set forth supply expectations for both soft goods (in pounds) and hard
4 goods (expressed as a percentage of soft goods). The negotiated rate per pound for soft goods
5 reflected the supply expectations for both soft goods and hard goods. Value Village acted in
6 accordance with the contract payment terms.

7 39. As a result of this payment structure, variations in the percentage of hard goods
8 “purchased” by Value Village month-to-month did not result in any change to the amounts
9 actually paid to the charities, which was calculated solely on the basis of the soft goods.

10 40. Throughout the relevant time period, Value Village’s advertising and marketing
11 represented to consumers that Value Village pays for “every” donation or “all” donations. The
12 State argues that because the “blended rate” for soft and hard goods incorporated expectations
13 concerning the volume of supply, however, donations of hard goods in excess of those amounts
14 were not directly compensated.

15 41. This is a technical argument that does not create a material misrepresentation
16 that would be meaningful to donors. Contracts were created in such a way to help charities hit
17 their marks for hard goods. If the yearly totals were inconsistent with payments, the next contract
18 would adjust this inequity. In general, when a person donated, the charity got paid. The
19 inclusion of hard goods helped drive the price of the cloth goods. There was a benefit to the
20 charity whenever someone donated – hard or soft goods.

21 **E. Cause of Action #4 - Prior to Late-2015, TVI’s Advertising and Marketing**
22 **Did Not Create the Deceptive Net Impression that Only “Primary” Charities**
23 **Received Payment for Donations**

24 42. Prior to late-2015, TVI paid many of its Washington charity suppliers for
25 donations made at Value Village stores under a “shared” market arrangement, pursuant to which
26

1 individual charities received a percentage of the purchase price for donations made at particular
2 stores.

3 43. Every Value Village store, however, has a “promoted” charity, which is featured
4 in advertising at the store, for example in the large front-window panel on every store, on in-
5 store signs, and in store announcements. Additional charities receiving payments were featured
6 on large, readable signs at the point-of-donation. These signs clearly indicated that other
7 charities were receiving benefits from community donations.

8 44. While Value Village distributed tax receipts only for the promoted partner when
9 consumers donated at Value Village stores that utilized a shared market payment arrangement,
10 tax receipts are not advertising. Attempting to create a tax receipt for donators that reflected a
11 pooled market would have been confusing and difficult.

12 45. There is no evidence that anyone was or could have been deceived by the sign at
13 these pooled market OSD centers. TVI also could not have known it was deceiving customers.
14 The signs were sufficient. They told consumers that there was a primary charity and that their
15 donations also helped other charities. This was sufficient. There is no proof by a preponderance
16 of the evidence that it left a deceptive net impression.

17 **F. Cause of Action #5 - TVI’s Advertising and Marketing Created the**
18 **Deceptive Net Impression that It Paid the Rypien Foundation for Donations**
19 **in 2014 and 2015**

20 46. From February 2014 to late-2015, TVI paid the Rypien Foundation a flat fee of
21 \$4,000 per month, for the use of its charity logo. During the same time period, however, TVI
22 featured Rypien in its advertising and marketing at two Value Village stores in the Spokane area,
23 including representing to consumers in its advertising and marketing that donations at those
24 stores benefitted the Rypien Foundation.

25 47. Because Rypien was paid a flat fee, TVI did not, in fact, pay Rypien for donations
26 made at the Spokane stores. Rather, Rypien received \$4,000 per month, regardless of the amount

1 of goods donated by consumers. From the perspective of a donor, therefore, TVI's
2 representations that Rypien would benefit from donations at its Spokane stores were false.

3 48. The Court also finds that TVI knew or should have known that its advertising had
4 the capacity to deceive consumers concerning the benefit to the Rypien Foundation from
5 donations as TVI was aware of the true payment arrangement with Rypien. TVI knew what they
6 were telling customers. They knew what the contract said. They knew or should have known
7 the two were inconsistent and deceptive.

8 **G. Cause of Action #6 - TVI's Acts or Practices Did Not Deceive Consumers**
9 **About Whether It Paid Moyer Foundation for Donations at its Edmonds and**
10 **Marysville Stores Between 2009 and 2015**

11 49. TVI perverted its typical charitable partner contract in an effort to forge a
12 partnership with the Moyer Foundation. CEO Ken Alterman's relationship with Mr. Moyer had
13 an impact on the manner in which TVI went about these contracts. In 2005, TVI entered into a
14 Personal Services Purchase Agreement with the Moyer Foundation, which provided that TVI
15 would pay Moyer a set price-per-pound (\$0.043) for donations made at certain Value Village
16 stores. From 2009 forward, however, TVI ceased making payments to Moyer under the contract
17 terms, instead retaining the earned per-pound cash as a "credit" for future use to sponsor Moyer
18 fundraising events, such as golf events.

19 50. Much argument during trial revolved around the efficacy of these contracts. The
20 State expressed disbelief about the verbal contract between Mr. Alterman and Mr. Moyer. TVI
21 defended the contracts as a fair deal between two entities. The Court is not here to judge the
22 fairness of the contract. If Jaime Moyer wanted to create a reserve of cash which he could use
23 to bind TVI to sponsor the events that funded his charity, he had every right to do that. The
24 Moyer Foundation gets to decide what benefitted it most – a direct cash payment or the
25 availability of funding for public events that would provide greater funding. Those decisions by
26 the Moyer Foundation remain between Moyer and its donors.

1 51. The State’s quarrel here, is not with TVI’s honesty, but with the way Moyer
2 agreed to use the funds. TVI was not deceptive. They paid a particular amount per pound of
3 donated goods. They paid the money in the manner Moyer wanted them to pay it – with credit
4 for sponsorships of charity events.

5 52. From the donor perspective, therefore, TVI’s representations during the 2009-
6 2015 timeframe that it paid Moyer for donations at its Edmonds and Marysville stores were
7 accurate.

8 **H. TVI’s Acts or Practice were Materially Deceptive, Affected the Public**
9 **Interest, and Occurred in Trade or Commerce With Regard to Causes of**
10 **Action 1, 2 and 5.**

11 53. TVI’s deceptive acts or practices could be material to an ordinary, reasonable
12 consumer, meaning they could be of material importance to a consumer’s purchase or donation
13 decision. TVI’s investment in years of advertising and marketing encouraging consumers to
14 donate or shop at its stores in order to benefit charities demonstrates its understanding concerning
15 the materiality of its for-profit/nonprofit status to shoppers and donors, as well as the materiality
16 of whether charities benefit from in-store purchases, whether charities are paid for every
17 donation, and whether particular charities are paid for donations.

18 54. A 2016 State of Reuse report commissioned by TVI also identified, as a key
19 finding, that consumers will donate more if they know their donation “would help nonprofits
20 they support,” and 59% of U.S. consumers “donate goods to benefit nonprofit organizations.”

21 55. A 2017 State of Reuse Report commissioned by TVI identified as a key takeaway
22 that community impact is more important than environmental impact when deciding to donate
23 goods, and when forced to choose whether donations should benefit the community or the
24 environment, 78% wanted donations of used goods to benefit their community.

1 56. The first consumer survey performed by Ms. Butler similarly found that 60% of
2 donors and 39% of shoppers at Value Village store are motivated in part by a desire to benefit
3 charities or nonprofits.

4 57. TVI has owned and operated up to 24 retail thrift stores in Washington during the
5 relevant time period, at which it sold, and accepted donations of, thousands of used goods daily.
6 TVI's deceptive advertising and marketing was ubiquitous on the exterior and interior of its
7 stores. In addition, TVI advertised in surrounding communities, maintained an active website
8 and social media channels, and ran commercials on television and radio. TVI's deceptive acts or
9 practices thus impacted the public interest and occurred in trade or commerce.

10 **I. Cause of Action #7 – TVI Did Not Violate the Charitable Solicitations Act**

11 58. TVI registered as a commercial fundraiser in the State of Washington, under the
12 Charitable Solicitations Act in late-2014/early-2015. TVI did not start making the disclosures at
13 the point of solicitation required by the Act until October 2015.

14 59. TVI registration requirement came after years of being told by the State that they
15 did not need to register. Whatever one thinks about TVI's behavior in this case, there can be no
16 question that they reliably reached out to the State of Washington in an effort to ensure that they
17 were compliant with commercial fundraising laws. In November, 2014, they received a letter
18 telling them that after 12 years the State had reversed its position and wanted them to register.
19 TVI did not quibble or appeal or argue. They complied. They got their registration done within
20 a month, at the deadline given by the State.

21 60. It is this Court's belief that, had the State provided a deadline to get the
22 disclosures up in their stores, TVI would have met the deadline. Instead, they reached out to the
23 State several times and then began restructuring their contracts with their charitable partners.
24 They never indicated an unwillingness to place the disclosures, and the Court finds that TVI
25 genuinely intended to comply with the new requirements.

1 61. The State presented no evidence of how long such a process should take. The
2 State presented no evidence that TVI meaningfully delayed putting up the disclosures for a
3 nefarious purpose. There was no evidence about what TVI would need to do internally, within
4 their legal and marketing departments, in order to display the disclosures. The State's basic
5 argument was simply that, in their estimation, TVI took too long.

6 62. Given the 12 years it took the State to change its mind about TVI's status, it does
7 not seem unfair to give TVI nine months to completely rework the signage on all 20 of its stores
8 in the State of Washington. The Court finds the State's position with regard to CSA violations
9 completely unreasonable and will not find that TVI violated the CSA.

10 **J. TVI's Defense of Equitable Estoppel Fails**

11 63. TVI asserts that it relied, to its detriment, on communications with the Secretary
12 of State concerning whether TVI fell within the CSA definition of a commercial fundraiser.

13 64. To establish equitable estoppel, under Washington law, requires proof of (1) an
14 admission, statement or act inconsistent with a claim later asserted; (2) reasonable reliance on
15 that admission, statement, or act by the other party; and (3) injury to the relying party if the court
16 permits the first party to contradict or repudiate the admission, statement or act. *State, Dep't of*
17 *Ecology v. Theodoratus*, 135 Wn.2d 582, 599, 957 P.2d 1241 (1998). Equitable estoppel against
18 the government is not favored. *Id.* Therefore, when the doctrine is asserted against the
19 government, equitable estoppel must be necessary to prevent a manifest injustice, and the
20 exercise of government functions must not be impaired as a result of estoppel. *Id.* Each element
21 must be proved by clear, cogent, and convincing evidence. *Id.*

22 65. In addition, "where the representations allegedly relied upon are matters of law,
23 rather than fact, equitable estoppel will not be applied." *Id.* "Reliance is justified only when the
24 party claiming estoppel did not know the true facts and had no means to discover them."
25 *Concerned Land Owners of Union Hill v. King Cty.*, 64 Wn. App. 768, 778, 827 P.2d 1017, 1022
26 (1992).

1 66. TVI has not shown an inconsistent act or statement by the State, nor that its
2 reliance on communications with the Secretary of State was reasonable. The Secretary of State
3 is a ministerial agency that does not require entities to register under the CSA. Even if the
4 Secretary of State exercised that power, however, a determination that TVI did not need to
5 register under the CSA as a commercial fundraiser is not inconsistent with allegations that TVI's
6 advertising and marketing is deceptive under the CPA.

7 67. In addition, TVI may not rely upon legal determinations of the Secretary of State
8 concerning whether its business operations fell within the CSA definition of a commercial
9 fundraiser, and has not shown by clear and convincing evidence that it did rely upon any
10 communications exchanged with the Secretary of State. Moreover, even if it had shown reliance,
11 such reliance would not be justified as TVI, not the Secretary of State, was in possession of the
12 true facts concerning its business operations.

13 68. In addition, the Court finds that applying equitable estoppel based upon the
14 activities of employees of the Secretary of State carrying out their duties with respect to the CSA
15 is not necessary to prevent manifest injustice, and would impair the exercise of government
16 functions. See *In re Breast Cancer Prevention Fund*, 574 B.R. 193, 229–30 (Bankr. W.D. Wash.
17 2017).

18 69. The Court also finds that the State conducted its investigation of TVI in good
19 faith.

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K. Attorney Fees and Costs

70. The Court will address these issues in the context of the penalty phase of this trial, currently set to begin in April.

DATED this 21st day of November , 2019.



JUDGE ROGER ROGOFF