

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Other Civil
(Charitable/Consumer Law Violations)State of Minnesota, by its
Attorney General, Lori Swanson,Court File No. 27-CV-16-7913
Hon. Mel Dickstein

Plaintiff,

vs.

AMENDED COMPLAINTAssociated Community Services, Inc., and
Central Processing Services, LLC

Defendants.

The State of Minnesota, by its Attorney General Lori Swanson (“State” or “AGO”), for its Complaint against Associated Community Services, Inc. (“ACS”), and Central Processing Services, LLC (“CPS”), hereby states and alleges as follows:

INTRODUCTION

1. This Complaint arises out of Defendants’ conduct in soliciting donations for a charity named Foundation for American Veterans, Inc. (“FAV”). FAV is a nonprofit organization that claims a charitable mission to help veterans. Defendants ACS and CPS solicited donations for FAV using deceptive solicitation practices and other high-pressure telemarketing tactics, including sending call recipients deceptive mailers falsely claiming that they pledged to donate a certain amount to FAV. FAV has paid ACS and CPS—which have the same owners—at least \$27 million since 2010, or more than 80% of all monetary donations that it has received. About 28,000 Minnesotans have donated more than \$925,000 to FAV. The State of Minnesota, by its Attorney General, Lori Swanson, brings this enforcement action to

stop Defendants' unlawful conduct and enforce Minnesota's charitable solicitation and consumer protection laws.

PARTIES

2. Lori Swanson, Attorney General of the State of Minnesota, is authorized under Minnesota Statutes chapter 8; the Minnesota Charitable Solicitation Act, Minnesota Statutes chapter 309; the Uniform Deceptive Trade Practices Act, Minnesota Statutes section 325D.43-.48; and common law, including *parens patriae* authority, to bring this action on behalf of the State of Minnesota and its residents to enforce Minnesota's laws.

3. Associated Community Services, Inc. is a for-profit corporation organized under the laws of Michigan. ACS's registered address with the State of Michigan is 29777 Telegraph Road, Suite 3000, Southfield, Michigan 48034. ACS is registered as a "professional fund-raiser" with the AGO pursuant to the Minnesota Charitable Solicitation Act, Minn. Stat. ch. 309.

4. Central Processing Services, LLC is a for-profit limited liability company organized under the laws of Michigan. CPS's registered address with the State of Michigan is 29777 Telegraph Road, Suite 3200, Southfield, Michigan 48034.

JURISDICTION

5. This Court has subject-matter jurisdiction over this action under Minnesota Statutes sections 8.01, 8.31, 8.32, subd. 2(a), 309.57, and common law.

6. This Court has personal jurisdiction over ACS under Minnesota Statutes section 543.19 and common law because ACS transacts business within Minnesota, solicits charitable contributions from Minnesota residents, and has committed acts inside and outside Minnesota causing injury in Minnesota.

7. This Court has personal jurisdiction over CPS under Minnesota Statute section 543.19 and common law because CPS transacts business within Minnesota, solicits charitable

contributions from Minnesota residents, and has committed acts inside and outside Minnesota causing injury in Minnesota.

VENUE

8. Venue is proper in Hennepin County under Minnesota Statutes section 542.09 because the cause of action arose, in part, in Hennepin County. Among other things, ACS and CPS solicited charitable contributions from residents of Hennepin County through the practices described in this Complaint.

FACTUAL BACKGROUND

I. BACKGROUND OF FAV AND ITS OPERATIONS.

9. FAV is a nonprofit corporation organized under the laws of the District of Columbia. FAV lists its principal address as 7473 Wilshire Street, West Bloomfield, Michigan 48322. FAV is tax-exempt under 26 U.S.C. § 501(c)(19), which is a tax-exempt status available only to certain organizations serving and comprised of veterans. FAV is registered with the AGO as a soliciting charitable organization pursuant to the Minnesota Charitable Solicitation Act, Minn. Stat. ch. 309.

10. FAV claims to support veterans in a variety of manners, and states that its “primary mission” is to assist them with clothing and other items through its partnerships with VA hospitals, homeless shelters, and various other programs.

11. FAV has only two employees and five board members. Its two employees are its President and its National Program Director. FAV does not have a dedicated office space. Its President and its National Program Director work out of their homes, and FAV’s board of directors meets in public facilities.

12. On paper, FAV appears to be a large organization. From 2010 to 2014, FAV reported total revenues of about \$38.5 million. FAV reported over \$8 million in revenue in 2014 alone.

13. FAV receives two different types of donations from donors: (1) money, and (2) “gifts in kind.” “Gifts-in-kind” donations consist of donated goods and services, as opposed to money. The majority of FAV’s revenue has come from monetary donations, rather than gifts-in-kind donations. FAV’s 2014 IRS Form 990 (i.e., its tax return) indicates that of the \$38.5 million of its total revenue from 2010 to 2014, approximately \$33.7 million (88%) was from monetary donations, and \$4.8 million (12%) was from gifts-in-kind donations of clothing and other goods. FAV received \$6,143,663 in monetary donations nationwide in 2014 alone.

14. FAV has received significant monetary donations from Minnesota residents. From November 2011 through October 2015, Minnesotans donated a total of \$929,888 in money to FAV. Minnesotans donated \$303,030 to FAV between November 1, 2014 and October 31, 2015 alone. At least 28,069 Minnesotans have donated money to FAV since 2013.

II. FAV USES THE FOR-PROFIT PROFESSIONAL FUNDRAISER ASSOCIATED COMMUNITY SERVICES AND ITS AFFILIATE, CENTRAL PROCESSING SERVICES, TO SOLICIT MONETARY DONATIONS ON ITS BEHALF.

15. FAV’s sole source of money donations is telemarketing solicitations and follow-up mail solicitations performed by Associated Community Services, Inc. (“ACS”)—a “professional fundraiser”—and its affiliates. A “professional fundraiser” is “any person who for financial compensation or profit performs for a charitable organization any service in connection with which contributions are, or will be, solicited in this state by the compensated person or by any compensated person the person employs, procures, or engages to solicit; or any person who for compensation or profit plans, manages, advises, consults, or prepares material for, or with

respect to, the solicitation in this state of contributions for a charitable organization.” Minn. Stat. § 309.50, subd. 6.

16. ACS is FAV’s exclusive telemarketing professional fundraiser. ACS conducts telemarketing campaigns by requesting monetary donations for FAV over the phone. ACS is owned by Robert W. Burland and Richard T. Cole. Central Processing Services, LLC (“CPS”) also works for FAV. CPS is a related party to ACS and is likewise owned by Burland and Cole. FAV uses another professional fundraiser, Community Services Appeal, as an alleged consultant. Community Services Appeal is owned by the wives of Burland and Cole.

17. ACS and its affiliates have received about 85% of each dollar they have solicited for FAV for the past several years, including in 2014. FAV used approximately 5% of its monetary donations on management and general expenses in 2014. FAV spent the remaining 10% of the money donations it received in 2014 on its ostensible charitable mission.¹

18. ACS conducts all of FAV’s telephone solicitation activity. FAV’s most recent contract with ACS, which is still in effect, states that FAV agreed to “appoint[] ACS as its exclusive marketing and fundraising agent.”

19. FAV entered into an agreement with CPS in 2009 to “create a mechanism whereby pledges made to [FAV], directly or indirectly, may be processed by CPS as agent for [FAV].” In the agreement, CPS agreed to, among other things, “assist [FAV] with the

¹ According to FAV’s valuation of the goods, it received about \$4.8 million of gifts-in-kind donations from 2010 to 2014. FAV received, according to its valuation, about \$1.9 million in gifts-in-kind donations in 2014 alone. FAV did not spend \$1.9 million to obtain these goods, but it counted the entirety of these \$1.9 million in donated goods toward the money it expended on its charitable mission. These gifts-in-kind donations thus increased the percentage of expenses FAV reported on its 2014 tax return as being spent on its ostensible charitable mission from 10% to 31%. Even taking into account gifts-in-kind donations, FAV thus still spent almost 70% of donors’ donations on things other than its ostensible charitable mission.

coordination and implementation of fulfillment pledges for contributions made to [FAV] as the result of services provided by Associated Community Services, Inc[.]”

20. Prior to 2002, FAV contracted only with ACS, and paid it 85% of each donation made to FAV. But in 2002, ACS divided its operations and its owners formed CPS. FAV began paying CPS 30% of the donations that it had previously paid to ACS, thereby reducing, on paper, ACS’s share of donations to FAV from 85% to 55%.

21. Even though they technically became separate legal entities, there is little practical difference between ACS and CPS. ACS and CPS have the same owners and some of the same principals. They share the same registered address. They share the same email server. Additionally, ACS and CPS jointly sign off on FAV solicitation mailers. Further, CPS’s contract with FAV is in effect only to the extent that ACS’s contract with FAV is in effect.

22. ACS and CPS also work in tandem to solicit donations for FAV. ACS telemarketers telephone potential donors on behalf of FAV and, among other things, seek a “pledge”—or a promise to donate—from each prospective donor. If, according to ACS, a donor responds favorably, it passes this information along to CPS. CPS then sends written “pledge reply” or “pledge reminder” mailers to potential donors in the mail, further soliciting them to donate to FAV. CPS reviews and signs off on these solicitation mailers before sending them to prospective FAV donors.

23. FAV is a lucrative source of revenue for ACS and CPS. FAV paid ACS and CPS a total of \$27,497,175 between 2010 and 2014. FAV paid \$17,961,118 to ACS, and \$9,536,057 to CPS. In 2014 alone, FAV paid ACS and CPS \$5,038,993 of the \$6,143,663 from the monetary contributions collected in FAV’s name. FAV also paid Community Services Appeal an additional \$189,779 in 2014.

24. ACS has an extensive history of regulatory enforcement actions for its misconduct in soliciting donations for its charitable organization clients. ACS's solicitation practices have resulted in at least 10 previous Assurances of Discontinuances or equivalent agreements with regulators, beginning with the Ohio Attorney General's Office in 2002, and concluding most recently the Michigan Attorney General's Office in 2016.

25. For example, in 2008, ACS entered into an Assurance of Discontinuance with the Ohio Attorney General finding, among other things, that ACS "committed deceptive acts and misled potential donors," failed to make statutorily required disclosures about its status as a professional fundraiser, and violated a previous Assurance of Discontinuance. In 2011, ACS entered into a Consent Judgment with the Iowa Attorney General in which it agreed to, among other things, "refrain from making any false representation . . . in the course of fundraising." In 2011, ACS entered into a Stipulated Limited Judgment with the Oregon Attorney General that addressed, among other things, whether a potential donor had actually pledged to the charity on behalf of which ACS was soliciting, alleged "false and misleading statements" ACS made to potential donors concerning how a charity's donations would be used, and the percentage of donations that would be retained by the charity.

26. ACS shows no signs of reformation notwithstanding these actions. To the contrary, as recently as May 13, 2016—fewer than two weeks before the AGO filed the current lawsuit—the Michigan Attorney General issued a Notice of Intended Action and Cease and Desist Order, asserting that ACS used false and misleading solicitation scripts that overstated the percentage of a donor's contribution that would go to the charity, and misstated how the donations would be used by the charity.

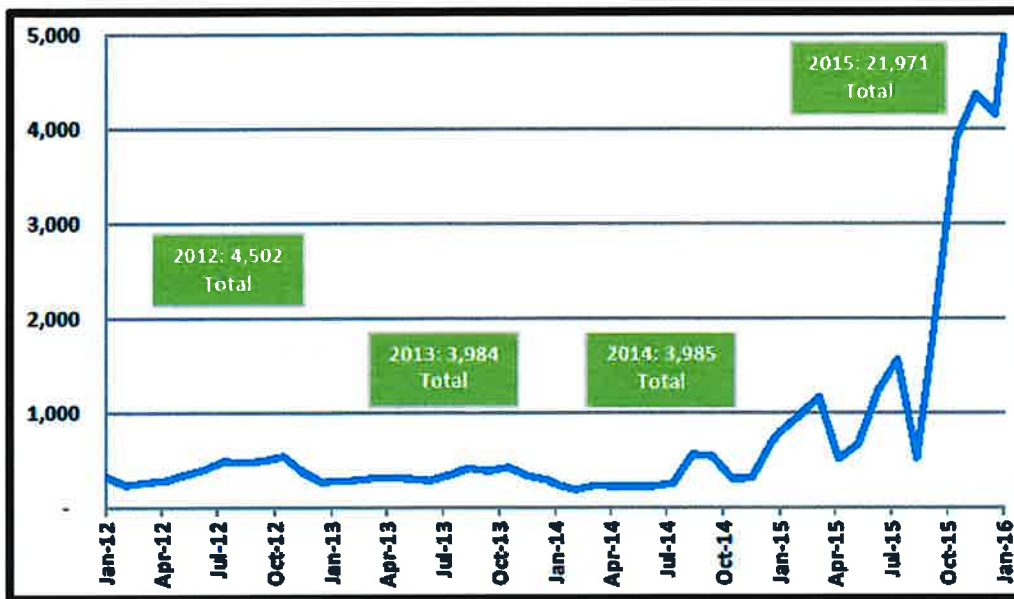
III. ACS USED AGGRESSIVE TELEMARKETING AND HIGH-PRESSURE SOLICITATION PRACTICES TO SEEK DONATIONS ON BEHALF OF FAV.

A. ACS Intensified Its Telemarketing Efforts in the Latter Part of 2015.

27. In line with its contractual promise to conduct an “intense campaign” on behalf of FAV, ACS has been a prolific caller in Minnesota over the past several years for FAV. This is demonstrated by ACS’s own internal communications, the testimony of Minnesota residents, and the do-not-call list ACS maintains on behalf of FAV.

28. ACS maintains a “do not call” list regarding FAV. ACS’s list reflects that between January 1, 2012 and December 31, 2015, almost 35,000 Minnesotans requested that their phone numbers be placed on FAV’s do-not-call-list.

29. In July of 2015, ACS, in the midst of bankruptcy proceedings that appear to continue to this day, gained the opportunity to obtain “a more consistent income stream” with less effort and expense via FAV “sustained donors”—or donors who pledged to make regular payments to FAV. In September of 2015, ACS implemented changes to its automatic dialer settings that increased the number of solicitation pitches its telemarketers could make per hour. ACS appears to have intensified the frequency and number of calls soliciting donations for FAV in the second half of 2015, as illustrated by the below chart of FAV-related individual “do not call” requests:

ACS Monthly Do-Not-Call Requests for FAV

30. ACS's call records concerning one Minnesotan, 59-year-old Cohasset resident R.G., provide a snapshot of the impact of FAV and ACS's "intense campaign." ACS's records show that, in the four months preceding January 2016, ACS called R.G. 42 times on behalf of FAV. R.G. made multiple requests to have his number removed from FAV's call list, but ACS continued to call on behalf of FAV nevertheless.

31. ACS's unwanted calling spurred complaints from Minnesota residents to the AGO, which in turn sometimes contacted ACS about the complaints. This type of negative attention from regulators occurred frequently enough for ACS to characterize it as "fairly routine." As far back as 2010, FAV's National Program Director opined to ACS that "[t]here is a pattern growing here now" of complaints from potential donors about ACS's telemarketing solicitation tactics.

32. In 2012, FAV again discussed with ACS its concerns "about the number of complaints received by FAV regarding the frequency of solicitations," but FAV and ACS

decided that because “the amount of complaints does not impact donations,” they would continue their practices.

33. ACS’s internal communications further illustrate the volume of consumer complaints about its calls on behalf of FAV, particularly in late 2015. FAV’s voicemail box, which is maintained by ACS, was flooded with so many complaints that ACS could not keep up with the volume and had to set up new voicemail boxes to handle the surge. FAV complaints were so widespread, an ACS employee opined: “I expect we will continue to get more complaints of this nature and a regulator might notice the pattern and ask us to explain what is going on.”

B. ACS Employed High-Pressure Solicitation Tactics on Those Minnesota Residents Who Answered Phone Calls.

34. ACS also used high-pressure tactics in its solicitation pitches in an attempt to pressure Minnesota residents to make donations. Multiple Minnesota residents reported that ACS refused to take “no” for an answer when they declined to donate. For example, when 58-year-old Elysian resident B.N. refused to donate to FAV over the phone in a December 2015 phone call and asked to be placed on FAV’s do-not-call list, ACS questioned whether B.N. was “grateful for the sacrifices that disabled veterans have made for our country.” When B.N. repeated her request to be removed from FAV’s list, ACS hung up on her. Despite her requests for removal from its call list, ACS called B.N. again. When B.N. asked why she was continuing to get calls from ACS, the caller told her that to get the phone calls to stop, she needed to donate to FAV.

35. ACS’s tactics were particularly unpopular with Minnesota’s veterans. 63-year-old U.S. Air Force veteran and Moorhead resident P.J. stated that she did not “appreciate that FAV is making repeated, unwanted calls to my home and using aggressive solicitation tactics to

fundraise money in the name of veterans.” 84-year-old Woodbury resident and Korean War U.S. Army veteran H.G. stated that as a veteran who supports many veterans’ causes, he found ACS’s solicitations “rude” and “concerning.” J.C., a 74-year-old Glencoe senior citizen and U.S. Army Veteran who served in Germany and Korea, stated that he did “not appreciate that FAV is playing upon donors’ sympathies” with its tactics.

36. ACS and FAV knew that veterans found their tactics distasteful: In a January 18, 2016 email, FAV National Program Director and ACS discussed how ACS’s solicitation practices “offend[] many . . . elderly, disabled vets & families of deployed in harm[’]s way” and were “upsetting veterans.”

IV. ACS AND CPS EMPLOYED DECEPTIVE SOLICITATION PRACTICES WHEN SOLICITING FOR FAV, INCLUDING FALSE “PLEDGE REPLY” AND “PLEDGE REMINDER” MAILERS SUBSEQUENTLY SENT TO CALL RECIPIENTS.

37. In addition to making repeated, unwanted calls to Minnesota residents and engaging in high-pressure tactics, ACS and CPS deceptively represented to potential donors their pledge and donor status, and ACS deceptively conflated its identity with FAV in a manner that shielded its status as a for-profit professional fundraiser.

A. ACS and CPS Falsely Represented to Minnesota Residents That They Had Pledged to Donate to FAV, When They Had Not.

38. When a potential donor is under the impression that he or she has already pledged to make a donation to a charity, it makes it more difficult for that person to feel comfortable refusing to make a donation, even though he or she is under no obligation to pay any alleged “pledge.” ACS and CPS, which each share a percentage of donations received from persons who donate to FAV, are thus incentivized to give potential donors the impression that they have already “pledged” to donate to a charity, whether accurate or not. ACS’s records further demonstrate that an individual telemarketer’s compensation is based in part on the amount of

pledges that each telemarketer obtains. This likewise incentivizes individual telemarketers to log as many pledges as possible from potential donors, whether accurate or not.

39. ACS, in conjunction with CPS, has deceptively represented to Minnesota donors that they had pledged to donate to FAV. ACS and CPS jointly employed this deceptive practice as follows: an ACS telemarketer would request a donation to FAV from a potential Minnesota donor over the phone. A recipient of a telemarketing call from ACS would unequivocally refuse to make a donation, or perhaps ask for more information about FAV. ACS's telemarketers would nevertheless falsely code the potential donor's response as a "pledge" to donate in its electronic database. CPS, which maintained the donor database used by ACS to telemarket, would then mail a "pledge reply" or "pledge reminder" to the call recipient requesting that he or she donate to FAV. CPS's mailer contained the false statement that the potential donor had previously pledged to donate to FAV during the call with ACS.

40. Indeed, ACS's and CPS's internal emails indicate their "system is not set up for [the] purpose" of "sending 'information only' as a result of a sales call." In other words, if a potential donor asks for more information or is not sure about donating, Defendants must either mail a false pledge reminder or lose the "sale."

41. An example of a pledge reminder that CPS sent to a Minnesota donor falsely indicating the donor had pledged to donate to FAV during an ACS telemarketing call, and further soliciting the donor to donate, is attached hereto as **Exhibit 1** (w/ redactions). Exhibit 1 reflects that the postage in the upper right hand corner of the pledge reminder is paid by CPS.

1. ACS and CPS Falsely Told Minnesota Residents That They Pledged to Donate to FAV.

42. Examples of Minnesota residents who faced ACS and CPS's deceptive solicitation practices include, but are not limited to, the following:

K.E.

43. Around December 2015, a man who said he was from FAV called 63-year-old Coon Rapids resident and Air Force Veteran K.E. and asked him for a donation. K.E. told the man that he would not donate or commit to a donation over the phone, but said the man could send him information about FAV in the mail. Instead, FAV mailed K.E. something that looked like a bill that falsely claimed K.E. had pledged to make a \$30 donation to FAV. K.E. was upset about receiving this bill-like mailer, and to make matters worse, Defendants kept sending him additional similar mailers because he had yet to donate to FAV. After he continued to receive these FAV mailers, K.E. eventually wrote FAV a check for \$30 on or about January 29, 2016.

Y.S.

44. Around January or February 2016, 66-year-old Madison Lake resident Y.S. received a call from person who said he was calling from FAV and raising money for the charity. Y.S. had donated to FAV prior to that call. The caller asked Y.S. to donate \$25, but she told him she could not afford to do so because she had a lot of medical bills to pay at the moment. The caller would not take no for an answer, however. Every time Y.S. refused to donate, the caller would just ask for a smaller amount. Y.S. eventually hung up on him without agreeing to make a donation. About a week later, Y.S. nevertheless received a mailer from FAV that indicated she had agreed to make a \$25 donation. This mailer was false, as Y.S. had not agreed to donate to FAV when it last called her.

J.V.

45. In late 2015, 77-year-old Eagan resident J.V. received a call from FAV. The FAV solicitor was pushy and insisted that J.V. commit to donate to FAV over the phone. J.V. asked the caller to send her some information in the mail, but steadfastly refused to agree to donate to

FAV over the phone. When J.V. would not commit to donate, she was transferred to a second person who again pressured her to make a donation to FAV. Because J.V. did not appreciate FAV's aggressive solicitation tactics, she hung up on the second person, thinking she had escaped FAV's attempts to pressure her into making a donation.

46. J.V. later received multiple mailers from FAV, however, claiming she had pledged a donation of \$20. The continuing FAV pledge reminders started to make her feel guilty for not donating. Eventually, the mailers wore her down, and J.V. wrote a \$20 check to FAV on January 25, 2016, after repeatedly receiving these false pledge reminders from CPS.

J.C. & D.C.

47. On or around November 15, 2015, ACS called Glencoe residents and husband and wife J.C. and D.C. soliciting a donation for FAV. D.C. picked up the phone, and ACS asked her to donate \$20 to FAV. Because J.C. and D.C. were on a fixed income, she refused to make a donation. ACS called D.C. again a few days later, and falsely claimed that she had previously pledged to pay FAV \$20.

48. Further, on or around November 17, 2015, CPS mailed J.C. two pledge reminders. Among other things, CPS's pledge reminders stated, "Your Pledge Amount: \$20.00," and requested: "Please mail your pledge today." The claims on CPS's pledge reminders are false, because neither D.C. nor J.C. had pledged to donate any money to FAV.

49. The calls from ACS soliciting donations for FAV continued multiple times a week for several weeks after J.C. and D.C. received the false pledge reminders. Each time, ACS falsely insisted that J.C. or D.C. had previously pledged to donate \$20 to FAV. Each time, D.C. repeated that neither she nor her husband had ever made such a pledge, again refused to donate to FAV, and ended the call.

B.R.

50. In or around November of 2015, U.S. Air Force veteran and Duluth resident B.R. received a call from ACS soliciting donations for FAV. The caller initially asked B.R. to donate \$75 to FAV. When B.R. declined, the caller asked her to make a donation in a lesser amount. When B.R. declined again, the caller asked her to donate \$15 to FAV. B.R. informed ACS that she was on a fixed income and could not donate any of the requested amounts to FAV. B.R. said she would have to consider it further before deciding whether to donate, and did not pledge to pay any amount to FAV during that call. Shortly thereafter, B.R. received a “pledge reminder” from CPS. The pledge reminder states, among other things: “Your Pledge Amount: \$15.” The claim on this pledge reminder from CPS is false. B.R. never pledged to donate \$15, or any other amount of money, to FAV on that phone call.

51. In or around early April of 2016, B.R. received another phone call from ACS requesting a donation. B.R. did not pledge to donate any amount to FAV on the April phone call either. Shortly after the April phone call, B.R. received another “pledge reminder” from CPS. The pledge reminder states, among other things: “Your Pledge Amount: \$15.” This claim is also false, as B.R. never pledged to donate to FAV.

A.K.

52. On or about December 29, 2015, ACS called Rochester resident A.K. and asked her to pledge to donate \$50 to FAV. She refused, and the caller asked if she would pledge to donate \$30 to FAV. She again refused. The caller asked if A.K. would pledge to donate \$15 to FAV. A.K. refused to pledge to donate \$15 (or any other amount) to FAV, but told the caller that if FAV sent her more information in the mail, she would consider whether to make a donation at a later time.

53. A.K. was then transferred to another individual who asked for her credit card number. A.K. refused to give ACS her credit card number, and repeated that she would only consider making a donation once she received some information about FAV in the mail. On or about December 31, 2015, A.K. nevertheless received a “pledge reply” form in the mail from CPS. The pledge reply falsely states, among other things: “Your Pledge Amount: \$15.00.”

A.S.

54. In or around late December 2015, ACS called 67-year-old U.S. Air Force veteran A.S. and asked him to donate to FAV. A.S. agreed to donate to FAV on that phone call. CPS then sent A.S. a pledge reminder in the mail, and A.S. responded by mailing a donation of \$20 to FAV with the pledge reminder.

55. A few months later, in or around March of 2016, A.S. received another phone call from ACS requesting that he donate again. This time, A.S. told the caller that he was not interested in making another donation at that time. ACS nevertheless continued to pressure A.S. to make a donation, stating the need for donations was urgent and that he needed to donate “right away.” A.S. again refused to donate, told ACS to take his name off of FAV’s call list, and demanded that FAV never call him again.

56. A.S. subsequently received another “pledge reminder” in the mail from CPS. The pledge reminder indicated that A.S. had pledged to donate money to FAV, and that the amount he had allegedly pledged to donate was unfulfilled. The claims on this pledge reminder from CPS were false. A.S. had not pledged to donate any amount of money to FAV during the most recent phone call, and had already donated the amount he pledged in December 2015.

2. ACS's and CPS's Internal Records Reflect a Serious, Ongoing Problem of False Pledge Claims and Other Misrepresentations.

57. ACS's and CPS's records indicate that they were aware of the perpetration of deceptive solicitation practices but failed to take appropriate steps to correct them.

58. For example, in a September 2011 internal email, ACS discussed the disciplinary history of one of its callers, which included 29 infractions, some of them related to making false statements to potential donors and some of them in calls on behalf of FAV. ACS referred to this disciplinary history as the telemarketer's "wrap sheet." ACS recorded one infraction as follows:

Misrepresentation on FAV - Localized FAV, improper program details in order to make sale by telling donor he was part of the VA Admin and pretended to locate the donors paperwork for his veteran ID card and said that he would receive it in 30 days in order to make a sale. 2nd call - Same as 1st call plus told donor he would send someone over to pick up a wheelchair the donor wanted to donate in order to make a sale. Other calls found were impersonating a [S]panish translator, lied about being in the military by using rank in pitch and told donors he has 4 sons in Iraq.

Despite this and his 28 other infractions, the telemarketer continued to work for ACS at the time of the email.

59. In a January 27, 2016, email concerning a telemarketer's multiple failure to "code" calls correctly (as is the case when a telemarketer falsely codes that a person has pledged to donate), an ACS Senior Manager asked: "So on their 5th infraction they get a written warning? This seems awfully lenient."

60. This was not the only time CPS was made aware of problems in ACS's telemarketing when soliciting for FAV. CPS's CEO was involved in the high-level operations of ACS, and had knowledge of misconduct by ACS's telemarketers. This is evidenced by, among other communications, emails between ACS and FAV on which he was included recapping meetings between FAV and Defendants and discussing concerns regarding ACS's solicitation tactics.

61. On January 25, 2016, the FAV National Program Director emailed ACS about a complaint from a potential donor stating that he or she “told [the caller] no three times [and] still got [a] pledge” reminder in the mail.

62. In an email a few days later on January 28, 2016, from FAV’s President to ACS’s Compliance Officer regarding the AGO’s investigation, he stated:

. . . What happen[ed] to the complainants calls in the AG letter, and are we deceiving them in any way[?] It also says somewhere I think that people are agreeing to donate [*sic*] but are getting invoices in the mail saying they did not offer to contribute [*sic*]. The St. Louis article comes to mind. ACS is getting the reputation of being like the old boiler plate rooms. That is where you have to convince the [Minnesota] AG otherwise.

63. FAV’s President was apparently referring to a January 26, 2016 St. Louis Post-Dispatch article about FAV headlined: “BBB, Consumers Question Foundation For American Veterans’ Fundraising Tactics.” The article states that the Better Business Bureau (“BBB”) warned Missouri residents about solicitation calls from FAV and referenced, among other tactics, falsely claiming persons had pledged to donate to FAV when they had not.

64. An excerpt from the Post-Dispatch article described one call recipient’s experience as follows:

A [call recipient] said she refused to make a donation after receiving what she described as a “pushy” phone call from a [FAV] representative shortly before Christmas. Instead, the woman said she asked the caller to mail her information detailing the charity’s programs, saying she would consider a contribution after reviewing the materials. The woman said she was stunned to receive a mail notification a few days later claiming she had made a \$20 pledge and asking for payment “very quickly – even today if possible.”

65. The article further “cites concerns with . . . law enforcement action involving [FAV’s] main fundraiser, Associated Community Services.” It goes on to explain how ACS “has had a troubled history with state and federal law enforcement authorities,” including

involvement in litigation with the Federal Trade Commission and numerous state attorneys general.

66. In a contemporaneous public statement to the St. Louis BBB concerning the article, FAV's President acknowledged that FAV was "having problems with [its] telemarketer." FAV's President further stated in a January 28, 2016, email to ACS's Compliance Officer that such practices "sure [make FAV] look[] like we are crooks no matter what we do."

67. Minnesotans' accounts also support deceptive representations that extend beyond false pledge claims. In the fall of 2015, for example, ACS solicited R.G. ACS said it was calling for "disabled veterans" but refused to give R.G. the name of the charity (i.e., FAV). R.G. told ACS that he already donated to two other veterans' charities, and again requested the identity of the charity seeking a donation. The caller once more refused to identify the charity. Rather, ACS falsely told R.G. that his prior donations were the reason for the call, and that it wanted to thank him for his support. ACS also falsely told R.G. that he "always" donated to the charity on whose behalf caller was seeking a contribution, and that he had even made a donation in the last year. In reality, R.G. had never given money to FAV.

68. ACS internal records indicate that the types of deceptive representations contained in R.G.'s account also are longstanding. A July 25, 2012, email concerning a caller's disciplinary history refers to, among other violations, "Lying about how much donor previously donated." In a June 5, 2015, email from ACS's Compliance Officer to ACS's President, the President opined that a caller identifying himself as simply "with the veterans" didn't "sound good."

69. As already referenced above, ACS has previously entered into settlement agreements that relate, in part, to allegations of sending potential donors false pledge claims. For

example, ACS settled with Oregon in 2011, and agreed as one of the terms of the settlement that it would not make “false and misleading statements about whether the person has made a pledge or previously donated to the nonprofit client.” ACS has also entered into settlement agreements with the states of Michigan, Ohio, and Iowa concerning other allegations of deceptive solicitation practices.

B. ACS Deceptively Indicated That It *Was* FAV, As Opposed to A For-Profit Professional Fundraiser Hired by FAV.

70. A person may be less inclined to donate when a caller indicates that he or she is a for-profit telemarketer, and not an employee of the charity. Informing potential donors that the caller works for a for-profit professional fundraiser also helps to inform callers potential donors of the likelihood the telemarketer/fundraiser takes a “cut” of any donation they make. ACS, however, deceptively indicated that it *was* FAV when calling donors, as opposed to a for-profit professional fundraiser.

71. In a September 2014 internal email, for example, an ACS employee stated that ACS was “getting a ton of [complaints about] . . . agents claiming to be veterans that call for FAV.”

72. When ACS called potential Minnesota donors, their caller IDs have reflected that the call was from FAV, not ACS. At least one telephone number ACS used to solicit donations for FAV, (952) 679-8647, is registered under FAV’s name. B.N., D.K., and J.K. stated that their caller IDs identified the callers’ telephone number as belonging to FAV. ACS’s internal documents likewise indicate that FAV’s name appears on the caller IDs of potential FAV donors solicited by ACS.

73. Neither did ACS disclose material facts about its identity and its nature, thereby further deceiving potential Minnesota donors. Special circumstances exist that triggered a duty

on the part of ACS to disclose all material facts to potential Minnesota donors that it solicited. First, ACS had special knowledge—which Minnesota donors did not have at the time they were solicited—that it was a professional fundraiser acting on FAV’s behalf and not FAV itself. Second, the nature and quality of the representations that ACS made to potential donors about itself were so incomplete that by failing to disclose that it was a professional fundraiser, and was not the charity to which the donor was donating, ACS did not say enough to prevent the representations it did make to potential donors from being deceptive and misleading. By holding itself out as FAV itself, ACS knew or had reason to know that potential donors would place their trust and confidence in ACS and rely on ACS to inform them of material facts relating to their potential donation.

74. ACS’s specific deceptive representations and omissions regarding its identity and status as a for-profit professional fundraiser include the following:

J.M.

75. ACS solicited 68-year-old Navy veteran and South St. Paul resident J.M. multiple times over the past few years. ACS callers told J.M. they were from FAV. J.M. donated a total of \$300 to 400 to FAV over the last year or so in response to ACS’s telephone solicitations, typically by a credit or debit card over the phone. At no point during any of the phone calls ACS made on behalf of FAV did the caller identify himself or herself as being a professional fundraiser or calling from ACS. Had J.M. been told he was being solicited by a professional fundraiser, and not directly by FAV, he would have chosen to donate to a different charity.

Z.C.

76. Around early October 2015, 75-year-old Oakdale resident Z.C. received a call from a man who identified himself as “Steve.” Steve said he was an employee of the charity

“American Veterans,” whose mission was to help veterans. In soliciting Z.C. to donate, ACS tried to make her feel guilty, saying things about how she should want to support veterans that go overseas to serve their country. Z.C. said ACS made her feel like she should be ashamed if she did not want to donate. ACS did not disclose its name or that “Steve” worked for a professional fundraiser on the solicitation call. Z.C. mailed FAV a donation on October 15, 2015 in response to a mailer she received from it that was purportedly signed by “Steve,” making her think he and FAV were legitimate.

K.E.

77. In a December 2015 solicitation call to K.E., he refused to donate to FAV but asked ACS to send him some information about how his donation would be used, if he were to make one in the future. When K.E. donates he wants most of his donation to go to charity, and not fundraising expenses. ACS did not identify itself on its solicitation call to K.E., or that the caller worked for a professional fundraiser and not FAV.

J.T.

78. Around January 2016, a man who said he was from FAV called 65-year-old Minneapolis resident J.T. asking for donations to the charity. The man said that this was for veterans who needed J.T.’s help. He made a pitch that J.T. donate, and she felt pressured to do so. She eventually agreed to contribute \$15. J.T., who serves on the board of a nonprofit, was surprised by ACS’s high-pressure tactics. J.T. mailed a \$15 check to FAV on January 20, 2016. The FAV caller did not mention “Associated Community Services” or “AC Services” during the call. The caller also did not say he worked for a professional fundraiser. Had J.T. been told she was being called by a fundraiser, she would not have donated to FAV.

D.C.

79. On approximately November 15, 2015, ACS's telemarketer called D.C., identifying himself as calling from FAV. ACS called D.C. and her husband J.C. on multiple subsequent occasions over the following weeks seeking donations for FAV. D.C. states that during none of the phone calls did the callers identify themselves to either D.C. or J.C. as working for ACS or a professional fundraiser.

B.N.

80. ACS called affiant B.N. twice in or around December of 2015. The ACS representative simply identified himself as calling from a "veterans' organization," but B.N.'s caller ID reflected that it was FAV who was calling. B.N. indicates that at no point in either phone call did the caller indicate that he/she was an employee of ACS and working for a professional fundraiser.

B.S.

81. Over the last year or two, 65-year-old Oasakis resident and Vietnam War veteran B.S. donated to FAV at least twice after receiving solicitation calls from ACS. During neither of the most recent two times B.S. donated to FAV did ACS's caller state that he was working for a professional fundraiser or identify ACS. B.S. wanted as much of his donation as possible to go to help veterans, and not to a fundraising company. He donated to FAV after having been given no reason to believe his donation would be used otherwise.

P.J.

82. In late December of 2015 or early January of 2016, ACS called P.J. multiple times over several weeks and asked her to donate money to FAV. P.J. believed it was FAV who

had called her, and states that at no point did the caller identify himself as working for ACS or a professional fundraiser.

Pat.J.

83. 71-year-old Plymouth resident Pat.J. had told ACS's callers in the past that she will only donate once a year at most, but they continued to call her more frequently than yearly. When ACS does call for FAV, it also often tells Pat.J. stories that make her feel guilty if she doesn't donate. In January 2016, Pat.J. received a call from ACS though the caller said he was from FAV. Pat.J. thought the caller was an employee of FAV. The caller was aggressive and pressured her to use her credit card over the phone, but she refused. He did not identify himself as a professional fundraiser, an employee of a fundraiser, or mention ACS's name. Not being so told during the call, Pat.J. mailed FAV \$30 after receiving an FAV mailer from CPS.

H.G.

84. In or around mid-November of 2015, ACS called H.G. soliciting donations on behalf of FAV. Mr. Gunter did donate to FAV. Thereafter, a man from ACS called again asking H.G. to donate again to FAV. During none of the times H.G. spoke to ACS did the caller identify himself as working for ACS or a professional fundraiser.

D.E.K.

85. On or around January of 2016, ACS called 79-year-old U.S. Air Force veteran and Princeton resident D.E.K. soliciting donations for FAV. Sometime after January 13, 2016, ACS called D.E.K. a second time seeking donations for FAV. D.E.K. states that during neither conversation did the ACS caller identify himself or herself as working for ACS or a professional fundraiser.

J.V.

86. In the late 2015 solicitation to J.V., ACS's callers claimed to J.V. that they were calling from FAV. The callers did not identify themselves as ACS employees. Based upon how ACS's callers presented themselves to J.V., she believed she was speaking directly to FAV employees. J.V. doesn't like it when fundraisers get a portion of her donation.

A.B.

87. In about January of 2016, 81-year-old Cambridge Air Force veteran A.B. received a telephone call from someone stating he was from FAV. The caller was aggressive in asking A.B. to donate, so he agreed to donate \$30 during the call. ACS's caller did not state that he was working for a professional fundraiser or mention ACS's name. While A.B. checked to see if FAV was authorized to do business in Minnesota, FAV called A.B. at least twice more asking why he hadn't donated yet. A.B. mailed a check to FAV after learning it was permitted to do business in the state. A.B. avoids donating through professional fundraiser because he wants as much of his donations to vets as possible to help local veterans.

D.M.

88. Around January 2016, a man who said he was from FAV called 72-year-old Bloomington resident D.M. soliciting donations. The FAV caller did not mention Associated Community Services during the call, or that he worked for a professional fundraiser. ACS implored D.M. to donate by stating her donation would be used to help local veterans. D.M. refused to donate over the phone by credit card, but did donate after ACS's caller indicated he was from FAV and failed to disclose ACS's status as a professional fundraiser, and subsequently receiving an FAV mailer in the mail from CPS.

T.S.

89. In December 2015, Cottage Grove resident T.S. received a phone call from an ACS caller identifying himself as with FAV. The caller did not state that they were working for a professional fundraiser or mention ACS's name. ACS asked T.S. if she could donate \$50 or more. She declined, but said that \$30 might be possible. T.S. refused to donate on the phone, however, and told the caller to send some materials in the mail. After CPS mailed T.S. multiple donation reminders, she eventually donated \$30. T.S. wants as much of her donations to veterans charities as possible to help actual veterans, and refuses to donate through professional fundraisers.

T.N.

90. T.N. lives in Carver and is a 68-year-old electrician. T.N. has several friends who are veterans, and supports veterans' causes. He has donated to FAV at least twice in the past, always after getting a phone call asking for a contribution and responding to a follow up mailer. T.N. most recently donated about \$25 to FAV in late 2015 or early 2016. The persons who called T.N. for FAV led him to believe he was donating directly to FAV. The callers said they were calling from FAV, and did not mention Associated Community Services or disclose they were professional fundraisers. T.N. prefers to donate directly to charities because he doesn't want fundraisers to take a cut of his donation. If he were to find out that he unwittingly donated to charity through a professional fundraiser, he would feel misled.

C.S.

91. ACS began soliciting St. Paul resident C.S., 63, after her aunt donated some money to FAV on her behalf. In early 2016, a man from ACS called stating he was with FAV and asked her to donate again. The ACS caller was persistent and kept asking C.S. to donate

even after she indicated she was not interested in doing so. Feeling pressured, C.S. eventually told ACS she could afford to donate \$30. C.S. was transferred to a second person, who asked for her credit card information. She refused to provide it, and CPS then sent her an FAV mailer. When she didn't donate right away, ACS continued to call asking her why she hadn't donated yet. If she had been told these calls were from a professional fundraiser, C.S. would have hung up the phone because she thought she was talking to FAV. Frustrated by the frequency of ACS's calls, C.S. eventually sent in \$30 to FAV and wrote on the envelope to quit calling her.

C.K.

92. Roseville resident and 73-year-old retiree C.K. received a number of phone calls from a veterans' organization, which she identified using her caller ID and tried to avoid answering. In early 2016, she picked up the phone by mistake, and the caller was a man who said he was calling from FAV. C.K. tried to tell him to quit calling, but the caller talked over her. He asked C.K. to donate \$100, but she said that was impossible. He asked for any donation she could afford, and, feeling pressured, she told ACS she could donate \$20. The man then transferred C.K. to a woman who requested her credit card information. C.K. refused to provide it. C.K. thought the solicitation was made by FAV, as the caller never disclosed he was from ACS. CPS subsequently sent C.K. a mailer asking for \$20 for FAV. She didn't respond initially, but after receiving additional such mailers she finally donated \$20.

C.C.

93. C.C. is 66 and works and lives in Minneapolis. When she donates to charity she wants most of her donations to actually go to the charity's purpose and not for other costs. C.C. received a call on her work number in January 2016 from a man stating he was calling from FAV. ACS was aggressive in its solicitation, and she agreed to donate \$10 to FAV. During the

call the man did not mention that he worked for ACS or that ACS was a professional fundraiser. C.C. subsequently received an FAV mailer from CPS that looked to her a lot like an invoice, and mailed back \$10.

J.G.

94. Retiree J.G. is 75 and lives in Minnetonka. Her husband was a veteran of the Vietnam War, and she has donated to various veterans charities in the past. In January 2016, ACS called J.G. but the person said he was calling from FAV instead. He asked J.G. to donate, but she initially refused. The ACS caller kept reducing the amount of the donation he was requesting, and J.G. felt pressured to donate. She eventually told FAV she never donates over the phone, but it could send her something in the mail. It did, and J.G. ultimately donated \$25 to FAV. FAV continued to call J.G. after her donation, but she screened these calls and did not answer using her caller ID. ACS never told J.G. its name or that it was a professional fundraiser when it solicited over the telephone.

M.Y.

95. M.Y. is 75 years old and lives in Montgomery. She has neighbors who are veterans who have struggled at times so tries to support veterans charities, usually donating \$10 or so because money is tight for her. ACS called M.Y. around the beginning of 2016 saying it was FAV. The caller did not tell M.Y. he was calling from ACS, or that ACS was a professional fundraiser. M.Y. agreed to donate \$10 to FAV in response to the call. CPS, however, subsequently sent her multiple pledge reminders not for \$10, but for \$102 dollars. M.Y. was confused and worried she would be forced to donate this amount to FAV, not the \$10 to which she had agreed. She complained, however, and the matter was dropped.

96. ACS has a history of this type of deceptive representations and omissions. In a 2011 Consent Judgment with the State of Iowa, ACS agreed to, among other things, “refrain from stating or implying that [an individual solicitor] is a member of, an employee of, or a volunteer for a donee organization, or is otherwise associated with such organization in any manner other than as a professional fundraiser or a representative of a professional fundraiser.”

V. ACS FAILED TO MAKE STATUTORILY REQUIRED DISCLOSURES.

97. ACS’s conflation of its identity with that of FAV not only deceived potential donors, but also violated Minnesota’s charitable solicitation disclosure requirements. Minnesota law requires the disclosure of: (1) the name and location by city and state of each charitable organization on behalf of which the solicitation is made, (2) the tax deductibility of the contribution, (3) a description of the charity’s charitable programs, and (4) for professional fundraisers soliciting donations, the name of the professional fundraiser and that the solicitation is being conducted by a professional fundraiser. Minn. Stat. § 309.556, subs. 1, 2. ACS failed to make the required disclosures as follows:

98. First, as already discussed above, ACS on multiple occasions failed to disclose its name and that it was a professional fundraiser. Multiple states have taken action against ACS for failing to disclose its name and professional fundraiser status in violation of those states’ disclosure laws, and in two instances (Ohio and South Carolina), states specifically cited ACS’s failure to disclose its name and professional fundraiser status in calls ACS made on behalf of FAV.

99. Second, Minnesota residents R.G., B.N., J.K., D.K., P.J., H.G., D.C., J.C., A.S., B.R., D.E.K., J.M., M.H., C.C., J.G., M.Y., B.S., A.B., and T.S. all reported that ACS failed to disclose FAV’s city and state in solicitation calls made in 2015 and 2016. For example, A.B.

believed that FAV was local to his area because ACS's caller used A.B.'s first name, knew that A.B. was a veteran, and failed to disclose that FAV was located in Michigan. If A.B. had known that FAV was located in Michigan, he would not have donated to FAV. Moreover, even had ACS adhered to the call scripts FAV reviewed and approved (which it did not), those call scripts failed to include disclosures for the city and state of FAV. Other states have taken action and entered into settlement agreements with ACS for its failure to make similar location disclosures under equivalent state laws, including specifically for solicitations made on behalf of FAV.

100. Third, in each of the calls referenced above to R.G., B.N., J.K., D.K., H.G., D.C., D.E.K., A.S., B.R., M.H., C.K., C.C., and Pat.J., ACS failed to disclose a description of FAV's charitable program. For example, H.G. recounted that when he asked ACS's telemarketer in a call on or around mid-November of 2015 to describe FAV's charitable purpose, "the caller seemed unsure of himself and was unable to answer my questions." ACS's records confirm Minnesotans' accounts, including an email from FAV National Program Director relaying a complaint to ACS from a potential donor who stated that the "[c]aller will not answer my questions regarding what FAV does???"

101. Finally, ACS failed to disclose the tax deductibility of contributions to FAV to R.G., J.K., D.K., H.G., D.C., and D.E.K. Further, had ACS adhered to FAV's call scripts (which again, it did not), the scripts contain no disclosures regarding tax deductibility.

**COUNT I
DECEPTIVE SOLICITATION OF DONATIONS
(ACS & CPS)**

102. The state re-alleges all prior paragraphs of this Complaint.

103. Minnesota Statutes section 309.55, subdivision 5 states:

No charitable organization and no person acting on behalf of a charitable organization shall use or employ any fraud, false pretense, false promise, misrepresentation, misleading statement, misleading name, mark or

identification, or deceptive practice, method or device, with the intent that others should rely thereon in connection with any charitable solicitation, including any such actions or omissions designed to confuse or mislead a person to believe that such organization is another organization having the same or like purposes; or to believe that the funds being solicited are or will be used for purposes and programs conducted within or for persons located within the state of Minnesota when such is not the case; or to otherwise present purposes and uses of the funds which are not as provided within the purposes and uses filed upon registration of said organization under this chapter, or if no such registration has been filed, then as provided under the exemption of said organization from federal and state income taxes as an organization formed and operating for charitable purposes as defined herein.

104. Minnesota Statutes section 309.50, subdivision 10, in part states:

“Solicit” and “solicitation” mean the request directly or indirectly for any contribution, regardless of which party initiates communication, on the plea or representation that such contribution will or may be used for any charitable purpose, and include any of the following methods of securing contributions:

(1) oral or written request;

(2) the distribution, circulation, mailing, posting, or publishing of any handbill, written advertisement, or publication; . . .

105. Given the representations they made and the other circumstances described in this Complaint, ACS and CPS had a duty to disclose all material facts to the Minnesota public in connection with their solicitation of contributions.

106. ACS and CPS repeatedly violated Minnesota Statutes section 309.55, subdivision 5, by engaging in deceptive and fraudulent practices as described in this Complaint with the intent that others rely thereon in connection with charitable solicitations, including by making false, deceptive, and/or misleading representations to Minnesota residents regarding, among other things, that they had pledged to donate money to FAV, when they had not; that they had previously donated to FAV, when they had not; deceptively representing the identity of the

soliciting charity; and by presenting the false impression that ACS's telemarketers worked directly for the charity, as opposed to a for-profit professional fundraiser.

107. Due to the deceptive and fraudulent conduct described in this Complaint, Minnesota residents donated to FAV through ACS and CPS when they otherwise would not have done so, thereby causing them harm and enriching ACS and CPS.

108. Defendants' conduct, practices, actions, and omissions described in this Complaint—and failure to act when they were required to do so—constitute multiple, separate violations of Minnesota Statutes section 309.55, subdivision 5.

COUNT II
DECEPTIVE TRADE PRACTICES
(ACS & CPS)

109. The state re-alleges all prior paragraphs of this Complaint.

110. Minnesota Statutes section 325D.44, subdivision 1 states, in relevant part:

A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

(3) causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;

.....

(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

.....

(13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

111. Given the representations they made and the other circumstances described in this Complaint, ACS and CPS had a duty to disclose all material facts to potential donors in connection with the above-described charitable solicitation activities.

112. ACS and CPS repeatedly violated Minnesota Statutes section 325D.44, subdivision 1, by engaging in the deceptive and fraudulent conduct described in this Complaint that caused a likelihood of confusion or misunderstanding among Minnesotans regarding, among other things, whether potential donors had pledged to donate to FAV at all; whether ACS's telemarketers worked directly for FAV as opposed to ACS, a professional fundraiser; and whether FAV was another charity to whom a potential donor had already donated in the past.

113. Due to the deceptive and fraudulent conduct described in this Complaint, Minnesota residents donated to FAV when they otherwise would not have done so, thereby causing them harm and enriching ACS and CPS.

114. ACS's and CPS's conduct, practices, actions, and omissions described in this Complaint—and failure to act when they were required to do so—constitute multiple, separate violations of Minnesota Statutes section 325D.44.

**COUNT III
DECEPTIVE ACTS PERPETRATED AGAINST SENIOR CITIZENS
(ACS & CPS)**

115. The state re-alleges all prior paragraphs of this Complaint.

116. Minnesota Statutes section 325F.71, subdivision 2(a), provides:

In addition to any liability for a civil penalty pursuant to sections 325D.43 to 325D.48, regarding deceptive trade practices; 325F.67, regarding false advertising; and 325F.68 to 325F.70, regarding consumer fraud; a person who engages in any conduct prohibited by those statutes, and whose conduct is perpetrated against one or more senior citizens or disabled persons, is liable for an additional civil penalty not to exceed \$10,000 for each violation, if one or more of the factors in paragraph (b) are present.

117. ACS and CPS engaged in conduct prohibited by Minnesota Statutes sections 325D.44.

118. ACS's and CPS's conduct was perpetrated against one or more senior citizens (i.e., persons who are 62 years of age or older).

119. ACS's and CPS's conduct meets one or more of the nonexclusive factors listed in section 325F.71, subdivision 2(b) and other appropriate factors referenced therein, including that ACS and CPS knew or should have known that their conduct was directed to one or more senior citizens, and that ACS and CPS used high-pressure practices in soliciting donations from senior citizens, as well as engaging in other appropriate factors stated above in this Complaint.

120. ACS's and CPS's conduct, practices, actions, and omissions described in this Complaint—and failure to act when they were required to do so—constitute multiple, separate violations of Minnesota Statutes section 325F.71.

COUNT IV
FAILURE TO PROVIDE REQUIRED DISCLOSURES
(ACS)

121. The state re-alleges all prior paragraphs of this Complaint.
122. Minnesota Statutes section 309.556, subdivision 1, states:

Prior to orally requesting a contribution or contemporaneously with a written request for a contribution, the following information shall be clearly disclosed:

- (a) the name and location by city and state of each charitable organization on behalf of which the solicitation is made;
- (b) the tax deductibility of the contribution; and
- (c) a description of the charitable program for which the solicitation campaign is being carried out; and, if different, a description of the programs and activities of the organization on whose behalf the solicitation campaign is being carried out.

If the solicitation is made by direct personal contact, the required information shall also be disclosed prominently on a written document which shall be exhibited to the person solicited. If the solicitation is made by radio, television, letter, telephone, or any other means not involving direct personal contact, the required information shall be clearly disclosed in the solicitation.

123. Minnesota Statutes section 309.556, subdivision 2, states:

In addition to the disclosures required by subdivision 1, any professional fund-raiser soliciting contributions in this state shall also disclose the name of the professional fund-raiser as on file with the attorney general and that the solicitation is being conducted by a “professional fund-raiser.” The disclosures required by this subdivision shall be given in the same manner as the disclosures required by subdivision 1.

124. ACS acted as a professional fundraiser for FAV, a registered charitable organization with the AGO, in soliciting contributions from Minnesota residents.

125. ACS repeatedly violated Minnesota Statutes section 309.556, by soliciting multiple Minnesota residents over the telephone for a charitable contribution but failing to clearly disclose (1) the name and location by city and state of FAV, (2) the tax deductibility of the any contribution to FAV, (3) a description of FAV’s charitable program for which the solicitation campaign is being carried out, or a description of the programs and activities of FAV, and (4) ACS’s name as on file with the attorney general and that the solicitation is being conducted by a “professional fund-raiser.”

126. ACS’s conduct, practices, actions, and omissions described in this Complaint—and failure to act when they were required to do so—constitute multiple, separate violations of Minnesota Statutes section 309.556.

RELIEF

WHEREFORE, Plaintiff State of Minnesota, by its Attorney General, Lori Swanson, respectfully asks this Court to enter judgment against Defendants as follows:

1. Declaring that Defendants’ acts and omissions as described in this Complaint constitute multiple, separate violations of Minnesota Statutes sections 309.531, 309.55 and 309.556, 325D.44; and 325F.71;

2. Enjoining Defendants and their employees, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert of participation with them, from engaging in the unlawful acts and omissions described in this Complaint, or in any other way violating Minnesota Statutes chapter 309, section 325D.44, or 325F.71;

3. Requiring Defendants and their employees, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert of participation with them, to undertake remedial actions to address the unlawful acts and omissions described in this Complaint;

4. Awarding monetary relief pursuant to Minnesota Statutes section 8.31, Minnesota Statutes section 309.57, 325D.44, 325F.71, the *parens patriae* doctrine, and the general equitable powers of this Court, as necessary to remedy the injury to donors, the public, and the State from Defendant's acts and omissions described in this Complaint;²

5. Awarding civil penalties pursuant to Minnesota Statutes section 8.31 and 309.57;

6. Awarding Plaintiff its attorneys' fees, litigation costs, and costs of investigation as authorized by Minnesota Statutes section 8.31 and Minnesota Statutes section 309.57; and

7. Granting such further relief as provided for by law or equity, or as the Court deems appropriate and just.

² As referenced above, ACS filed for Chapter 11 bankruptcy protection in the Eastern District of Michigan and it appears that these proceedings are still ongoing. See *In re Associated Community Services, Inc.*, No. 14-44095 (E.D. Mich. Bkrptcy Ct. filed March 13, 2014); *U.S. v. Associated Community Services, Inc.*, No. 15-05029 (E.D. Mich. Bkrptcy Ct. filed Oct. 20, 2015). In most circumstances, 11 U.S.C. 362(a) would stay the initiation or continuation of actions against the Debtor, ACS. Government agencies, however, are exempted from this stay requirement when bringing a police or regulatory action, as is the case here. See 11 U.S.C. § 362(b)(4). Accordingly, the State may proceed with this action but is not, at this time, asking the court to determine the amount or extent of monetary relief to be awarded against ACS, only that an award is justified under the circumstances pursuant to applicable law. The actual amount of monetary relief owed by ACS can be determined when the automatic stay is lifted, or such relief is determined to be excepted from discharge and the stay is released in favor of the discharge injunction.

Dated: August 22, 2016

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota

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/s/Carol R. Washington
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Attorneys for the State of Minnesota

**MINN. STAT. § 549.211
ACKNOWLEDGMENT**

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

Dated: August 22, 2016

/s/Carol R. Washington
CAROL R. WASHINGTON
Assistant Attorney General

PLEDGE REMINDER

Please make your gift payable to:
FOUNDATION FOR AMERICAN VETERANS

Processing Questions: 1-877-871-7162



FOUNDATION FOR AMERICAN VETERANS
PMB 742-CONTRIBUTIONS
19785 WEST 12 MILE
SOUTHFIELD MI 48076-2584

Date: 11/17/15

Processing # 00220-0173788

Your Pledge Amount: \$20.00

*Thanks for remembering our veterans,
especially during this holiday season!*



GLENCOE MN 55336-1701



12/31/15 35 PM -1 02/28/15 20151231 K1ZAN119 AV 1 04 DONALD JAY 1000P 16 1004 AV

FOUNDATION FOR AMERICAN VETERANS
PMB 742-CONTRIBUTIONS
19785 WEST 12 MILE
SOUTHFIELD MI 48076-2584



PLEASE MAKE SURE THIS SIDE OF YOUR PLEDGE REMINDER SHOWS THROUGH THE ENVELOPE WINDOW

FAY RE RD 06

Dear [Redacted]

Please forgive this friendly reminder if you've already mailed your gift and accept my most sincere thanks. *However, if you haven't mailed your pledge yet, I urge you to do so today for two reasons:*

1. Your gift can be deducted from your 2015 taxes only if it's in before December 31.
2. Because winter is upon us and many of the veterans we aid aren't wishing for a white Christmas. **They would give anything just to be warm** and have some of the items that you and I take for granted. Items like socks. Sweatshirts. Pajamas. Shoes. Underwear. A blanket.

By fulfilling your pledge today, you could give some very hurting heroes what they need right at this most critical moment in their lives. Believe me, your help is truly a blessing that's fervently yearned for. And I can assure you that through every gift, you are making an impression on the heart and mind of a hurting hero. You have the incredible opportunity to make a veteran feel good. To make a veteran comfortable. To let a veteran know he is thought of during this holiday season.



Please mail your pledge today. Thank you,

Bob McDonald, National Director



Don't forget! Get your Donation in by December 31 to take advantage of your Tax Deduction.

Exhibit 1

