

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street, Denver, Colorado 80202</p> <hr/> <p>Plaintiff:</p> <p>STATE OF COLORADO ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL</p> <p>v.</p> <p>Defendants:</p> <p>BOOBIES ROCK!, INC., a/k/a THE SE7VEN GROUP, a California corporation, SAY NO 2 CANCER, and ADAM COLE SHRYOCK, individually</p>	<p>DATE FILED: March 18, 2015 8:54 AM CASE NUMBER: 2013CV32857</p> <hr/> <p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case No. 2013CV32857</p> <p>Courtroom: 269</p>
<p style="text-align: center;">FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER</p>	

This matter came before the Court on November 3, 4, 5, and 6, 2014, for a trial to the Court. Plaintiff, the State of Colorado (the “State”), upon relation of John W. Suthers, Attorney General for the State of Colorado, appeared with its attorneys, Alissa Hecht Gardenswartz and Jeffrey Leake. Defendants, Boobies Rock!, Inc. a/k/a The Se7ven Group, Say No 2 Cancer and Adam Cole Shryock (“Shryock”), appeared with their attorney, James Scherer. The Court, having considered the evidence, the proposed findings of fact submitted by counsel,¹ and the relevant legal authority, makes the following findings of fact, conclusions of law, and order:

PROCEDURAL BACKGROUND

1. On June 25, 2013, the State filed its Complaint against Defendants, asserting eight separate claims for relief. In six of the claims, the State alleges violations of the Colorado Charitable Solicitations Act (“CCSA”), § 6-16-101, *et seq.*, C.R.S. (2014). In the remaining two claims, the State alleges violations of the Colorado Consumer Protection Act (“CCPA”), § 6-1-101, *et seq.*

2. On that same date, the State also filed a Motion for Ex Parte Temporary Restraining Order, Preliminary Injunction and Asset Freeze. The Court entered a Temporary Restraining Order and Asset Freeze on June 26, 2013.

¹ The Court has incorporated many of the proposed findings of fact and conclusions of law into this Order, in whole or in part, but only after careful consideration and adoption by the Court.

3. On July 8, 2013, the Court approved the stipulation of the State and the Defendants for issuance of a Preliminary Injunction.

4. On October 16, 2013, the Court granted the State's Motion for Clerk's Entry of Default Against All Defendants. The State filed its Motion for Default Judgment Against Boobies Rock!, a/k/a The Se7ven Group, Say No 2 Cancer, and Adam Cole Shryock on November 25, 2013.

5. On January 13, 2014 and January 20, 2014, Defendants filed their Answer. On January 20, 2014, Defendants also filed their Response to Plaintiff's Motion for Entry of Default Judgment and their Motion to Set Aside Entry of Default. The Court granted Defendants' Motion to Set Aside Entry of Default and denied the State's Motion for Default Judgment on February 25, 2014.

6. After the conclusion of the trial to the Court, on January 30, 2015, the parties submitted proposed findings of fact and conclusions of law.² On page 6 of their proposed findings of fact and conclusions of law, Defendants stated that they do not contest entry of a permanent injunction.³

FINDINGS OF FACT

The Court finds that the following facts have been proven by a preponderance of the evidence:

I. Boobies Rock!, Inc.

Background and Operations of Boobies Rock, Inc.

1. In approximately 2009, Shryock formed the Se7ven Group. The Se7ven Group initially was involved in the business of mobile billboards in the states of Kansas, Missouri and California. Shryock is the sole officer of the Se7ven Group.

2. In late 2009, the Se7ven Group began selling t-shirts, koozies,⁴ and bracelets with humorous slogans. Beginning in September 2010, the Se7ven Group sold these items in the state of California as part of a breast cancer awareness campaign. Shryock testified that the Se7ven Group represented that it would make donations to various breast cancer charities with the proceeds from its sales, and that he set a goal of \$100,000.00 for the first year of the campaign.

3. In February 2011, Shryock titled the promotional campaign as "Boobies Rock Awareness for Breast Cancer." He sent promotional models to events where the models sold merchandise to consumers as part of this breast cancer awareness campaign. The promotional models averaged between \$15,000.00 and \$20,000.00 per week in sales.

² On February 6, 2015, the Court granted the State's motion to modify paragraph 265 of its proposed findings of fact and conclusions of law.

³ During the course of these proceedings, the State has filed two separate contempt citations against Defendant Shryock. Both contempt citations proceeded to hearing.

⁴ A "koozie" is a sleeve designed to thermally insulate a beverage can or bottle.

4. In April 2011, Shryock formally incorporated Boobies Rock!, Inc. (“Boobies Rock”) as a California corporation. Shryock was the sole owner and officer of Boobies Rock.

5. From September 2010 through September 2011, the Se7ven Group/Boobies Rock made the following donations:

Linda Creed Breast Cancer Foundation	\$ 100.00
Gateway to Hope	\$1,000.00
Tennessee Breast Cancer Coalition	\$ 250.00

The Se7ven Group/Boobies Rock further made a donation to the Leukemia/Lymphoma Society of approximately \$100.00, as well as a donation to the Texas Breast Cancer Resource Center that was rejected.

6. The groups also donated \$3,000.00 to the Allison Sturgill Foundation. Ms. Sturgill was a young woman suffering from cancer. Ms. Sturgill worked as an independent distributor for Boobies Rock.

7. In 2011, Keep A Breast Foundation, a nonprofit cancer organization, sued Shryock and his companies for trademark infringement. Keep A Breast claimed that Boobies Rock’s merchandising slogan, “I Love Boobies,” infringed on its trademark, “I [Heart] Boobies.” Shryock settled that lawsuit in October 2011, agreeing to pay \$225,000.00 to Keep A Breast Foundation and to make a \$25,000.00 donation to Young Survival Coalition, another nonprofit cancer organization. At trial, Shryock admitted that he still owed \$100,000.00 to Keep A Breast Foundation. In Boobies Rock marketing materials and later in SN2C marketing materials, the \$225,000.00 payment to Keep A Breast Foundation was characterized as a charitable contribution.

8. In October 2011, Shryock moved to the state of Colorado, where he rented a home at 1045 Meteor Place in Castle Rock.⁵ He headquartered Boobies Rock at this residence.

9. Shryock employed several women, including Amy Ambie, Desiree Cottet and Elizabeth Diebold, to work as hiring managers of Boobies Rock. Some of the hiring managers worked out of Shryock’s Castle Rock residence. Other hiring managers were stationed in other cities, such as Chicago, San Diego, Las Vegas, Orlando, Pittsburgh, Philadelphia, San Francisco, St. Louis, and Tucson. Shryock advised Kenneth King, the State’s criminal investigator, that, at one point, Boobies Rock was represented in 42 cities.

10. The hiring managers recruited promotional managers and promotional models through job postings on internet websites, such as Craigslist. The hiring managers hired the promotional managers to schedule promotional events in various cities throughout the United States and to hire the promotional models who would work at those events. The hiring managers also trained the promotional managers on the methods to book events, provided fliers on the sale of merchandise to both promotional managers and promotional models, and tracked inventory and sales of merchandise at the different events.

⁵ Initially, Shryock’s monthly rental obligation at this home was \$8,250.00. When he moved to the home in October 2011, he prepaid rent for six months, plus a \$15,000.00 security deposit, for a total of approximately \$49,000.00. Subsequently, his monthly rental obligation was increased to \$10,000.00.

11. Hiring managers directed prospective promotional managers to the Boobies Rock website (www.boobiesrockstore.org) to gain information about Boobies Rock and its operations. Similarly, promotional managers referred prospective promotional models to the website to learn about the company. The managers and models used the website to sell merchandise at promotional events.

12. Promotional managers and promotional models executed Boobies Rock!, Inc. Promotional Manager and Promotional Model Agreements, respectively. Those agreements provide, in pertinent part, as follows:

Principal conducts a merchandise business consisting of apparel and accessories and at times, may donate a portion of the proceeds to a non-profit of their choosing or a collections [sic] of non-profit organizations nationally.

Plaintiff's Exhibits 5 and 4, page 1.

13. Several witnesses described a typical Boobies Rock promotional event. The promotional models attended a football tailgating party or visited a bar and sold t-shirts, bracelets, koozies and other merchandise with slogans such as "I Heart Motorboating," and "Boobies Rock." The models received \$5.00 for bracelets, \$10.00 for koozies, and \$20.00 for t-shirts. The models accepted cash or credit card payments. Some consumers made donations without accepting merchandise.

14. If the consumer chose to pay by credit card, the models had access to an application called "Square App" on their smartphones. The Square App was connected to Shryock's email account which then linked to a Boobies Rock merchant account at Wells Fargo Bank.

15. Shryock oversaw the operations of Boobies Rock. He directed hiring managers, tracked the company's financials, and maintained primary responsibility for selecting and contacting nonprofit organizations. Shryock also reviewed marketing materials and press releases before their distribution and approved and managed the contents of the Boobies Rock website.

16. Shryock testified that football season, from late August through January, was the busiest time for Boobies Rock. In October 2011, when he relocated the headquarters for Boobies Rock to Colorado, he maintained operations in approximately 30 to 35 locations and made \$30,000.00 per week. During the off season, Shryock continued operations in approximately 15 cities. In the entire 2011 period, Shryock averaged 40 to 50 promotional events each week.

17. Shryock operated Boobies Rock in Colorado from October 2011 through June 2013. During that time period, Defendants held between 3,600 and 4,500 promotional events.

18. Meanwhile, in 2013, Shryock formed another business, Say No 2 Cancer ("SN2C"). SN2C began hosting promotional events in January 2013. Shryock operated Boobies Rock and SN2C simultaneously from January 2013 through June 2013. During that time, employees for both businesses held promotional events on behalf of SN2C.

19. Prior to the formation of SN2C and while headquartered in the state of Colorado, Boobies Rock held between 2,560 and 3,200 promotional events. From January 2013 through June 2013, Defendants held between 1,040 and 1,300 events on behalf of SN2C. Thus, during their operations in the state of Colorado, Defendants held between 3,600 and 4,500 promotional events.⁶

Boobies Rock Financials

20. Shryock admitted that he maintained ultimate oversight over the Boobies Rock financials. He indicated, however, that he did not create any profit and loss statements or other documents that tracked revenue and expenses. Instead, he reviewed inventory sheets and bank statements to monitor his profits and expenses. He estimated that Boobies Rock received cash in approximately 70% of its sales.

21. As noted above, Boobies Rock employees accepted cash and credit card payments at promotional events. Employees who worked in cities outside of the state of Colorado deposited sales proceeds in Boobies Rock accounts at either Wells Fargo Bank or Bank of America. Shryock controlled these accounts. Employees who worked in the state of Colorado brought the sales proceeds to Shryock at his Castle Rock home. Any payments which were made by credit were routed to Boobies Rock's Wells Fargo Bank account.

22. Boobies Rock employees typically would pay themselves from the cash proceeds prior to remitting the funds to the bank accounts or to Shryock.

Representations Regarding the Nature of Boobies Rock's Business

23. Boobies Rock was a for-profit company and represented this status on its website and in its marketing materials. Nevertheless, the company's message to both its prospective employees and to the public was that its purpose was fundraising for breast cancer charities.

24. On its website, Boobies Rock represented as follows:

A portion of each online sale is donated to various breast cancer organizations throughout the country. Boobies Rock donates only to organizations that provide direct funds and relief to active patients and survivors.

Plaintiff's Exhibit 9. Shryock explained that the "online" modifier was not always included on the website and that previous webpages simply referred to "a portion of each sale."

25. Additionally, on its website, Boobies Rock noted its recent donations. It prominently displayed the name and logo of Young Survival Coalition ("YSC") and the \$25,000.00 donation made to it and then, in smaller font, listed smaller donations to Linda Creed Breast Cancer Foundation ("Linda Creed"), Gateway of Hope, TBCC,⁷ and Breast Cancer

⁶ These estimates were admitted by Shryock and confirmed by Kenneth King, the State's criminal investigator.

⁷ Tennessee Breast Cancer Coalition.

Resource Center of Texas. On those webpage, Boobies Rock further represented that it “help[ed] raise money for individuals battling breast cancer through small fundraising events.”
Id.

26. On its website, Boobies Rock also maintained a “FAQ” page. There, in response to the question, “What percentage of each sale is donated?,” the website stated:

We typically enter into what are called “pledge agreements,” with our non-profit partners for fixed donation amounts such as \$10,000, \$25,000 or \$100,000 and not percentages. We believe that this is a more transparent approach that customers can understand more clearly than percentages of unknown sales figures. Additionally, we make random, small donations to various groups, often without a partnership or fixed agreement.

Id.

27. In response to the question, “How can I become an Independent Distributor?,” the website stated:

We are always looking for outgoing and ambitious sales reps to help grow our brand and promote the cause. For more information on becoming an Independent Distributor or hosting your own fundraising even please submit your contact information below or contact our office.

Id.

28. Shortly before its move to the state of Colorado, on September 11, 2011, Shryock sent an email to Dan Levy, a representative of Atlas College Marketing Group, Inc., a promotional marketing group in the southern United States. There, he described Boobies Rock’s typical introduction to prospective employees about the company as follows:

Our company hosts a nationwide tailgaiting [sic] promotion in which we raise money and awareness for breast cancer at the biggest football games each week. The promotion is called BOOBIES ROCK! and you can check out the company and the merchandise at www.boobiesrockstore.org. . . .

We are looking for outgoing and reliable girls who are fun to be around and who are committed to the cause.

Plaintiff’s Exhibit 1.

29. Several former Boobies Rock employees testified that they were instructed to give the impression that Boobies Rock was raising money for a breast cancer charity.

30. In late February 2012, Boobies Rock hired Cari Merriam as a promotional model. Merriam subsequently was promoted to a promotional manager position. When she received that

promotion, Shryock told her to advise consumers that Boobies Rock was a for-profit organization but that it was collecting donations and raising money for The Pink Fund, a cancer charity. Accordingly, she explained to consumers that Boobies Rock was generating money for The Pink Fund by receiving donations for merchandise. Indeed, some consumers donated money without receiving merchandise.

31. Merriam further testified that Shryock told her to compare Boobies Rock to the Susan G. Komen cancer organization, by telling consumers that Boobies Rock donates more money than that organization.

32. Merriam also explained that she used a pamphlet to book venues for promotional events and to train promotional models. Plaintiff's Exhibit 13. That pamphlet was a PowerPoint presentation created by Jenna Levesque, a Boobies Rock promotional marketing manager, and approved for use by Shryock. The pamphlet described the operations of Boobies Rock and stated that "[a] portion of each sale will be donated to an organization in your region."

33. Merriam testified that she was paid \$25.00 per hour but that Shryock told her that she would not necessarily receive that amount:

Because we were trying to hit this goal. So we aligned with 40 percent of all purchases are donated to The Pink Fund. So if we didn't have enough capital to be able to take care of the merchandise, we didn't always take that \$25.

Transcript, November 3, 2014, 29:16-19.

34. Jenna Levasque similarly testified that, upon being hired by Boobies Rock, Shryock instructed her to advise consumers that Boobies Rock was a "for-profit company but that it was a charitable company . . . that then gave back some of the proceeds." Transcript, November 3, 2014, 61:4-14. She also experienced consumers who gave a donation but did not receive merchandise.

35. Levasque further confirmed that the PowerPoint pamphlet was used to train promotional models. She indicated that the pamphlet stated that Boobies Rock was "partnered with The Pink Fund and pledged to raise \$50,000.00 for breast cancer survivors by September 1st, 2012" and that "40% of all purchases [were] donated to The Pink Fund for a period of 6 months, or until the goal is reached." Plaintiff's Exhibit 13.

36. Emily Geeves was a promotional model for Boobies Rock from March 2012 until June 2012. She testified that she was instructed to represent to consumers that she was "taking donations." Transcript, November 3, 2014, 110:14-17. She explained that the purpose of this language was to obtain donations without selling merchandise. She added that she was further instructed to tell consumers that Boobies Rock was pledging funds to The Pink Fund.

37. Representatives from three Denver bars testified that they allowed Boobies Rock to conduct promotional events in their establishments because the organization was raising money for charity. Benjamin Elek, the assistant general manager at Jackson's Sports Rock,

stated that Boobies Rock was permitted to hold a promotional event in his bar because it was fundraising for breast cancer awareness. Kirk Schumann, the former general manager of Lodo's Bar and Grill, indicated that Boobies Rock conducted several promotional events in his bar. He related that the bar's policy was to allow such promotional events for only nonprofit organizations. Sean Workman, the managing partner for the Hornet, agreed to allow Boobies Rock to conduct a promotional event in his bar and restaurant because a representative from Boobies Rock indicated the event was a fundraiser to collect or solicit funds to support breast cancer awareness.

38. The representations that Boobies Rock was fundraising, and more particularly raising money for The Pink Fund during the March through October 2012 time period, extended beyond the boundaries of the state of Colorado.

39. In March 2012, Alexandra Armstrong responded to a listing on Craigslist for a position as a breast cancer awareness promotional model with the Se7ven Group. She accepted the position and worked with the group until February 2013. As a promotional model, she advised consumers that Boobies Rock was a breast cancer awareness organization and that it was raising money for The Pink Fund. Armstrong explained that she received this information from her training materials, the Boobies Rock PowerPoint pamphlet. In the fall of 2012, Armstrong was asked to participate in the Boobies Rock football bus tour. Armstrong met with Shryock prior to the tour. On this tour, Armstrong traveled to several states, including Michigan, Kentucky, Virginia, Louisiana, Oklahoma, Texas, Illinois and California, to conduct promotional events. She testified that she told consumers that Boobies Rock was "a for profit breast cancer awareness organization . . . trying to raise \$50,000 for the Pink Fund." Transcript, November 4, 2014, 21:1-5.

40. Jorie Kopacek worked in Chicago, Illinois from June 2012 through September 2012 as a Boobies Rock promotional manager. Amy Ambie, one of Kopacek's supervisors, provided Kopacek with written materials to use as a promotional manager. One of the documents provided the following "pitches" to increase sales:

"Hey guys! How are you all doing tonight? I'm not sure you have seen the Boobies Rock girls here in the (your location) area but we work with a company based out of San Francisco who partners with various Breast Cancer Foundations as well as private chapters and our goal is to raise \$100,000 throughout this Baseball season."

One of our beneficiaries this year is the TBCC and Y-ME, have you heard of this organization? Well, if you guys would like to support breast cancer awareness, you can do so by purchasing any of our Boobies Rock! gear. . . .

Every single dollar helps in this fight against breast cancer so even a \$5.00 wristband makes a difference in help us reaching that goal! It all adds up and can affect a women's life battling this disease right now! [W]e directly donate the proceeds to the woman themselves and we really appreciate any support and we accept random donations as well!

We are out here fundraising for breast cancer. Our campaign is Boobies Rock!

Plaintiff's Exhibit 2. The document further emphasizes that the "word fundraising is key" and "works much better than saying 'collecting donations.'" *Id.* Kopacek testified that she relied on this document, as well as the PowerPoint pamphlet and the Boobies Rock website, in booking events and training promotional models.

41. Desiree Cottet, another Boobies Rock promotional manager, was located in the state of Arizona. She similarly was provided with promotional literature to use in booking events and training promotional models. She received the "pitch" memo from Nicole Johnson, a promotional hiring manager. She testified that she used the "pitches" when she attended promotional events.

Boobies Rock's Communications with Charities

42. As noted above, on its website, Boobies Rock represented that it made donations or pledges to several charities, including YSC, Linda Creed, TBCC, Y-Me National Breast Cancer Organization ("Y-Me") and Pink Lotus Petals.

43. In his testimony, Shryock admitted that Boobies Rock never donated money to Y-Me or Pink Lotus Petals. He further disclosed that Pink Lotus Petals did not want him to use its name in Boobies Rock's promotional materials.

44. At trial, representatives of YSC, Linda Creed, TBCC and The Pink Fund testified about the nature of Boobies Rock's "donations" to their organizations.

45. Donna Duncan, the executive director of Linda Creed, testified that, on August 24, 2011, the organization received an online \$100.00 donation from Boobies Rock. Shryock also represented, with that donation, that he would like to make an ongoing contribution to Linda Creed. Shortly thereafter, Duncan spoke with Shryock. In their conversation, Shryock stated that he wanted to make a minimum donation of \$100.00 each month in exchange for the ability to use the name of Linda Creed in Boobies Rock's promotional efforts. Duncan accepted that offer, advising Shryock, however, that "he needed to first make the ongoing contributions." Transcript, November 5, 2014, 50:9-11.

46. Neither Shryock nor Boobies Rock made any further donations to Linda Creed. Duncan testified that Shryock thus did not have permission to use the Linda Creed name in its promotional materials or on its website, and that Linda Creed did not form a partnership with Boobies Rock.

47. Jami Eller, the executive director of TBCC, received an email, on April 4, 2011, from a representative of the Se7ven Group, advising her that TBCC had been chosen to be the beneficiary of their pledges to the state of Tennessee for that year. In response to the email, Eller spoke with Kelli Gazich, an employee of Boobies Rock or the Se7ven Group. Gazich proposed donating the proceeds from the sale of Boobies Rock promotional products to TBCC in exchange

for the use of TBCC's name. Eller advised Gazich that the proposal would have to be approved by TBCC's executive board. After the executive board approved the proposal, Eller advised Gazich that the parties would be required to enter into an agreement regarding use of the TBCC logo. Eller sent the agreement to Gazich for execution, but neither Gazich nor any other representative returned a signed agreement to her.

48. Subsequently, Eller was contacted by employees of the Se7ven Group or Boobies Rock in the Nashville area. The employees advised her that the TBCC name was being used in promotional events. Eller also received a telephone call from an individual who had made a donation of TBCC's behalf and wanted to ensure that the organization received the donation. In response to these communications, in September 2011, Eller contacted Shryock and requested that Boobies Rock remove the TBCC reference from their website and that he should not use the TBCC name in selling merchandise. Shryock advised her that, because of a lawsuit that resulted in a large payout by his organization, he did not have any available funds to donate to her organization. Nevertheless, on September 14, 2011, Shryock made a personal donation to TBCC in the amount of \$250.00.

49. Despite Eller's request that Boobies Rock refrain from use of the TBCC name and logo, Boobies Rock continued to use both on its website. Plaintiff's Exhibit 9. TBCC never gave written or verbal permission to Boobies Rock to use its name or logo. Moreover, TBCC never formed a partnership with Boobies Rock or the Se7ven Group.

50. Jennifer Glazer, the chief development officer for YSC, testified that she was contacted by a representative of Keep A Breast Foundation who advised her of a potential donation of \$25,000.00 from Boobies Rock to her organization. On October 31, 2011, YSC received and accepted a donation from Boobies Rock. YSC acknowledged the donation in a November 18, 2011 letter to Boobies Rock. Defendants' Exhibit F. Glazer testified that this donation did not authorize Boobies Rock to use YSC's name or logo on its website. She further indicated that, despite Boobies Rock's representations, YSC was not partnered with Boobies Rock. Indeed, Glazer provided testimony on the process employed by YSC for forming partnerships. She emphasized the importance of forming partnerships with "companies that [YSC] think[s] will bring positive value to [it]." Transcript, November 5, 2014, 22:10-11.

51. Molly MacDonald, the founder and chief executive officer of The Pink Fund, testified about her contacts with Shryock. In early 2012, Shryock contacted her by telephone and proposed his support of The Pink Fund through the sale of Boobies Rock merchandise. As a small nonprofit organization, MacDonald entertained the idea. Shryock agreed to present a more formal agreement. At the conclusion of the telephone call, MacDonald indicated that she and Shryock had not reached an agreement between The Pink Fund and Boobies Rock.

52. Shryock never presented a formal agreement to MacDonald.

53. Subsequently, MacDonald discovered that Boobies Rock was representing to consumers that it was raising money for The Pink Fund.⁸ More specifically, on October 28,

⁸ Indeed, as noted above, from March 2012 through September or October 2012, Boobies Rock conducted an extensive promotional campaign representing that it was fundraising for The Pink Fund.

2012, MacDonald received an email from a former employee of Boobies Rock. In the email, the former employee reported that she solicited donations for merchandise at two football games in Chicago and, if requested, advised the consumers that Boobies Rock had pledged \$100,000.00 to The Pink Fund. The former employee sought verification from MacDonald as to the Boobies Rock pledge. Plaintiff's Exhibit 41. MacDonald contacted the former employee and, as a result of the email and the later contact, engaged her attorney. MacDonald discovered, through her attorney's investigation, that Boobies Rock released a press release announcing that it would donate \$50,000.00 to The Pink Fund by September 2012. MacDonald did not have any knowledge of this proposed donation prior to the discovery of the press release.

54. On November 1, 2012, through Facebook, Shryock sent MacDonald the following message:

As you know, Boobies Rock has been setting aside funds over the last few months to contribute to the Pink Fund and I was wanting to know if the P.O. Box listed on the website is the best address to send a check to or if there is an alternative address you would prefer?

Right now we are able to contribute \$25,000 and should be able to do an additional \$25k within the next few months. Our goal, of course was \$50,000, and we will hit that.

Please let me know the best way to get a check out to you.

Defendants' Exhibit K. MacDonald testified that she was unaware of Boobies Rock's intent to set aside funds for the benefit of The Pink Fund. She further stated that she did not respond to the message because she had referred the matter to her attorney.

55. At trial, MacDonald was presented with an email dated March 7, 2012, from molly@thepinkfund.org to support@boobiesrockstore.org. The email was sent through the Boobies Rock website. The email stated, "Gratefully blown away by your effort . . . please contact me so we can get our PR firm on this asap . . ." Defendants' Exhibit M. MacDonald testified that she did not recall sending this email or visiting the Boobies Rock website. She noted that her email address was typed incorrectly,⁹ that the language in the message was not the type of language employed by her, and that The Pink Fund did not have a "PR" firm in March 2012. Shryock further noted that contact forms on websites permit individuals to use any email address in the box for email address.

56. The most credible evidence is that MacDonald did not have any knowledge of Boobies Rock's use of The Pink Fund name and the purported \$50,000.00 pledge until October 28, 2012.

57. The Pink Fund never gave written authorization to Boobies Rock to use its name or logo.

⁹ She testified that she would not have used a capital "P" in her email address on an email contact form.

II. Say No 2 Cancer

58. In or around November 2012, after receiving negative press coverage in the Chicago Sun-Times and Denver's Channel 9 News, Shryock began scaling down Boobies Rock's operations. Shryock testified that, by January 2013, Boobies Rock concluded its promotional campaign for The Pink Fund.

59. In late February 2013, Shryock incorporated Say No 2 Cancer or SN2C, Inc., a non-profit corporation. He was the sole officer of that company. He created the company to maintain to control over the non-profit to which Boobies Rock was donating funds. He further testified that he incorporated the company in the state of Delaware because, under the laws of that state, he was not required to disclose the names of corporate officers on corporate filings.

60. SN2C reported that it was a "501(c)(3) non-profit organization established to provide financial assistance to those affected by cancer." Plaintiff's Exhibit 21. On its website as well as in its marketing materials and employment related documents, SN2C described itself as a 501(c)(3) tax-exempt organizations. *See, e.g.*, Plaintiff's Exhibits 16, 18, and 21. In one SN2C flier, it was reported that "SN2C RECEIVES APPROVAL FOR NATIONWIDE 501(C)(3)." Plaintiff's Exhibit 17.

61. Shryock admitted, however, that he never submitted the necessary paperwork to the United States Internal Revenue Service to obtain 501(c)(3) status for SN2C.

62. Shryock knew that SN2C was representing to the public that it was a 501(c)(3) organization. He reviewed the representation on the website and the contents of marketing materials prior to their distribution.

63. Shryock admitted that SN2C never provided any financial assistance to individuals affected by cancer.

64. SN2C employed the same operational structure as Boobies Rock. Hiring managers engaged promotional models and promotional managers throughout the nation to sell the merchandise sold by Boobies Rock. Shryock hired several individuals as employees of SN2C as well as relying on several Boobies Rock employees to conduct promotional events for SN2C. However, instead of advising consumers that they were raising money for breast cancer awareness, the models advised consumers that 100% of the net proceeds¹⁰ went "towards SN2C programs." Plaintiff's Exhibit 21, at Shryock:Deason:00007.

65. Shryock required the promotional managers to deposit funds in the Boobies Rock operating bank account at Wells Fargo Bank. He also converted the Seven Group bank account at Wells Fargo to a doing business as SN2C account.

66. Shryock used the Boobies Rock operating bank account to pay for personal expenses, including the purchase of a BMW in February 2013 for \$18,500.00.

67. Shryock used funds in the SN2C account in June 2013 to pay rent for his home in the amount of \$10,000.00.

¹⁰ In a promotional pamphlet, SN2C defined "net proceeds" as "remaining profits after product costs and administrative fees." Plaintiff's Exhibit 21, at Shryock:Deason:00007.

68. Shryock used the Boobies Rock and SN2C accounts interchangeably to pay his employee and fiancée, Amy Bradley Maierson.

69. Shelby Deason and Krystyn Chase Pietrowki, residents of Kentucky, testified about their experiences as employees of SN2C.

70. In April 2013, Shelby Deason responded to a Craigslist advertisement seeking team leads and brand name ambassadors of SN2C. Because of her experience, Deason responded to the ad and spoke with Elizabeth Diebold, a hiring manager for Boobies Rock and SN2C. Diebold advised her that SN2C was a company that sold merchandise and gave a portion of the proceeds to help cancer treatment patients with their bills.

71. Deason was hired as a team lead and brand ambassador for SN2C. She was responsible for the Kentucky, West Virginia and Ohio area. She signed an independent contractor agreement with SN2C. The agreement provided that SN2C was “of the City and County of Denver[,]” that the agreement was “governed by, construed, and enforced in accordance with the laws of the State of Colorado[,]” and that SN2C “desire[d] to arrange for the sale and distribution of its merchandise throughout Colorado.”¹¹ Plaintiff’s Exhibit 19.

72. Upon her employment, Diebold provided Deason with several documents, including a promotional training manual entitled “Promotional Training Manual and Keys to Success Handbook” and other promotional and training materials. *See* Plaintiff’s Exhibits 18, 19, 20 and 21. Deason confirmed that she used the handbook and the materials to train models and to book events.

73. The material provided to Deason described SN2C as a nonprofit and 501(c)(3) organization that assisted individuals diagnosed with cancer. The manual suggested the following sales introduction as a “creative way[] to increase sales and donations:

Hi! I am “Give Name” with SN2C which is a nationwide 501(c)(3) non-profit that provides financial assistance to those diagnosed with cancer. It is only one of a few programs nationwide that individuals diagnosed with cancer can turn to for help with out-of-pocket expenses that result from time off work or loss of employment. . . . Your participation increases awareness for cancer, provides funding for those in need, and shows your customers you care.”

Plaintiff’s Exhibit 18, Shryock:Deason:00028.

74. In her encounters with consumers, Deason used an introduction similar to that proposed in the manual, typically referring to SN2C as a nonprofit as opposed to a 501(c)(3) organization. She advised consumers, upon inquiry, that the donation was tax-deductible. She also asked a consumer for a donation if the consumer was not interested in purchasing merchandise, which included t-shirts, koozies, and bracelets with slogans, such as “Boobies Rock,” “Mustache Rides,” and “I Heart Motorboating.”

¹¹ The Independent Contractor Agreement contained a blank space for the inclusion of other locations in which to sell and distribute SN2C merchandise.

75. Deason only worked for SN2C for two weekends. Over that period of time, she scheduled eight to ten events. She mailed all donations and sales proceeds, as instructed by Diebold or another manager, by money order, leaving the “pay to” line blank, to SN2C, 1045 Meteor Place, Castle Rock, CO 80108. Plaintiff’s Exhibit 22.

76. In May 2013, Krystyn Chase Pietrowski also responded to a JobSpider.com advertisement. The ad sought models for the SN2C promotion and described the company as having “hosted more than 25,000 bar promotions over the last two years in which [it] raise[d] money and awareness for cancer.” Plaintiff’s Exhibit 15.

77. Desiree Cottet interviewed Pietrowski. As noted above, Cottet was a Boobies Rock promotional manager. She began working for Shryock in 2011 as an employee of the Se7ven Group and continued to work for him as a manager for Boobies Rock and SN2C. Cottet informed Pietrowski that SN2C was a nonprofit organization that provided direct financial aid to cancer patients who had difficulty paying their bills.

78. Pietrowski was hired as a promotional manager for the Lexington, Kentucky area. She was responsible for hiring models and organizing promotional events. She was instructed to sell t-shirts and koozies and to “spread the word” about cancer awareness. Transcript, November 4, 2014, 118:3-7.

79. Upon her acceptance of employment, Pietrowski executed the same independent contractor agreement as was executed by Deason.

80. Pietrowski was trained by Cottet. She also reviewed the SN2C website and marketing and promotional materials about the company.

81. Pietrowski booked events in various venues. In booking the events, she was provided fliers which described SN2C as a 501(c)(3) nonprofit organization. Pietrowski received the fliers from Cottet.

82. Pietrowski also received a “Professional Training Manual and Keys to Success Handbook” which again described SN2C as a nonprofit organization that provided financial aid to individuals affected by cancer. Plaintiff’s Exhibit 24. She used this manual for the purpose of educating herself and training promotional models.

83. Pietrowski scheduled and conducted promotional events for SN2C in the Lexington area until the Court’s entry of the Temporary Restraining Order. She held promotional events on Thursdays, Fridays and Saturdays.

84. At these events, Pietrowski and the promotional models sold t-shirts and other merchandise with slogans related to breast and testicular cancer. Some of the slogans were the same as those on Boobies Rock merchandise.

85. During this time, she was expected to earn \$1,000.00 over a two-hour period of time. She was required to report her totals, on an hourly basis, to Cottet. She testified that she and her models were “cut” if they did not meet expected monetary goals. *Id.* 125:4-16. On some occasions, she was instructed to move to another venue. Every Monday, Pietrowski sent an “Event Rundown” to SN2C. Plaintiff’s Exhibit 28. There, she summarized the inventory sold

and the money collected, including sales and straight donations. She also deposited sales proceeds and donations on Mondays.

86. On Wednesdays or Thursdays, Pietrowski received new merchandise as well as paychecks for her and her models. The shipments were from the state of Colorado.

87. Pietrowski described most events as successful. In other words, she was able to meet the monetary goals established by SN2C. She testified that she “would speak to people and hear their heartfelt stories” and “they would actually just hand [her] money.” Transcript, November 4, 2014, 128:16-17. Indeed, she remarked that most of the revenue collected by her and her models was from individuals who donated money without receiving merchandise.

88. On July 1, 2013, after the Court’s entry of the Temporary Restraining Order, Cottet sent Pietrowski an email which stated, in pertinent part, as follows:

As you know we have been having a lot of issues with our credit card account/app. I was just notified the reason in relation to fraud. We are still looking into the matter very carefully. However my biggest priority is that your checks went through from last weekend. Please let me know by tomorrow so we can figure this out right away. . . . For this reason we are only excepting [sic] cash and checks over \$20, no credit cards at this time. I understand this will be limiting and more difficult to hit your quota, but this is just temporary. I will walk you through the events as usual. What we will do until the temporary matter is cleared, the company will be paying you cash directly. . . . We will also be doing deposit no longer with the same account until the matter is cleared. Deposits will now be made through money orders, which are very easier [sic] to do[.]

Plaintiff’s Exhibit 32. In the email, Cottet further advised Pietrowski to mail money orders to SN2C, 1045 Meteor Place, Castle Rock, CO 80108. *Id.*

89. Almost immediately after receiving this email, Pietrowski was advised about a new promotion entitled “I Heart This Bar.” She was asked to work on this promotion instead of the SN2C promotion. She received a series of emails describing the new promotion. Plaintiff’s Exhibit 32.

90. The “I Heart This Bar” promotion involved promotional models selling the same merchandise at college football tailgating events and bars and representing that they were raising money for a “scholarship.” *Id.* The “scholarship” was, in fact, a cash bonus to be paid to the most successful promotional models.

91. Shryock authored these emails.

CONCLUSIONS OF LAW

The Court concludes as follows:

I. Claims for Relief

1. In its Complaint, the State asserts six claims for relief based on the following violations of section 6-16-111 of the CCSA:

- a. Knowingly solicits any contribution and, in aid of or in the course of such solicitation, utilizes the name or symbol of another person or organization without written authorization from such person or organization for such use, § 6-16-111(1)(b);
- b. With the intent to defraud, devises or executes a scheme or artifice to defraud by means of a solicitation or obtains money, property, or services by means of a false or fraudulent pretense, representation, or promise in the course of a solicitation, § 6-16-111(1)(g);
- c. Represents or causes another to represent that contributions are tax-deductible unless they so qualify under the federal internal revenue code, § 6-16-111(1)(h);
- d. Represents or causes another to represent that a contribution to a charitable organization will be used for a purpose other than the purpose for which the charitable organization actually intends to use such contribution, § 6-16-111(1)(i);
- e. Represents or causes another to represent that a greater portion of the contribution will go to a charitable organization than the actual portion that will go to such organization, § 6-16-111(1)(j); and
- f. Represents or causes another to represent that the solicitor has a sponsorship, approval, status, affiliation, or connection with an organization or purpose that the solicitor does not actual have, § 6-16-111(1)(l).

2. The State further asserts the following two claims for relief based on the following violations of section 6-1-105 of the CCPA:

- a. Knowingly makes a false representation as to affiliation, connection, or association with or certification by another, § 6-1-105(1)(c); and
- b. Fails to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction, § 6-1-105(1)(u).

Further, pursuant to § 6-1-105(1)(hh), any violation of a the CCSA is deemed a “deceptive trade practice” under the CCPA. *See also* § 6-16-111(5) (“Violation of any provision of [the CCSA] also shall constitute a deceptive trade practice in violation of the “Colorado Consumer Protection Act”, article 1 of this title, and shall be subject to remedies or penalties, or both, pursuant thereto”).

II. This Court's Jurisdiction

3. Throughout these proceedings, Defendants have challenged this Court's authority to hold them liable for activities that occurred outside the state of Colorado. This Court rejects that challenge. The Court finds and concludes that its authority extends to all Defendants' activities and the activities of its employees and agents, within and outside the state of Colorado.

4. The CCSA and the CCPA were enacted to proscribe certain offensive business practices and fraudulent charitable solicitations. As the General Assembly has declared, the provisions of the CCSA "are necessary to protect the public's interest in making informed choices as to which charitable causes should be supported." § 6-16-102. Similarly, the CCPA is designed to deter and punish deceptive trade practices. *Showpiece Homes Corp. v. Assurance Co. of America*, 38 P.3d 47, 50-51 (Colo. 2001).

5. Section 6-1-103 provides that the attorney general and the district attorneys of the judicial districts of the state of Colorado have concurrent responsibility to enforce the CCPA. Civil enforcement actions brought by the State are designed "to protect the public" and "to abate evils which are deemed to arise from the pursuit of business." *May Dep't Stores Co. v. State ex rel. Woodard*, 863 P.2d 967, 980 (Colo. 1993) (quoting *People ex rel. Dunbar v. Gym of America, Inc.*, 493 P.2d 660, 667 (Colo. 1972)).

6. Under the CCPA, the only geographical limitation placed on the Court's authority is that a "portion of a transaction involving an alleged deceptive trade practice" occur in the state of Colorado.¹² § 6-1-103. Moreover, the CCPA authorizes a Colorado district court to "make such orders or judgments as may be necessary to prevent the use or employment . . . of *any* such deceptive trade practice" and to compensate "*any* person injured by means of such practice" or "to prevent any unjust enrichment by *any* person through the use or employment of *any* deceptive trade practice." § 6-1-110(1) (emphasis added).

7. These provisions are similar to the provisions of § 18-1-201, the statute on state jurisdiction in criminal actions. Under that section, the state of Colorado enlarges its power to prosecute crimes that are "committed wholly or partly within the state." § 18-1-201(1)(a).

8. In its cases concerning the CCPA, the Colorado Supreme Court has provided a liberal construction of the Act, emphasizing its broad purpose and scope. *See, e.g., Hall v. Walter*, 969 P.2d 224, 230 (Colo. 1998). Accordingly, in interpreting the Act, this Court is charged with "avoid[ing] any interpretation that 'defeats the legislative intent.'" *Gen. Steel Domestic Sales, LLC v. Hogan & Hartson, LLP*, 230 P.3d 1275, 1281 (Colo. App. 2010) (quoting *Hall*, 969 P.2d at 229).

9. Here, Boobies Rock and SN2C represented themselves as Colorado companies. Indeed, at all relevant times, Defendants' principal location and the center of operations were in the state of Colorado. Shryock, the sole owner and operator of the Defendant companies, is and was a resident of the state of Colorado and directed the operations of his companies from his home at 1045 Meteor Place, Castle Rock, Colorado. Shryock and his employees and agents

¹² Again, any violation of the CCSA is deemed a deceptive trade practice under the CCPA. The CCPA thus provides the framework of analyzing the Court's authority. § 6-16-111(5).

developed or reviewed the business models, marketing strategies, promotional materials, websites, employee training materials, and solicitation scripts in the state of Colorado.

10. Under these circumstances, the Court has authority to address, under the CCPA and CCSA, Defendants' conduct within and outside the state of Colorado. Any other conclusion would result in piecemeal enforcement of the law and would be inconsistent with the broad purposes and scope of the CCPA.

III. Violations of the CCSA and the CCPA - Boobies Rock a/k/a The Se7ven Group

First Claim for Relief – Violations of § 6-16-111(1)(b) and § 6-1-105(1)(hh)

11. In its First Claim for Relief, the State alleges that Defendant Boobies Rock violated § 6-16-111(1)(b) and § 6-1-105(1)(hh)¹³ “by using the names of various charities, including Pink Fund, YSC, Breast Cancer Resource Center of Texas, Linda Creed Breast Cancer Foundation, TBCC, and Gateway of Hope in solicitations for donations without their permission.” Complaint, at ¶ 64.

12. Section 6-16-111(1)(b) provides that “[a] person commits charitable fraud if he or she . . . [k]nowingly solicits any contribution and, in aid of or in the course of such solicitation, utilizes the name or symbol of another person or organization without written authorization from such person or organization for such use.”

13. The Court finds and concludes that Boobies Rock committed charitable fraud by engaging in this prohibited conduct and that this violation is a deceptive trade practice.

14. At various times, the Boobies Rock website prominently featured the names and logos of YSC, the TBCC and Linda Creed. *See, e.g.*, Plaintiff Exhibit 9. Representatives of Boobies Rock advised employees to visit the website to gain information about the company. Several employees heeded this advice.

15. Boobies Rock created and distributed a PowerPoint pamphlet to its employees for use in booking promotional events. The pamphlet features the names and logos of TBCC, YSC and The Pink Fund. Plaintiff's Exhibit 13.

16. Additionally, several Boobies Rock employees testified that, from approximately February 2012 through early October 2012, they were advised to tell consumers that Boobies Rock was conducting a fundraising campaign on behalf of The Pink Fund.

17. Representatives of The Pink Fund, YSC, Linda Creed and the TBCC testified credibly that their respective organizations did not give oral or written authorization to Boobies Rock to use their name or logo in conjunction with fundraising activities. This testimony was corroborated by communications between the various nonprofit organizations and Boobies Rock. The communications further confirmed that Shryock had knowledge that Boobies Rock lacked authorization to use the names and logos of these nonprofit organizations.

¹³ Again, § 6-1-105(1)(hh) is the catchall statutory provision that deems any violation of the CCSA to be a deceptive trade practice under the CCPA.

Second Claim for Relief – Violations of § 6-16-111(1)(g) and § 6-1-105(1)(hh)

18. In its Second Claim for Relief, the State alleges that Defendant Boobies Rock violated § 6-16-111(1)(g) and § 6-1-105(1)(hh) “by intentionally misrepresenting to consumers that [it] was ‘taking donations’ for charitable causes rather than primarily selling merchandise for a profit.” Complaint, ¶ 67

19. Section 6-16-111(1)(g) provides that “a person commits charitable fraud if he or she . . . [w]ith the intent to defraud, devise or executes a scheme or artifice to defraud by means of a solicitation or obtains money, property, or services by means of a false or fraudulent pretense, representation, or promise in the course of a solicitation. A representation may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a material fact.” *Id.*

20. The Court finds and concludes that Boobies Rock committed charitable fraud by engaging in this prohibited conduct and that this violation is a deceptive trade practice.

21. Here, Boobies Rock induced consumers to purchase merchandise and make donations by failing to disclose known material facts regarding their financial commitments or lack of financial commitments to various charitable organizations. Boobies Rock further failed to disclose known material facts regarding the coerced nature of payments it made to some charitable organizations. Boobies Rock acted knowingly and with the intent to defraud in this conduct.

22. In its sale of merchandise, Boobies Rock presented a commitment to raise funds for or to donate to charitable organizations. Indeed, as noted above, in one of its training documents, Boobies Rock provided a suggested “pitch” in which its employees told consumers that Boobies Rock’s goal was to raise \$100,000.00 for charitable organizations.

23. Additionally, on its website, Boobies Rock represented that the company “typically” entered into pledge agreements with its nonprofit partners for fixed donation amounts. Boobies Rock further publicized previous payments to charitable organizations during solicitations and on its website. It characterized these payments as “donations.”

24. Boobies Rock failed to disclose to consumers that it did not have any commitments or agreements to donate to any charitable organizations or that it “may,” “at times,” donate to a nonprofit of its choosing.¹⁴

25. Boobies Rock also failed to disclose that its largest charitable donations were the result of a legal settlement or the threat of legal action. For example, Boobies Rock did not disclose that its \$25,000.00 donation to YSC was made in conjunction with its settlement of a trademark infringement lawsuit.

Fourth Claim for Relief – Violations of § 6-16-111(1)(i) and § 6-1-105(1)(hh)

¹⁴ Boobies Rock!, Inc’s Promotional Model Agreement stated that Boobies Rock “at times, may donate a portion of proceeds to a non-profit of [its] choosing or a collections [sic] of non-profit organizations nationally.” Plaintiff’s Exhibits 4 and 5.

26. In its Fourth Claim for Relief, the State alleges that Boobies Rock violated § 6-16-111(1)(i) and § 6-1-105(1)(hh) by “representing that contributions to Boobies Rock . . . would go to cancer-related causes when, in fact, very little of the money raised . . . went to cancer-related causes and instead went to Shryock for his personal benefit.” Complaint, ¶ 74.

27. In its Proposed Findings of Fact and Conclusions of Law, the State does not present any proposed conclusions as to this claim. Accordingly, the Court will find that the State has abandoned this specific claim as to Boobies Rock.

Fifth Claim for Relief – Violations of § 6-16-111(1)(j) and § 6-1-105(1)(hh)

28. In its Fifth Claim for Relief, the State alleges that Defendant Boobies Rock violated § 6-16-111(1)(j) and § 6-1-105(1)(hh) “by misrepresenting the amount of each contribution that would go to cancer-related causes.” Complaint, ¶ 77

29. Section 6-16-111(1)(j) provides that “a person commits charitable fraud if he or she . . . [r]epresents or causes another to represent that a greater portion of the contribution will go to a charitable organization than the actual portion that will go to such organization.”

30. The Court finds and concludes that Boobies Rock committed charitable fraud by engaging in this prohibited conduct and that this violation is a deceptive trade practice.

31. From September 2010 through March 2012, Boobies Rock represented to consumers that it “would donate a portion of proceeds to various non-profits nationwide with an annual goal of \$100,000.” Transcript, November 5, 2014, 213:1-6. During that time period, Boobies Rock made donations of approximately \$4,350.00 to charitable organizations. This amount does not include payments to settle a trademark infringement lawsuit brought by Keep A Breast Foundation against Boobies Rock and Shryock.

32. On its website, Boobies Rock also made representations that it entered into pledge agreements with various charitable organizations. Despite these representations, Boobies Rock did not have any formal pledge agreements, in any amount, with any charitable organization.

33. From March 2012 through October 2012, Boobies Rock made specific representations that it had partnered with The Pink Fund and had pledged to raise \$50,000.00 by September 1, 2012, for that organization. Boobies Rock represented that to meet this goal “40% of all purchases [would be] donated to The Pink Fund for a period of 6 months, or until the goal [was] reached.” Plaintiff’s Exhibit 13, Shryock:BoobiesRock:00017.

34. Molly MacDonald, the founder and chief executive officer of The Pink Fund credibly testified that her organization was not informed of Boobies Rock’s purported pledge until late October 2012.

35. Although Defendants ultimately provided \$50,000.00 to The Pink Fund in November 2012, this payment was made two months later than had been represented to consumers. Until this payment in November 2012, Boobies Rock had not made any donations to The Pink Fund, contrary to its affirmative representation of donating 40% of its purchases during the March through September 2012 time period.

36. Moreover, Boobies Rock made this payment only after being contacted by the attorney for The Pink Fund. There was no credible evidence to suggest that Boobies Rock and Shryock intended to forward any funds to The Pink Fund prior to their contact with The Pink Fund's attorney.

37. The Court finds and concludes that Shryock and Boobies Rock did not intend to, and would not have, made a substantial payment to The Pink Fund absent the actions of MacDonald and The Pink Fund's attorney. Thus, the Court finds that Defendants' representations to consumers regarding their "pledge" to The Pink Fund were false at the time of the solicitation. This finding and conclusion is consistent with Shryock's and Boobies Rock's general practice of donating minimal amounts to charitable organizations, until confronted by the charity, or as part of a legal settlement.

38. From October 2012 until January 2013, Boobies Rock continued to solicit donations, generally representing that it was committed to raising \$100,000.00 for various non-profits nationwide.

39. From September 2010 through November 12, 2012, excluding the payments made pursuant to its settlement with Keep A Breast Foundation, Boobies Rock did not come close to donating \$100,000.00 to charitable organizations.

Sixth and Seventh Claims for Relief – Violations of § 6-16-111(1)(l), § 6-1-105(1)(hh), and § 6-1-105(1)(c)

40. In its Sixth Claim for Relief, the State alleges that Defendant Boobies Rock violated § 6-16-111(1)(l) and § 6-1-105(1)(hh) "by misrepresenting that [it] had 'partnered' with breast cancer charities to raise money for those organizations when no such partnership existed." Complaint, ¶ 80.

41. In its Seventh Claim for Relief, the State alleges that Defendant Boobies Rock violated § 6-1-105(1)(c) "by misrepresenting that it had 'partnered' with breast cancer charities to raise money for those organizations when no such partnership existed." Complaint, ¶ 84.

42. Section 6-16-111(1)(l) provides that "a person commits charitable fraud if he or she . . . [r]epresents or causes another to represent that the solicitor has a sponsorship, approval, status, affiliation, or connection with an organization or purpose that the solicitor does not actually have."

43. Section 6-1-105(1)(c) provides, in pertinent part, that "a person engages in a deceptive trade practice when, in the course of the person's business, . . . the person . . . [k]nowingly makes a false representation as to affiliation, connection, or association with or certification by another."

44. The Court finds and concludes that Boobies Rock committed charitable fraud and engaged in a deceptive trade practice by engaging in this prohibited conduct.

45. Here, as noted above, Boobies Rock knowingly misrepresented that it was affiliated or "partnered" with various charitable organizations.

46. Again, Boobies Rock’s website indicated that it “typically enter[ed] into what are called “pledge agreements” with [its] non-profit partners.” Plaintiffs Exhibit 9, Shryock:BoobiesRock:00004.

47. Additionally, Boobies Rock’s employees were instructed to, and did in fact, advise consumers that Boobies Rock was “partnered with” various charitable organizations, most notably The Pink Fund. *See, e.g.*, Plaintiff’s Exhibit 13, Shryock:BoobiesRock:00017.

48. Representatives of The Pink Fund, YSC, Linda Creed, and the TBCC credibly testified that their organizations were never partnered with Boobies Rock. Indeed, there was no evidence of any partnerships between Boobies Rock and a charitable organization.

49. The Court finds and concludes that these misrepresentations of partnerships were injurious to the nonprofit sector and to the public.

Eighth Claim for Relief – Violations of § 6-1-105(1)(u)

50. In its Eighth Claim for Relief, the State alleges that Defendant Boobies Rock violated § 6-1-105(1)(u) “by misrepresenting that [Boobies Rock] is a ‘charitable organization’ that donated the vast majority of net proceeds from merchandise sales to breast cancer-related causes when, in fact, [Boobies Rock] is a for-profit entity that gives very little money to breast cancer-related causes.” Complaint, ¶ 88.

51. Section 6-1-105(1)(u) provides, in pertinent part, that “a person engages in a deceptive trade practice when, in the course of the person’s business, . . . the person . . . fails to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction.”

52. The Court finds and concludes that Boobies Rock engaged in a deceptive trade practice by engaging in this prohibited conduct.

53. Here, Boobies Rock induced consumers to purchase merchandise and make donations by failing to disclose known material facts regarding its lack of commitment to donating money to charity.

54. As noted above, Boobies Rock’s employment agreements stated that the company “may” donate a portion of its proceeds to non-profit organizations. Plaintiff’s Exhibits 4 and 5. Shryock confirmed the accuracy of this statement, emphasizing that Boobies Rock was a for profit merchandise business. Transcript, November 6, 2014, 13:8-14:9. Nevertheless, Boobies Rock did not instruct its employees to advise consumers that the company “may” donate proceeds to charity. Instead, promotional models and managers were told to inform consumers that Boobies Rock was raising money and awareness for breast cancer.

55. Because Boobies Rock employees did not tell consumers that the company may or may not donate a portion of its proceeds to charity, the Court finds and concludes that Boobies Rock failed to disclose material information about its merchandise sales.

IV. Violations of the CCSA and the CCPA - SN2C

Second Claim for Relief – Violations of § 6-16-111(1)(g) and § 6-1-105(1)(hh)

56. In its Second Claim for Relief, the State alleges that Defendant SN2C violated § 6-16-111(1)(g) and § 6-1-105(1)(hh) “by intentionally misrepresenting to consumers that [it] was a nonprofit, approved tax-exempt organization collecting charitable donations.” Complaint, ¶ 68.¹⁵

57. The Court finds and concludes that SN2C committed charitable fraud by engaging in this prohibited conduct and that this violation is a deceptive trade practice.

58. More specifically, SN2C falsely represented or caused others to represent that the company was a 501(c)(3) tax-exempt organization to induce consumers to donate funds directly to the company and to purchase merchandise to benefit the company. SN2C also falsely represented to consumers that donations made to the company and profits realized from the sale of merchandise would be used to benefit individuals affected by cancer.

59. SN2C acted knowingly and with intent to defraud consumers in its misrepresentations.

60. SN2C’s business model was based on representing itself as a 501(c)(3) nonprofit organization to employees, venue owners and consumers.

61. As noted above, SN2C’s website prominently announced that “Say ‘NO’ to Cancer is a 501(c)(3) non-profit organization.” Plaintiff’s Exhibit 16, Shryock:00057 and :00062. Former employees of SN2C testified that they relied on the information in the website in their “pitches” to consumers. In its Promotional Training Manual and Keys to Success Handbook, SN2C provided a sample script to be used by models in their contacts with consumers at various venues. The script included language identifying SN2C as “a nationwide 501(c)(3) non-profit.” SN2C or its representatives instructed its employees to use this script to solicit consumers.

62. SN2C further provided a template letter to its Team Lead employees for use in contacting potential venues about promotional events. The letter began with the following introduction: “Say ‘NO’ To Cancer is a 501(c)(3) non-profit organization established to provide financial assistance to those affected by cancer.” Plaintiff’s Exhibit 21.

63. SN2C created and distributed a flier with the headline “SN2C Receives Approval for Nationwide 501(c)(3).” Plaintiff’s Exhibit 17, Shryock:SN2C:00060. The flier further indicates that:

[t]he non-profit organization announced on February 19, 2013, that approval was granted to become a national 501(c)(3), tax exempt corporation. This allows the organization to accept applications from individuals in all 50 states. Such status also enables the non-profit to accept monetary donations from business [sic] and corporations outside of the state of Colorado.

¹⁵ The provisions of § 6-16-111(1)(g) are set forth in paragraph 19 at pg. 19 of this Order.

Id. The flier was given to promotional models and presented to consumers during promotions events.

64. SN2C never received authorization from the Internal Revenue Service (“IRS”) to act as a 501(c)(3) tax-exempt organization. Shryock admitted, in his testimony, that he never submitted the appropriate forms to the IRS to initiate the 501(c)(3) approval process.

65. Moreover, SN2C did not use donated funds or profits from its sales to benefit individuals affected by cancer and did not disburse any funds to any charitable organizations established to assist such individuals.

66. The donated funds and profits collected by SN2C were used to support Shryock, the company’s sole owner and operator.

Third, Sixth and Seventh Claims for Relief – Violations of § 6-16-111(1)(h), 6-16-111(1)(l), 6-1-105(1)(c), and § 6-1-105(1)(hh)

67. In its Third Claim for Relief, the State alleges that Defendant SN2C violated § 6-16-111(1)(h) and § 6-1-105(1)(hh) “by misrepresenting that it [was] an approved 501(c)(3) organization and that donations to [it] would be considered tax-deductible.” Complaint, ¶ 71.

68. In its Sixth Claim for Relief, the State alleges that SN2C violated § 6-16-111(1)(l) and § 6-1-105(1)(hh) “by misrepresenting that [it] had been approved by the IRS to act as a 501(c)(3) tax-exempt organization.” Complaint, ¶ 81.

69. In its Seventh Claim for Relief, the State alleges that SN2C violated § 6-1-105(1)(c) “by misrepresenting that [it] had been approved by the IRS to act as a 501(c)(3) tax-exempt organization.” Complaint, ¶ 85.

70. Section 6-16-111(1)(h) provides that “a person commits charitable fraud if he or she . . . [r]epresents or causes another to represent that contributions are tax-deductible unless they so qualify under the federal internal revenue code.”¹⁶

71. The Court finds and concludes that SN2C committed charitable fraud by engaging in this prohibited conduct and that these violations are deceptive trade practices.

72. As described above, SN2C falsely represented and caused others to misrepresent that it had received approval for the IRS to operate as a 501(c)(3) tax-exempt organization. It further falsely represented and caused others to represent that donations made to it would be considered tax-deductible.

73. SN2C’s “Brand Ambassador Model Standard Procedures” instructs employees to advise consumers, upon inquiry, that “any purchase or donation made from SN2C is eligible for a tax deduction.” Plaintiff’s Exhibit 20, Shryock:Deason:00009. The Procedures manual further states:

¹⁶ The provisions of § 6-16-111(1)(l) and § 6-1-105(1)(c) are set forth in paragraphs 42 and 43, respectively, at pg. 21 of this Order.

Advise the customers to email support@sayno2cancer.com for tax info and corporate will handle it. Make sure to give them a receipt if they want to contact SN2C corporate for a tax deduction. (Use a receipt book for cash purchases & for credit card purchases you can email a receipt).

Id. This section of the manual is labeled “Important.”

74. As instructed, SN2C employees informed consumers that sales and donations to SN2C were tax-deductible.

75. Again, the IRS never authorized SN2C to solicit or accept tax-deductible donations.

76. SN2C never operated as a legitimate charity and thus was not qualified to represent that donations were tax-deductible under the federal internal revenue code. SN2C never gave any money to individuals affect by cancer and never took any steps to fulfill its stated mission. Instead, Shryock used the funds donated to SN2C for private benefit.

Fourth Claim for Relief – Violations of § 6-16-111(1)(i) and § 6-1-105(1)(hh)

77. In its Fourth Claim for Relief, the State alleges that Defendant SN2C violated § 6-16-111(1)(i) and § 6-1-105(1)(hh) “by, representing that contributions to . . . SN2C would go to cancer-related causes when, in fact, very little of the money raised by [this] organization[] went to cancer-related causes and instead went to Shryock for his personal benefit.” Complaint, ¶ 74.

78. Section 6-16-111(1)(i) provides that “a person commits charitable fraud if he or she . . . [r]epresents or causes another to represent that a contribution to a charitable organization will be used for a purpose other than the purpose for which the charitable organization actually intends to use such contribution.”

79. The Court finds and concludes that SN2C committed charitable fraud by engaging in this prohibited conduct and that this violation is a deceptive trade practice.

80. SN2C’s website specifically stated that “Say ‘NO’ to Cancer is . . . established to provide financial assistance to those affected by cancer.” Plaintiff’s Exhibit 16, Shryock:00057. The website also provided information as to the types of expenses, such as housing, utilities, car payments, insurance, child care and groceries, for which SN2C purportedly provided assistance, and described the eligibility requirements and application process for receiving such assistance. *Id.* As noted above, SN2C employees used this information in their pitches to consumers and, in conjunction with solicitations, provided the website address to consumers.

81. In its sample “pitch” in the Promotional Training Manual and Keys to Success Handbook, SN2C suggested the language, “SN2C . . . provides financial assistance to those diagnosed with cancer.” Plaintiff’s Exhibit 18, Shryock:Deason:00028. SN2C proposed a similar script in its Brand Ambassador Model Standard Procedures. That script proposed the following language: “100% of our NET proceeds go to Say No 2 Cancer which offers nationwide financial assistance to men, women and children who are battling cancer.” Plaintiff’s Exhibit 20, Shryock:Deason:00009. SN2C employees testified that they relied upon these scripts in their solicitations of consumers.

82. In a letter addressed to “business owner/manager” and provided to team leads for their use in contacting venue owners about promotional events, SN2C described itself as a “non-profit organization established to provide financial assistance to those affected by cancer.” Plaintiff’s Exhibit 21, Shryock:Deason:00005.

83. SN2C did not use donated funds or profits from its sales to provide financial assistance to those affected by cancer. SN2C never disbursed any funds to individuals affected by cancer or to organizations established to assist such individuals. There is no evidence that SN2C ever made any efforts to fulfill its stated mission. Instead, the donated funds and profits collected by SN2C were used to support Shryock, the company’s sole owner and operator.

Fifth Claim for Relief – Violations of § 6-16-111(1)(j) and § 6-1-105(1)(hh)

84. In its Fifth Claim for Relief, the State alleges that Defendant SN2C violated § 6-16-111(1)(j)¹⁷ and § 6-1-105(1)(hh) “by misrepresenting the amount of each contribution that would go to cancer-related causes.” Complaint, ¶ 77.

85. The Court finds and concludes that SN2C committed charitable fraud by engaging in this prohibited conduct and that this violation is a deceptive trade practice.

86. As the Court has found and concluded above, none of the funds acquired by SN2C, through donations or sales, were donated to a charitable organization or used for charitable purposes. SN2C did not take any steps to fulfill its stated mission, i.e., assisting individuals affected by cancer.

87. Moreover, based on the totality of the evidence and Shryock’s prior conduct, the Court finds and concludes that SN2C and Shryock did not intend to provide the funds acquired through donations or sales to individuals affected by cancer.

Eighth Claim for Relief – Violations of § 6-1-105(1)(u)

88. In its Eighth Claim for Relief, the State alleges that Defendant SN2C violated § 6-1-105(1)(u)¹⁸ “by misrepresenting that proceeds raised through SN2C merchandise sales were tax-deductible when, in fact, they were not.” Complaint, ¶ 89.

89. The Court finds and concludes that Boobies Rock engaged in a deceptive trade practice by engaging in this prohibited conduct.

90. Here, as noted above, SN2C induced consumers to purchase merchandise and donate money by failing to disclose known material facts about its lack of status as a 501(c)(3) tax-exempt organization and the non-deductibility of donations made to it. SN2C failed to disclose known material facts about the use of the funds donated to it.

¹⁷ The provisions of § 6-16-111(1)(j) are set forth in paragraph 29 at pg. 20 of this Order.

¹⁸ The provisions of § 6-1-105(1)(u) are set forth in paragraph 51 at pg. 22 of this Order.

V. Defendant Adam Cole Shryock’s Personal Liability for Conduct of Boobies Rock and SN2C

91. The CCPA provides that the “provisions of this article shall be available in a civil action for any claim against *any person* who has engaged in or caused another to engage in any deceptive trade practice[.]” Section 6-1-113(1) (emphasis added). “Any person” includes an “individual.” Section 6-1-102(6).¹⁹ Thus, under the CCPA, “[i]ndividual liability of corporate officers and agents is proper[.]” *Hoang v. Arbess*, 80 P.3d 863, 870 (Colo. App. 2003).

92. During the relevant time period, Shryock was the sole owner and operator of Boobies Rock and SN2C. He was intimately involved in all aspects of the operations of Boobies Rock and SN2C and formulated, directed, controlled, supervised or participated in the unlawful acts and practices of the companies.

93. Shryock conceived of and developed the business model employed by Boobies Rock and SN2C. More specifically, he formulated the policies and procedures for (1) the solicitation and employment of promotional models, (2) the training of promotional models, (3) communications with venues for promotional events, (4) the advertisement for promotional events, and (5) the solicitation of consumers. The misrepresentations and failures to disclose which form the basis of the deceptive trade practices of Boobies Rock and SN2C pervade these policies and procedures.

94. Shryock further drafted or reviewed a portion of the materials, including promotional scripts and pitches, websites, fliers, and press releases, used by Boobies Rock and SN2C to solicit consumers.

95. Moreover, Shryock knowingly, or with willful ignorance, profited from and sanctioned the deceptive conduct of Boobies Rock and SN2C.

96. Several of the CCPA subsections at issue in this case require that a person “knowingly” commit a deceptive trade practice. The term “knowingly,” as used in the CCPA, requires actual knowledge. *State ex rel. Suthers v. Mandatory Poster Agency, Inc.*, 260 P.3d 9, 14 (Colo. App. 2009).

97. “Willful ignorance is equivalent, in law, to actual knowledge. A man who abstains from inquiry when inquiry ought to be made, cannot be heard to say so, and to rely upon his ignorance.” *Mackey v. Fullerton*, 560, 4 P. 1198, 1200 (Colo. 1884); *see also Powder Mountain Painting v. Peregrine Joint Venture*, 899 P.2d 279, 281 (Colo. App. 1994) (“willful ignorance . . . is equivalent to chargeable actual knowledge”); *Tibbetts v. Terrill*, 96 P. 978, 982 (Colo. 1908) (“no man having knowledge of such signs of suspicion as these is at liberty to close his eyes, remain willfully blind to the facts, and by his negligence make himself the instrument of consummating a fraud against which the injured party might otherwise have protected himself”).

¹⁹ The term “person” also means “corporation, business trust, estate, trust, partnership, unincorporated association, or two or more thereof having a joint or common interest, or any other legal or commercial entity.” *Id.*

98. At trial, Shryock attempted to distance himself from the deceptive trade practices of Boobies Rock, asserting, in part, that he lacked knowledge of the specific representations of his employees. The Court harbors serious concerns about the credibility of these assertions. The evidence overwhelmingly establishes that Shryock, as owner and operator of the company and as the supervisor of the hiring managers, regularly reviewed all information disseminated about Boobies Rock. Moreover, Shryock directly instructed employees to advise consumers that they were taking donations in exchange for merchandise rather than just selling such merchandise for profit. Further, Shryock's effort to avoid knowledge of Boobies Rock's deceptive trade practices is, at best, an attempt to abstain from inquiry when inquiry should have been made by him.

99. With respect to SN2C, Shryock testified to his knowledge that SN2C was not authorized by the IRS to act as a 501(c)(3) organization and that the donations made to the company were not tax-deductible. Shryock's efforts to distance himself from the misrepresentations about SN2C's tax status were not credible since Shryock authored or reviewed the materials containing the misrepresentations.

VI. Remedies for the Violations of the CCSA and the CCPA

100. The CCPA is a remedial statute designed to deter and punish deceptive trade practices by persons in dealing with the public. *Showpiece Homes Corp. v. Assurance Co. of America*, 38 P.3d 47, 50-51 (Colo. 2001). The statute's "broad legislative purpose" is achieved through the provision of "prompt, economical, and readily available remedies against consumer fraud." *Western Food Plan, Inc. v. Dist. Court*, 598 P.2d 1038, 1041 (Colo. 1979).

101. The CCPA provides for enforcement by the attorney general. Under section 6-1-110(1), the attorney general "may apply for and obtain" injunctive relief prohibiting a person from the continuation of deceptive trade practices. That statutory provision further authorizes the district court to make available the following additional remedies:

The court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice or which may be necessary to completely compensate or restore to the original position of any person injured by means of any such practice or to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice.

Id. In light of the broad legislative purpose of the CCPA, this remedy provision grants the court "considerable discretion in entering orders and judgment." *In re Jensen*, 395 B.R. 472, 495 (Bankr. Colo. 2008).

Unjust Enrichment

102. The Court concludes that disgorgement of Defendants' unlawful gains is a proper remedy to prevent Defendants from being unjustly enriched by the employment of deceptive trade practices. *See, e.g., S.E.C. v. Gordon*, 822 F.Supp. 2d 1144, 1158 (N.D. Okla. 2011) ("[d]isgorgement is an equitable remedy 'designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations unprofitable.'"); *Earthinfo*,

Inc. v. Hydrosphere Resource Consultants, Inc., 900 P.2d 113, 117 (Colo. 1995) (recognizing remedy of disgorgement of defendant's gain to prevent unjust enrichment of gain). The Court has broad discretion in determining whether or not to order disgorgement in a civil enforcement action as well as in calculating the amount to be disgorged. See *U.S. S.E.C. v. Maxxon, Inc.*, 465 F.3d 1174, 1179 (10th Cir. 2006).

103. The amount of Defendants' gross receipts is an appropriate baseline measure for calculating the amount of disgorgement. See *F.T.C. v. Kuykendall*, 371 F.3d 745, 765-66 (10th Cir. 2004) (damages determination based on gross receipts in deceptive practices case under the Federal Trade Commission Act ("FTC Act")); *F.T.C. v. Freecom Communications, Inc.*, 401 F.3d 1192 (10th Cir. 2005) (allowing damages determination based on gross receipts from consumer sales under FTC Act). The use of this method effectuates the purposes of the CCPA in a case involving a large number of consumers affected by Defendants' deceptive trade practices. It would be "virtually impossible" for the attorney general to offer proof of reliance by every consumer, and "to require it would thwart the [attorney general's] ability to fulfill [the CCPA's] statutory purpose." See *Kuykendall*, 371 F.3d at 765 (quoting *F.T.C. v. Security Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991)). Moreover, "[t]o the extent the large number of consumers affected by the defendants' deceptive trade practices creates a risk of uncertainty, the defendants must bear that risk." *Id.* Defendants are, however, allowed to present evidence showing amounts that should offset the gross receipts. *Id.* at 766.

104. Here, Shryock testified that he operated the Defendant businesses from the state of Colorado for a twenty-one month period beginning in October 2011, until the end of June 2013. Shryock described the average weekly earnings of his businesses during that period of time. He stated that the business earned approximately \$30,000.00 per week in football season and approximately \$15,000.00 per week in non-football season. He noted that football season spanned twenty weeks.

105. This testimony reveals that Shryock's businesses would have received revenues of \$1,080,000.00 over the course of a one-year period, with an average monthly revenue of \$90,000.00. Based on Shryock's estimations, the Court determines that, during the twenty-one month period in which the businesses were operated from Colorado, Defendants received revenues totaling \$1,890,000.00.

106. The testimony of Investigator Kenneth King corroborates Shryock's estimation of revenues. Investigator King testified that Shryock admitted in his deposition to revenues of \$30,000.00 per week during the football season and between \$15,000.00 and \$20,000.00 during non-football season. Using these admissions, King calculated that Defendants' businesses would have received revenues of \$2,030,000.00 during the twenty-one month period of Colorado operations.

107. At trial, Defendants did not offer any financial records that would establish that its gross revenues were less than the estimates presented by Shryock. Shryock confirmed that 70% of his business revenues were in cash. He further testified that Boobies Rock promotional managers paid themselves and the promotional models directly from the proceeds of their events and then deposited the remainder of the cash into one of two primary bank accounts. He also

indicated that some SN2C promotional managers sent money orders for proceeds from promotional events to his home. Shryock relied on weekly inventory reports from his promotional managers to determine the receipts from merchandise sales and donations. He noted that the inventory sheets formed the basis for his determination that his businesses earned \$30,000.00 per week during the football season.

108. Relying on Shryock's estimations, the Court finds and concludes that Defendants' gross receipts during its twenty-one month operations from the state of Colorado were \$1,890,000.00. Defendants have not presented any amounts that should offset this total.

109. Accordingly, the Court orders Defendants jointly and severally to pay an unjust enrichment award of \$1,890,000.00.

110. The Court further orders, within 10 days of the date of this Order, the release of all funds previously frozen, pursuant to the Court's June 26, 2013 Asset Freeze Order, to the State in partial satisfaction of this Judgment.

111. All payments, pursuant to this Order, shall be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General's sole discretion for attorney fees and costs, restitution, if any, and for future consumer education and consumer enforcement.

Civil Penalties

112. The CCPA authorizes the attorney general to bring a civil action on behalf of the state of Colorado to seek the imposition of civil penalties. Section 6-1-112(1)(a) provides, as follows:

Any person who violates or causes another to violate any provision of this article shall forfeit and pay to the general fund of this state a civil penalty of not more than two thousand dollars for each violation. For purposes of this paragraph (a), a violation of any provision shall constitute a separate violation with respect to each consumer or transaction involved; except that the maximum civil penalty shall not exceed five hundred thousand dollars for any related series of violations.

The imposition of a civil penalty is mandatory. *May Dep't Stores Co.*, 863 P.2d 967, 972 (Colo. 1993). It is designed to "punish and deter the wrongdoer and not to compensate the injured party." *Id.* Thus, "the CCPA does not require proof of an actual injury or loss before a civil penalty can be awarded." *Id.* at 973.

113. The CCPA contemplates consumer-involved violations and transaction-involved violations. *Id.* A consumer-involved violation means a person who is exposed to the business's violations and either purchases merchandise subject to the misleading information or undertakes other activities in reliance on the misleading information. *Id.* A transaction-involved violation "concerns the dissemination of false or misleading information." *Id.* at 974. A transaction-based violation does not require actual injury to a consumer to be a violation subject to the imposition of a civil penalty. *Id.*

114. Here, the State has elected to seek civil penalties on a transaction-involved basis.

115. Based on the substantial direct and circumstantial evidence presented at trial, the Court finds and concludes that Defendants disseminated false and misleading information and engaged in deceptive trade practices during each promotional event held over the course of Defendants' business operations from the state of Colorado. *See, e.g., BP America Production Co. v. Patterson*, 263 P.3d 103, 109-10 (Colo. 2011) (court may infer that a company engaged in numerous uniform material misrepresentations or omissions based on circumstantial evidence).

116. The misrepresentations which form the basis of the State's eight claims for relief are present in the hiring and training manuals, the websites, the scripts, and the correspondence templates for Defendants Boobies Rock and SN2C. Additionally, several of Defendants' former employees provided testimony as to the material representations made by them to consumers during promotional events.

117. The State has suggested the following factors²⁰ to consider in imposing an appropriate amount in civil penalties: (1) the good or bad faith of the defendant; (2) the injury to the public; (3) the defendant's ability to pay; and (4) the desire to eliminate the benefits derived by violations of the CCPA. Although an analysis of these factors is helpful in addressing civil penalties, the Court recognizes that such analysis is not required by the CCPA. *People v. Shifrin*, 342 P.3d 506, 523 (Colo. App. 2014).

118. Here, Defendants demonstrated bad faith and injury to the public through their deceptive business practices. Defendants Boobies Rock and Shryock repeatedly preyed upon consumers' desires to provide legitimate aid in the fight against breast cancer, only to use the vast majority of the acquired funds for personal benefit rather than charity. Shryock continued this tactic in the creation of SN2C and the more egregious misrepresentation that consumer funds were donated directly to a tax-exempt charity.

119. As aptly noted by the representatives of legitimate charitable organizations, Defendants conduct harmed funding efforts by those legitimate charitable organizations.

120. Defendants did not present any evidence of an inability to pay civil penalties.

121. Defendants' businesses were cash-based and thus it is difficult to determine if there are funds which the State was unable to track. The imposition of civil penalties ensures that the benefits of Defendants' deceptive trade practices are eliminated.

122. Accordingly, the Court finds and concludes that a civil penalty of \$2,000.00 per violation of the CCPA is appropriate in this case.

123. As set forth above, Boobies Rock committed four separate violations of the CCSA during each promotional event, *see* § 6-16-111(1)(b), (g), (j), and (l), and SN2C committed five separate violations of the CCSA during each promotional events, *see* § 6-16-111(1)(g), (h), (i), (l), and (j). Each violation of the CCSA is deemed a deceptive trade practice, in violation of the CCPA, and subject to remedies or penalties, or both. *See* § 6-16-111(5) and § 6-1-105(1)(hh). Additionally, both Defendants committed two violations of the CCPA during

²⁰ These factors are discussed in *State ex rel. Woodard v. May Dep't Stores Co.*, 849 P.2d 802, 810 (Colo. App. 1992), *aff'd in part, rev'd in part, May Dep't Stores Co.*, 863 P.2d 967 (Colo. 1993).

promotional events. *See* § 6-1-105(1)(c) and (u). In total, Boobies Rock and SN2C committed five statutory violations in common during each event.

124. Shryock operated Boobies Rock from Colorado beginning in October 2011 until the end of June 2013. He began holding events for SN2C in January 2013. He operated both companies simultaneously from January 2013 until June 2013. During that time, employees for both entities conducted promotional events on behalf of SN2C.

125. Shryock testified that Defendants held, on an average, between 40 and 50 events per week. Based on this testimony, Boobies Rock would have held between 2,560 and 3,200 promotional events during the fifteen months in which it operated independent of SN2C and Boobies Rock and SN2C would have held between 1,040 and 1,300 promotional events during the six months in which both entities were in operation.

126. This testimony was corroborated by Investigator King. He testified that, based on his calculations, Defendants held between 3,600 and 4,500 promotional events while in the state of Colorado. He further indicated that his calculation was consistent with marketing materials produced by Defendant SN2C.

127. The Court finds and concludes that Defendant Boobies Rock and Defendant SN2C jointly engaged in 1,040 promotional events. At each event held by them, these Defendants violated the following three provisions of the CCSA: §6-16-111(1)(g); § 6-16-111(1)(j);and § 6-16-111(1)(l). These violations of the CCSA are considered to be deceptive trade practices in violation of the CCPA and thus, subject to remedies or penalties, or both. *See* §6-16-111(5) and § 6-1-105(1)(hh). These Defendants further committed violations of the following two provisions of the CCPA during each promotional event: § 6-1-105(1)(c); and §6-1-105(1)(u). Each event held by Defendants constitutes a separate transaction in which Defendants violated five particular provisions of the CCPA.

128. Boobies Rock committed an additional violation of § 6-16-111(1)(b) during these promotional events.

129. SN2C committed two additional violations of the CCSA, *i.e.*, § 6-16-111(1)(h) and § 6-16-111(1)(i), during these promotional events.

130. The Court imposes a \$2,000.00 penalty for each of the 1,040 times in which Defendants violated a particular provision of the CCPA. At \$2,000.00 per violation, the statutory penalty would vastly exceed the statutory cap of \$500,000.00. The Court therefore imposes the statutory cap of \$500,000.00. At \$2,000.00 per violation for the five statutory violations which were jointly violated by Defendants Boobies Rock and SN2C, the Court imposes a total of \$2,500,000.00.

131. The Court finds and concludes that Defendant Boobies Rock independently engaged in 2,560 promotional events. Each event held by Boobies Rock constitutes a separate transaction in which there was an additional violation of the CCPA.

132. The Court imposes a penalty of \$2,000.00 for each of the 2,560 times Boobies Rock violated this additional provision of the CCPA. At \$2,000.00 per violation, the statutory

penalty would vastly exceed the statutory cap of \$500,000.00 for any related series of violations. Therefore, the Court imposes the statutory cap of \$500,000.00.

133. The Court finds and concludes that, at the 1,040 promotional events engaged in by SN2C, SN2C committed two additional violations of the CCPA.

134. The Court imposes a \$2,000.00 penalty for each of the 1,040 times in which Defendants violated a particular provision of the CCPA. At \$2,000.00 per violation, the statutory penalty would vastly exceed the statutory cap of \$500,000.00. The Court therefore imposes the statutory cap of \$500,000.00 for the two additional statutory violations, for a total of \$1,000,000.00.

135. Defendant Shryock is liable for penalties for the deceptive trade practices by his entities, Boobies Rock and SN2C. Shryock was the sole owner and operator of Boobies Rock and SN2C. He developed, controlled and was responsible for their business practices. Shryock authorized, directed, cooperated in, and, at the very least, knew of and sanctioned the deceptive trade practices. *See Hoang*, 80 P.3d at 868; *Dolin v. Contemporary Financial Solutions, Inc.*, 622 F. Supp. 2d 1077, 1088 (D. Colo. 2009) (“the CCPA does provide for vicarious liability”). Moreover, the evidence overwhelmingly demonstrates that Shryock profited from and sanctioned the deceptive trade practices of Boobies Rock and SN2C.

136. Accordingly, the Court thus orders as follows:

a. Defendants, jointly and severally, shall pay civil penalties in the amount of \$2,500,000.00;

b. Defendants Shryock and Boobies Rock, jointly and severally, shall pay civil penalties in the amount of \$500,000.00; and

c. Defendants Shryock and SN2C, jointly and severally, shall pay civil penalties in the amount of \$1,000,000.00.

Injunction

137. “An injunction is an extraordinary and discretionary equitable remedy” which is designed to prevent future harm. *May Dep’t Stores Co.*, 863 P.2d at 978. The CCPA specifically authorizes the district court to enjoin a person from engaging in deceptive trade practices. § 6-1-110(1).

138. As set forth above, the Court concludes Defendants engaged in a pattern and practice of deceptive conduct and that Defendant Shryock has the capacity and tendency to continue such conduct if not permanently enjoined. Indeed, the Court has twice found Defendant Shryock in contempt of court for failing to abide by the July 8, 2013 Preliminary Injunction which enjoined him from engaging in charitable solicitation and related practices.

139. Defendants do not object to the issuance of a permanent injunction. *See* ¶ 6, at pg. 2 *supra*. Additionally, Defendants previously stipulated to injunctive terms which are substantively similar to those proposed here.

140. Accordingly, in order to prevent Defendant Shryock from using or employing deceptive trade practices, this Court concludes that it is in the public interest to permanently enjoin Defendant Shryock and any other persons or entities acting under his control or in concert or participation with him, including the corporate Defendants in this matter, from:

- a. Engaging in or conducting any “charitable sales promotion,” as that term is defined in the CCSA, Colo. Rev. Stat. § 6-16-103(3);
- b. Making any charitable solicitations on behalf of any charitable organization, as defined in C.R.S. § 6-16-103(1);
- c. Establishing, directing, facilitating, overseeing, funding, consulting on or otherwise engaging in any managerial or oversight activities relating to solicitation on behalf of, or in concert with, any charitable organization;
- d. Overseeing the collection or disbursement of funds by any organization which engages in solicitation on behalf of, or in concert with, any charitable organization;
- e. Advertising, promoting, soliciting for employees or hiring on behalf of any organization which engages in solicitation on behalf of, or in concert with, any charitable organization;
- f. Benefiting financially, either directly or indirectly, from any relationship with any organization which engages in solicitation on behalf of, or in concert with, any charitable organization, including, but not limited to, accepting compensation for providing or facilitating the purchase of merchandise;
- g. Operating, forming, founding, or establishing any charitable organization;
- h. Acting as a director, officer, trustee, compensated employee, or professional fundraising consultant of any charitable organization;
- i. Directing, facilitating, overseeing, funding, consulting on or otherwise engaging in any managerial or oversight activities for any charitable organization including, but not limited to, having involvement in the collection or disbursement of funds;
- j. Recruiting directors for the governing board of a charitable organization;
- k. Overseeing the operational finances of any charitable organization; and
- l. Benefiting financially, either directly or indirectly, from any relationship with any charitable organization.

Attorney’s Fees

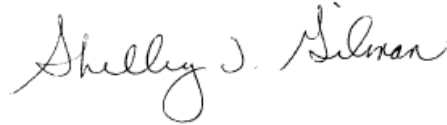
141. Section 6-1-113(4), provides that attorney fees and costs are mandatory when the Colorado Attorney General successfully enforces the CCPA: “Costs and attorney fees *shall* be

awarded to the attorney general . . . in all actions where the attorney general . . . successfully enforces this article.” (Emphasis added). As indicated by the awards of injunctive relief, civil penalties, restitution, and disgorgement of unjust enrichment, the Colorado Attorney General has successfully enforced the CCPA and is entitled to all reasonable attorney fees and costs.

142. The Colorado Attorney General, on behalf of the State, shall provide, within fourteen days of the date of this Order, an affidavit of attorney fees and costs. This Court concludes that recovery of fees for governmental prosecution should be calculated at market rate. *Balkind v. Telluride Mountain Title Co.*, 8 P.3d 581, 588 (Colo. App. 2000).

DATED: March 18, 2015

BY THE COURT:

A handwritten signature in cursive script that reads "Shelley I. Gilman". The signature is written in black ink and is positioned above a solid horizontal line.

SHELLEY I. GILMAN
District Court Judge