

1 6. Christopher A. Benson

2 7. John L. Olsen

3 The Court reviewed portions of the deposition testimony of:

4 1. Susan Atwood

5 2. James Bradshaw

6 3. Dorothy Clawson

7 4. Michael Clawson

8 5. Chris Conger

9 6. Edward Corcoran

10 7. Judy Corcoran

11 8. Diane Fogelman

12 9. Chris Garrett

13 10. Mitchell Johnson

14 11. Myrna Lindenthal

15 12. John Long

16 13. Charles Loper III (in his capacity as a CR 30(b)(6) witness on behalf
17 of CLA USA, Inc.)

18 14. Chares Loper III (in his capacity as a CR 30(b)(6) witness on behalf of
19 CLA Estate Services, Inc.)

20 15. Joel Martin

21 16. David Nelson

22 17. James Ottosen

23 18. Robert Schmidt

24 19. David Van Winkle

25 20. Janice Ward

26 The Court admitted approximately 141 exhibits.

1 Based upon the court file and records and the evidence and testimony
2 presented at trial, the Court makes the following Findings of Fact and
3 Conclusions of Law.

4 **I. FINDINGS OF FACT**

5 1. The Plaintiff State of Washington brought this action against
6 Defendants seeking injunctive and declaratory relief, restitution, civil penalties,
7 and its attorneys' fees and costs under the Consumer Protection Act (CPA), RCW
8 19.86, pursuant to the enforcement authority of the Attorney General of the State
9 of Washington under RCW 19.86.080 and RCW 19.86.140. Plaintiff also seeks
10 relief under the Estate Distribution Documents Act (EDDA), RCW ch. 19.295.

11 2. Defendants CLA Estate Services, Inc. (CLA ESI), and CLA USA, Inc.
12 (CLA USA) (collectively, CLA or Defendants) are Texas corporations registered to
13 do business in Washington.

14 **A. Estate Planning Seminars**

15 3. CLA began offering free estate-planning seminars for seniors in
16 Washington in 2008. Answer ¶¶ 5.11-5.13; Ex. 454. CLA promoted its seminars to
17 seniors at or near retirement age or older and included a free meal as an
18 enticement. Answer ¶¶ 5.9-5.13.

19 4. CLA's estate-planning seminars were led by CLA representatives
20 who were not licensed to practice law. Answer ¶ 5.19; Compton Testimony (Nov.
21 16, 2020).

22 5. At its estate-planning seminars, CLA's presenters distributed to
23 attendees and taught from a workbook titled "CLA 'Lifetime Estate Plan.'" Answer
24 ¶ 5.15; Compton Testimony (Nov. 16, 2020); Joel Martin Dep. at 35:25-36:1; *see*
25 Ex. 421.

1 6. CLA provided its presenters with a script to follow at CLA's estate-
2 planning seminars. Ex. 483. CLA expected its presenters to follow the script and
3 use the workbook as an outline in making their presentations, and the presenters
4 did so. Compton Testimony (Nov. 16, 2020); Schmidt Testimony (Nov. 24, 2020);
5 Joel Martin Dep. at 35:20-36:11.

6 7. CLA's workbook and accompanying script promoted CLA's Lifetime
7 Estate Plan and focused on the supposed dangers associated with probate that
8 could be avoided with a living trust. Ex. 421.

9 8. CLA's seminar presenters received no salary from CLA and relied
10 entirely for compensation on the commissions they received from selling the Plans.
11 Compton Testimony (Nov. 16, 2020).

12 9. CLA expected its presenters to sell a minimum of three Lifetime
13 Estate Plans per week, and preferred six sales per week. *Id.*; Ex. 417 at CESI
14 031993. Seminar presenters could lose their positions if they did not meet these
15 sales expectations. Compton Testimony (Nov. 16, 2020). Accordingly, CLA
16 presenters were highly motivated to sell as many Lifetime Estate Plans as
17 possible at each workshop.

18 10. CLA admits that 1,765 consumers attended CLA's estate-planning
19 seminars in Washington since November 3, 2015. Ex. 454.

20 **1. Deception Regarding Probate and Trust Law**

21 11. The Court previously granted Plaintiff's motion for partial summary
22 judgment, Dkt. No. 135, regarding CLA's representations relating to trusts and
23 probate. The Court ruled that CLA violated the CPA during its estate-planning
24 seminars and one-on-one meetings with consumers by misrepresenting probate
25 law, trust law, federal law, and the relative advantages of estate-planning
26 methods in Washington, and by creating a deceptive net impression that a

1 revocable trust is necessary to protect assets and heirs. Dkt. No. 171 (Order dated
2 July 19, 2019). The Court also determined that “[e]ach deceptive act or practice is
3 a separate violation of the CPA.” *Id.*

4 12. The misrepresentations presented in Plaintiff’s motion for partial
5 summary judgment included:¹

6 a. CLA does not accurately portray the probate process in
7 Washington at its workshops. Dkt. No. 66 at ¶¶ 15-48; Dkt. No. 56 (Declaration of
8 Jamie Clausen) at ¶¶ 7-22

9 b. Although probate procedures in some states may be
10 complicated and expensive, Washington has one of the simplest and most efficient
11 probate processes in the country. Dkt. No. 66 (Declaration of Steven Schindler) at
12 ¶ 10. Courts in Washington may appoint an executor and grant letters
13 testamentary with modest fees and no waiting period or hearing, and can grant an
14 executor broad authority to administer estates without prior court approval. RCW
15 11.68.011(1); RCW 11.68.041(1); Dkt. No. 66 at ¶ 11.

16 c. Unlike some other states, Washington does not impose probate
17 administration fees based on a statutory fee schedule. Dkt. No. 66 at ¶ 13.
18 Instead, it entitles the personal representative to fees approved by the decedent or
19 to reasonable fees. *Id.*; RCW 11.48.210. This is similar to the process that applies
20 to the fiduciary fees for the trustee of a revocable trust, who is entitled either to
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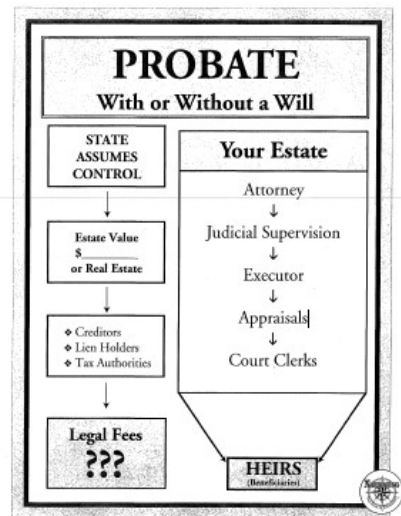
26 ¹ The facts presented in Plaintiff’s motion for partial summary judgment are recited in this paragraph and its subparts for their relevance to the Court’s remedies determination, as the Court has already made its liability findings regarding these facts.

1 the fee set in the trust agreement or reasonable fees subject to court approval.

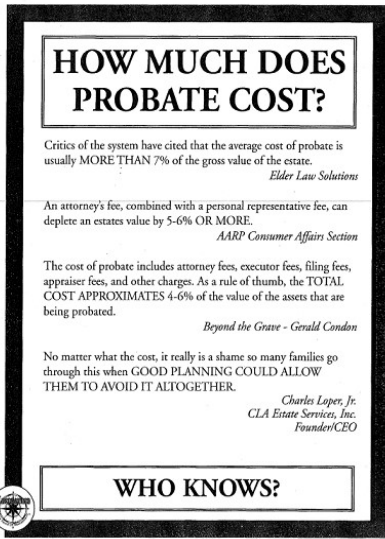
2 Dkt. No. 66 at ¶ 13; RCW 11.98.070(26); RCW 11.97.010.

3 d. Each CLA workbook contains a page identical or substantially
4 similar to the image below right, graphically representing that the probate process
5 significantly reduces the estate value available to distribute to heirs, and that in
6 probate, the state assumes control; creditors, lien holders, and tax authorities are
7 paid first; the process requires attorneys, judicial supervision, an executor,
8 appraisals, and court clerks; and heirs come last. Ex. 421 at CESI 000031. But
9 this image is misleading with regard to probate in Washington, where most
10 estates have little or no involvement of judges or court clerks. Dkt. No. 66 at ¶¶
11 16, 33. Washington probate does not require appraisals, but they may be used to
12 establish a stepped-up basis for assets whether the estate is administered in
13 probate or with a revocable living trust. Dkt. No. 56 at ¶ 12. Whether appraisals
14 are necessary depends on the nature of the assets and beneficial interests, not
15 whether a will or revocable trust is employed. Dkt. No. 66 at ¶¶ 16, 33. Executors
16 in probate serve effectively the same function

17 that trustees of revocable trusts serve, and
18 either may be advised by attorneys whose fees
19 are determined on a similar basis. *Id.* The
20 statement “STATE ASSUMES CONTROL” in
21 all capital letters on this page is not accurate
22 in Washington, where there is no state
23 intervention or involvement in settling a will
24 in probate. Dkt. No. 56 at ¶ 12.



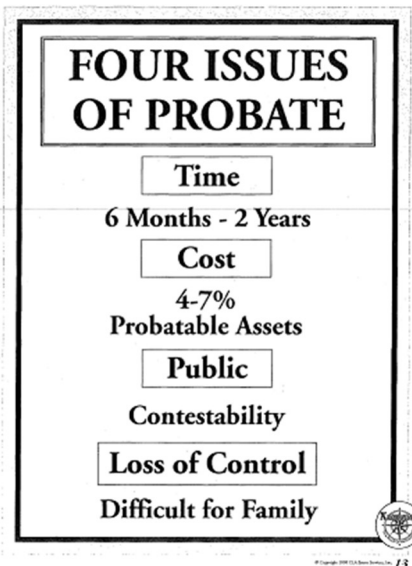
1 e. CLA's workbook also contains a page posing the question (in
2 all capital letters) "HOW MUCH DOES PROBATE COST?" and answering "WHO
3 KNOWS?" at the bottom of the page. Ex. 421 at CESI 000032. The page contains
4 quotes that purport to be from authorities such as "Elder Law Solutions" and



5 "AARP Consumer Affairs Section" stating that the
6 cost of probate is "MORE THAN 7% of the gross
7 value of the estate," that an attorney's fee
8 combined with a personal representative's fee "can
9 deplete an estate[]s value by "5-6% percent OR
10 MORE," and that the "TOTAL COST
11 APPROXIMATES 4-6% of the value of the assets
12 that are being probated." *Id.* These statements are
13 followed by a quote from CLA's founder that
14 "GOOD PLANNING COULD ALLOW THEM TO

15 AVOID IT ALTOGETHER," *id.*, presumably referring to the probate process or its
16 costs. These statements vastly overstate the general cost of probate
17 administration in Washington. Dkt. No. 66 at ¶ 36. While some states have
18 statutory fee schedules based on a percentage of estate assets, Washington does
19 not follow that approach. Dkt. No. 66 at ¶¶ 17, 36; Dkt. No. 56 at ¶ 13. Most of the
20 fees that contribute to the cost of probate administration in Washington, such as
21 tax return preparation fees, legal fees, fiduciary fees, and appraisal fees, cannot be
22 avoided with revocable trust planning. Dkt. No. 66 at ¶¶ 17, 36; Dkt. No. 56 at ¶
23 13. CLA's materials nowhere indicate that such costs are involved when a
24 consumer sets up a revocable trust.

1 f. CLA's workbook also includes a page titled "FOUR ISSUES
2 OF PROBATE." Ex. 421 at CESI 000033. The first issue is "time," and the
3 workbook indicates that probate takes six months to two years. *Id.* In Washington,
4 revocable living trusts are not necessarily administered in less time than probate
5 because both trust and probate administration require the same time-consuming
6 tasks of resolving debts, paying taxes, and collecting, valuing, managing and
7 distributing property. 26 U.S.C. § 6012(b)(1), (4); RCW 19.36.020; RCW



8 11.42.085(1); RCW 11.44.015; RCW 11.48.020;
9 RCW 83.100.050; RCW 11.68; Dkt. No. 66 at ¶ 12;
10 Dkt. No. 56 at ¶¶ 17-18. The two primary reasons
11 for delay in distribution of an estate are resolving
12 the decedent's debts and resolving estate tax
13 liabilities. Dkt. No. 66 at 19. Both estate executors
14 and trustees of revocable trusts may make interim
15 distributions of estate assets before these matters
16 are resolved, but both do so at the risk of personal
17 liability. *Id.*

18 g. The workbook identifies cost as the second "issue of probate,"
19 and indicates that the cost will be 4 to 7 percent of probatable assets. For the
20 reasons explained above, this significantly overestimates the cost of probate in
21 Washington.

22 h. The page lists "public" as the third issue of probate and
23 suggests probate raises "contestability" concerns. However, revocable living trusts
24 are not necessarily more private, nor are they invulnerable to challenge. Dkt. No.
25 56 at ¶ 15. In Washington, little is publicly disclosed in probate except the terms
26 of the will. Dkt. No. 66 at ¶¶ 21, 41. Estate inventories are not required to be filed

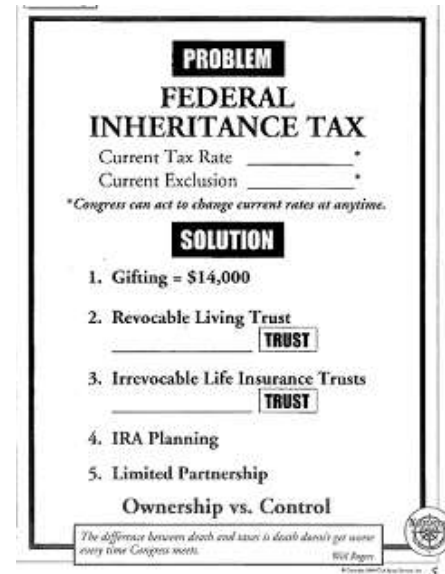
1 publicly. *Id.* An inventory must be provided only to specific parties such as heirs,
2 beneficiaries and creditors, and only upon written request. Dkt. No. 56 at ¶ 19.
3 Similarly, a trustee must provide a copy of a revocable living trust to beneficiaries
4 and immediate family members after a trustor’s death and provide an inventory
5 or accounting if requested. *Id.* Both probate and revocable trust administration
6 are “contestable” in the sense that beneficiaries or creditors may object to a
7 component of the probate or trust administration, in which case some aspects may
8 become public in litigation proceedings. Dkt. No. 66 at ¶¶ 21, 41. Regardless of
9 whether an estate is administered through a revocable trust or probate, some
10 aspects may become public if beneficiaries or creditors contest the administration.
11 Dkt. No. 66 at ¶¶ 21-22; Dkt. No. 56 at ¶¶ 15-16.

12 i. CLA’s workbook identifies “loss of control” as the fourth issue
13 of probate, which is purportedly “difficult for family.” Ex. 421. This is contrasted
14 with revocable living trusts on a subsequent workbook page, which states in large
15 capital letters “REVOCABLE LIVING TRUST,” “YOU CONTROL
16 DISTRIBUTION,” and “YOUR SUCCESSOR TRUSTEE (distributes as per your
17 direction).” *Id.* In Washington, the probate process does not strip a family of any
18 more control than the appointment of a successor trustee of a revocable trust. Dkt.
19 No. 66 at ¶¶ 22, 42. The decedent may designate family members or independent
20 fiduciaries as either personal representatives in a will or trustees in a revocable
21 trust. Just as a personal representative controls the probate administration, a
22 trustee controls the administration of revocable trusts, and each owes the same
23 fiduciary duties to a decedent. *Id.* Indeed, probate may be easier rather than more
24 difficult for families than administration of a revocable trust because the personal
25 representative typically obtains letters testamentary shortly after filing that may
26 be presented to a bank or other financial institution to manage the asset or

1 account. Dkt. No. 56 at ¶ 16. These institutions often require the trustee
2 administering a revocable trust to use the institution’s forms, which may require
3 the trustee to consult an attorney. *Id.*

4 j. CLA’s workbook also inaccurately suggests a revocable trust is
5 a “SOLUTION” to the “PROBLEM” of federal
6 inheritance tax. Ex. 421 at CESI 000025. There is
7 no tax on the inheritance of assets (hence no
8 federal inheritance tax). Both Washington and
9 federal law provide for an estate tax, and there are
10 several estate planning techniques to reduce the
11 tax burden on an estate. Dkt. No. 66 at ¶¶ 25, 44.
12 Some of these techniques, such as annual
13 exclusion gift planning and planning with
14 irrevocable trusts, are mentioned on the page, but
15 revocable trust planning to avoid probate offers no meaningful tax savings that
16 cannot also be attained using a will. Dkt. No. 66 at ¶ 25.

17 k. CLA’s workbook also indicates that a revocable living trust
18 will avoid guardianship in the event of incapacity and “eliminate[s] court control.”
19 Ex. 421 at CESI 000029. In actuality, revocable trusts alone do not fully protect
20 one who becomes incapacitated or avoid guardianship. Dkt. No. 66 at ¶¶ 44-46;
21 Dkt. No. 56 at ¶ 11. Indeed, a revocable living trust may be a poor vehicle for
22 avoiding guardianship because it does not allow the trustee to manage all of the
23 incapacitated individual’s income (such as income from social security or a
24 pension) or assets (such as individual retirement accounts or 401(k) accounts,
25 which cannot be put into a revocable trust during the trustor’s lifetime). Dkt. No.
26 56 at ¶ 11. CLA’s workbook does not mention the use of durable powers of



attorney, which are the most common means of avoiding guardianship. Dkt. No. 66 at ¶¶ 28, 45-46; Dkt. No. 56 at ¶ 11.

1. CLA repeats and summarizes the inaccuracies discussed above

YOU DECIDE	
YOUR WILL	YOUR TRUST
Begins at Death	Begins TODAY
State/Court Control	You Control
Public	Private
Average One Year to Settle	Assets Available Immediately
Family Vulnerable to Probate	Family Protected
WORRY	PEACE OF MIND

In a moment of decision, the best thing you can do is the right thing to do. The worst thing you can do is nothing.
Theodore Roosevelt

on a page titled “YOU DECIDE” that consists of a table comparing wills and trusts. Ex. 421 at CESI 000043. According to the chart, a will results in state/court control, is public, takes an average of one year to settle, and leaves the family “vulnerable to probate.” A trust, in contrast, is represented as being controlled by the consumer, private, allowing assets to become available immediately, and leaving the family protected.

The word “WORRY” in large type summarizes the will column, while “PEACE OF MIND” in large type summarizes the trust column. The following quote, purporting to be from Theodore Roosevelt, appears at the bottom of the page: “In a moment of decision, the best thing you can do is the right thing to do. The worst thing you can do is nothing.” *Id.* CLA’s workbook leaves consumers with the net impression that a revocable trust is preferable regardless of individual circumstances.

m. Another type of summary appears toward the end of the workbook. Ex. 421 at CESI 000060. This summary page contains a table comparing estate planning alternatives (intestate, payable on death, joint tenancy, will, properly funded living trust) on whether they avoid probate,

Estate Planning Alternatives					
	Intestate (No Plan)	Payable on Death (POD)	Joint Tenancy	Will	Properly Funded Living Trust
Avoids Probate	No	Sometimes	Sometimes	No	Yes
Avoids Guardianship (Conservatorship)	No	No	No	No	Yes
Maximizes Tax Savings	No	No	No	No	Yes
Provides Family Privacy	No	Sometimes	Sometimes	No	Yes
Prevents Attachment of Beneficiary's Assets	No	No	No	No	Yes

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1 avoid guardianship, maximize tax savings, provide family privacy, and prevent
 2 attachment of beneficiary's assets. With the words "Yes," "No," and "Sometimes,"
 3 the table purports to indicate which of these benefits applies to each estate
 4 planning alternative. The word "Yes" appears in the table only in relation to a
 5 "Properly Funded Living Trust," and indicates that every listed benefit applies
 6 only to living trusts and is always available with a living trust. As explained
 7 above, this table misrepresents Washington law, the Washington probate process,
 8 and the relative benefits of revocable living trusts in Washington.

9 n. Finally, the workbook offers a decision point. On a page with
 10 "YOU DECIDE" at the top, the characteristics of planning with a will and

11

YOU DECIDE	
Plan with Will or Nothing in place	CLA's Lifetime Estate Plan with Revocable Living Trust
Attorney Fees, Court Cost and related Probate Expenses	Assets in Trust DO NOT go through probate
Guardianship Cost \$2,000 - \$10,000 Per Year	Assets in Trust ARE NOT exposed to Guardianship
Emotional Cost to Family	Family Protected
Total Cost	Lifetime Estate Plan
_____	_____

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11 planning with CLA's Lifetime Estate Plan with a
 12 revocable living trust are compared. Ex. 421 at
 13 CESI 000049. According to CLA, a will entails
 14 attorney fees, court costs and related probate
 15 expenses, guardianship costs of \$2,000 to \$10,000
 16 per year, and emotional cost to the family. In
 17 contrast, planning with a revocable living trust
 18 means that assets do not go through probate,
 19 assets are not exposed to guardianship, and the
 20 family is protected. These descriptions of the

21 relative benefits of revocable living trusts are not accurate and are materially
 22 misleading for the reasons set forth above. CLA used these deceptive tactics to
 23 induce attendees at its seminars to purchase a CLA Lifetime Estate Plan with a
 24 revocable living trust.

1 **2. Offering to Gather, and Gathering, Information for Estate**
2 **Distribution Documents**

3 13. After alarming consumers about probate and the necessity of
4 revocable living trusts during its estate-planning seminars, CLA marketed and
5 sold its Lifetime Estate Plan as the solution, touting it as a full-service estate
6 planning package in which CLA would assist consumers in estate planning to
7 protect their assets and heirs, ensure their estate passes to their heirs, provide
8 access to attorneys to draft estate documents, and support and coordinate the
9 work of the attorneys. Ex. 421 at CESI 000021, 000023, 000045-47.

10 14. CLA’s workbook states that CLA’s Lifetime Estate Plan includes
11 regular meetings with CLA representatives to review and update estate
12 distribution documents, including a three-month review and annual reviews
13 “throughout [the] lifetime of the Estate Plan to ensure the plan is kept up to date
14 with tax, financial and family changes.” Ex. 421 at CESI 000046.

15 15. Page 1 of CLA’s workbook represents that CLA “[c]oordinates non-
16 legal services along with legal services provided by independent attorneys into a
17 Lifetime Estate Planning Package,” and that CLA “[c]oordinate[s], through an
18 independent attorney, the implementation of the client’s Estate Planning
19 documents.” Ex. 421 at CESI 000021. CLA ESI Vice President John Long testified
20 that CLA’s coordination of the non-legal aspects of a client’s estate plan included
21 gathering the information the attorney needed to create “a good estate plan.” Long
22 Dep. at 49:9-49:18.

23 16. CLA’s workbook states on page 25 that CLA’s “independent” referral
24 attorneys will provide the following services: (1) “Evaluate client needs and
25 recommend appropriate documents i.e. (*Will, Revocable Living Trust, Etc.*),”
26 (2) “Preparation of client’s legal documents to include all legal changes within the

1 first year,” (3) “Deed preparation for two in-state properties,” (4) “Document
2 preparation,” and (5) “Lifetime consultation regarding client’s Estate Planning
3 documents.” Ex. 421 at CESI 000046.

4 17. The script that CLA’s presenters follow for page 25 of the workbook
5 states: “I want to show you the Legal Services Provided By Estate Planning
6 Attorneys as a part of this plan.” Ex. 483 at CLA_ESI001391. The script directs
7 agents to explain:

8 As a part of your Complete Estate Plan, your attorney,
9 in addition to basic document preparation, will include
10 the following Extended Legal Services. You will receive
11 lifetime consultation concerning Estate Planning
12 documents. That means that anytime in the future, if
13 you have questions or concerns about your plan, your
14 consultation is done at no charge. Any changes to your
15 documents within the first year are done at no cost to
16 the client. Folks, this is a great benefit.

13 *Id.*

14 18. The script directs agents to tell clients that “the attorney does the
15 legal work . . . CLA does the leg work.” Ex. 483 at CLA_ESI001393.

16 19. After the seminar presentation, the CLA’s presenter, who is also
17 CLA’s sales representative, would offer to meet one-on-one with each workshop
18 attendee for a “complimentary review of your personal situation,” either
19 immediately following the workshop or shortly after the workshop at the
20 consumer’s home. Ex, 421 at CESI 000053.

21 20. When a consumer decided to purchase CLA’s Lifetime Estate Plan,
22 the CLA sales representative reviewed and completed a series of forms with the
23 consumer that CLA later provided to the referral attorney. First, the sales
24 representative worked with the client to complete a Client Information Form that
25 identified the client’s name, contact information, emergency contacts, reasons for
26

1 purchasing the Lifetime Estate Plan, value of the estate, and number of real
2 estate holdings. *E.g.*, Exs. 135, 176.

3 21. CLA sales representatives also reviewed and completed with
4 consumers a disclosure form that identified CLA's services and authorized CLA to
5 provide the consumer's information to the referral attorney, an authorization form
6 allowing the referral attorney to contact the client, and a form identifying the
7 consumer's workshop salesperson, client services coordinator, and referral
8 attorney. *E.g.* Exs. 135, 663.

9 22. CLA charged approximately \$2,500 to \$3,000 for the Lifetime Estate
10 Plan after a "discount" CLA typically provided to seminar attendees to encourage
11 them to promptly purchase the Plan. *See Answer* ¶ 5.29.

12 23. As detailed in Plaintiff's Motion for Partial Summary Judgment, Dkt.
13 No. 135, CLA continued to gather information for use in the preparation of a
14 client's estate distribution documents after its agents completed the Client
15 Information forms. This included gathering additional information and documents
16 needed by referral attorneys to prepare consumers' estate distribution documents,
17 such as copies of deeds or more detailed information about assets and
18 beneficiaries throughout the referral attorney's representation of the client.

19 24. The Court has already determined that CLA's conduct as established
20 in Plaintiff's first motion for partial summary judgment violated the Estate
21 Distribution Documents Act, RCW ch. 19.295, and the Consumer Protection Act,
22 RCW ch. 19.86. This conduct included (1) offering to gather information for the
23 preparation of estate distribution documents when CLA represented that would
24 support and coordinate with consumers' attorneys by collecting information for the
25 attorneys' use in preparing consumers' estate distribution documents;
26 (2) gathering information for the preparation of estate distribution documents

1 after consumers purchased CLA’s Lifetime Estate Plan through the completion of
2 Client Information forms; and (3) gathering information during in-home delivery
3 and review meetings about changes needed to the client’s estate documents, and
4 preparing Change Forms for attorneys describing these changes. Dkt. No. 135
5 (State’s Motion for Partial Summary Judgment); Dkt No. 171 (Order dated July
6 19, 2019). Violations of the EDDA are *per se* violations of the CPA. RCW
7 19.295.030. The Court ruled that each EDDA violation is a separate violation of
8 the CPA. Dkt. No. 171 (Order dated July 19, 2019).

9 25. CLA was put on notice that its practices could violate Washington
10 law by attorney Caroline Suissa-Edmiston, who declined to receive referrals after
11 attending a CLA workshop and concluded that CLA’s business model could violate
12 Washington law. Suissa-Edmiston Testimony (Nov. 16, 2020). After making this
13 determination, the attorney sent a letter to Chris Conger, then Senior Director for
14 CLA Estate Services, recommending that CLA “check into RCW 19.295 to make
15 sure that you are in compliance with Washington Law.” Ex. 485. Mr. Conger
16 testified that he did not recall any changes being made to CLA practices after he
17 received the letter. Conger Dep. at 101:4-101:13.

18 26. CLA sold 210 Lifetime Estate Plans in Washington since November
19 3, 2015. Ex. 454. CLA received \$2,565,626 in revenue from sales of its Lifetime
20 Estate Plan during the time it did business in Washington from 2008 to 2018. *Id.*
21 Accordingly, CLA completed at least 210 Client Information Forms.

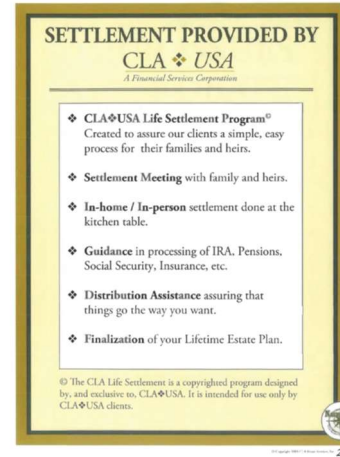
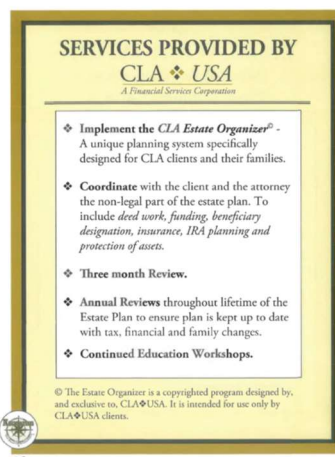
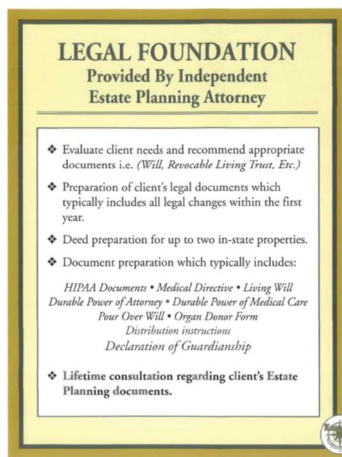
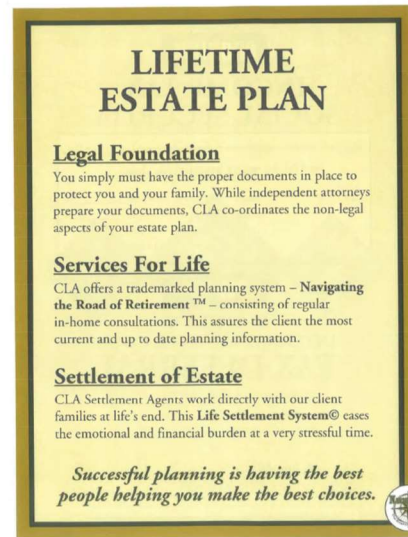
22 **3. Deceptive Marketing of In-Home Meetings**

23 27. CLA did not clearly explain to seminar attendees that CLA
24 representatives who conducted promised in-home review meetings were licensed
25 insurance agents, working on commission, who, in addition to gathering
26 information to ensure the estate plan was up to date, would use the in-home

1 consultations to learn about consumers' assets
2 and market annuities to them. Compton
3 Testimony (Nov. 16, 2020); *see* Dkt. No. 23
4 (Answer) ¶¶ 5.40-5.44 (admitting CLA
5 insurance agents discussed consumers' financial
6 planning, changes to estate plans, and whether
7 the estate plan was up to date at review
8 meetings).

9 28. CLA's workbook contains several
10 pages describing the robust estate planning
11 services CLA promised to provide through the Lifetime Estate Plan. Page 3
12 introduces the Plan as including a "Legal Foundation," "Services for Life," and
13 "Settlement of Estate." Ex. 421 at CESI 000023.

14 29. Pages 25, 26 and 27 of the workbook describe in more detail each of
15 these services. The "Legal Foundation Provided By Independent Estate Planning
16 Attorney" included evaluating client needs and recommending appropriate



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25 documents, preparation of legal documents, deed preparation, document
26 preparation and Lifetime consultation regarding the client's estate planning

1 documents. Ex. 421 at CESI 000045. The “Services Provided By CLA USA”
2 included implementing the CLA Estate Organizer, coordinating with the client
3 and the attorney the non-legal part of the estate plan, three month review
4 meetings, annual review meetings throughout the lifetime of the estate plan “to
5 ensure plan is kept up to date with tax, financial and family changes,” and
6 continued education workshops. Ex. 421 at CESI 000046. The “Settlement
7 Provided by CLA” included a life settlement program, settlement meeting with
8 family and heirs, “in-home/in-person settlement done at the kitchen table,”
9 “guidance in processing of IRA, pensions, social security, insurance, etc.,”
10 distribution assistance, and finalization of the Lifetime Estate Plan. Ex. 421 at
11 CESI 000047.

12 30. The workbook script associated with page 26 of the workbook
13 describes the person who will come to consumers’ homes as “a CLA financial
14 planner” who can “help you in many ways including financial guidance, tax
15 evaluation, long term health planning, and legacy planning.” Ex. 483 at
16 CLA_ESI001393. The script makes no mention that the person who will come to
17 consumers’ homes will be an insurance agent coming to sell annuities.

18 31. The script for page 26 also offered to gather information for the
19 preparation of estate distribution documents at delivery, 90-day and review
20 meetings:

21 [Y]our CLA Planner will be coordinating the legal work
22 done by your attorney. If you have chosen a Revocable
23 Living trust as your legal foundation we will bring it to
24 your home, notarize it, and go over everything with you.
25 This will be done under the direction of the estate
26 planning attorney who prepared the documents. I like to
put it this way. The attorney does the legal work. CLA
does the leg work. Does that make sense? Do you
remember earlier when I told you about how important
it is to get your assets funded into your trust[?] Your
CLA planner will do that work with you. We will help
you with the deed work done by your attorney. We will

1 help with all your financial accounts, your insurance,
2 your IRAs and any other things that are included in
3 your estate. By the way. Do you think a typical
4 document preparing attorney will do all of this for you?
5 Of course not.

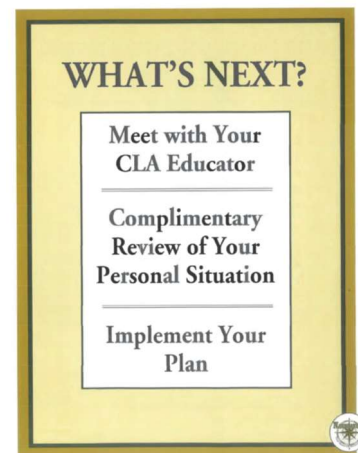
6 Three months after we deliver your documents we are
7 going to come back out to your home for a Review. Why
8 do you think we do that? Just to make sure nothing was
9 left out and everything is going smoothly. Also, you
10 might need to fine tune your wishes and directions at
11 that time. Does that make sense?

12 Finally, there is a[n] Annual Review. Many of our
13 clients feel that this might be the most important thing
14 CLA does for them. This annual review will be
15 conducted in your home, every year, by a CLA financial
16 planner. These folks can help you in many ways
17 including financial guidance, tax evaluation, long term
18 health planning, and legacy planning. They will help
19 you keep your planning on the right track.

20 Ex. 483 at CLA_ESI001392-93.

21 32. CLA seminar presenter Nyren Compton testified that he did not
22 discuss the sale of annuities when he was discussing any of these workbook pages
23 related to CLA's services. Testimony of Nyren Compton (Nov. 16, 2020).

24 33. The workshop script used by CLA's
25 presenters ended with page 33 of the workbook, a page
26 entitled "What's Next?" Ex. 421 at CESI 000053; Ex.
483 at CLA_ESI001399. The script concludes with the
presenter stating for those ready to get started: "I will
gather some basic information on behalf of the estate
planning attorney in order for him to start the process.
Is everybody with me? OK. Let's pull out that sheet we
looked at right before our break." Ex. 483 at
CLA_ESI001399.



1 34. CLA’s workbook contains only two references to insurance. The
2 seventh of eight bullet points on page 1 of the workbook mentions that CLA
3 “[o]ffers full line of insurance and related products to assist client in the protection
4 and preservation of their estate.” Ex. 421 at CESI 000021. But the script for this
5 page of the workbook describes the CLA agents who will conduct in-home
6 meetings as “financial professionals that perform the service work and settlement
7 assistance for my clients” and does not disclose that they are insurance agents
8 working on commission. Ex. 483 at CLA_ESI001378. In addition to performing
9 service work and settlement assistance, the script states that these financial
10 professionals will “work with the attorneys to implement your plan,” “give you a
11 complete review of your financial situation including things like budgeting,
12 income planning, and asset protection,” “can offer you a full line of insurance
13 products if you have a need,” “[t]hings like long-term care insurance, life
14 insurance, final expense insurance, and various type of annuity products,” and
15 “also provide all manners of legacy planning and end of life guidance to our
16 clients’ families.” *Id.* Like the workbook page, the script embeds the mention of
17 insurance in a broad list of estate planning services and presents it only as
18 something that can be offered if needed, not as something that must occur for
19 CLA’s agents to make a living.

20 35. The second reference to insurance in the workbook is on page 34,
21 after the last page addressed in the workshop script. Ex. 421 at CESI 000054. But
22 this page simply lists purported benefits of annuities under the title “Asset
23 Preservation Provided by CLA.” and says nothing that would alert a consumer
24 that the CLA representative conducting in-home meetings would be an insurance
25 agent working almost exclusively on commission.

1 36. Nyren Compton testified that he typically spent 30 seconds or less on
2 this page, out of the 2.5-3 hours that the seminars typically lasted, and that it was
3 the only time he would mention annuities during the seminar. Compton
4 Testimony (Nov. 16, 2020). Mr. Compton testified that he never told consumers
5 that CLA USA agents would try to sell them insurance at the in-home meetings.
6 *Id.*

7 37. Consumers testified that insurance and annuities were not discussed
8 at the seminars. *E.g.*, Ottosen Dep. at 15:25-16:2 (“Q. Was there any reference
9 during the seminar to insurance or annuities? A. No.”); Clawson Dep. at 24:24-
10 25:1 (“Q. On that point during the seminar, was there any reference to insurance
11 or annuities? A. No.”).

12 38. Consumers did not understand that CLA sold insurance. Instead,
13 they believed CLA was offering estate plans that would avoid probate. *E.g.*,
14 Ottosen Dep. at 27:6-12 (“Q. What was your understanding of the services that
15 CLA was offering at the seminar? A. Just keep our children from going through
16 probate and have a will. Q. Is there anything else that you understood CLA to be
17 offering? A. No.”); Lindenthal Dep. at 92:6-93:10 (“[W]hen my husband and I
18 signed up for this we thought we were getting just say a trust, things put in a
19 trust. We never thought we would be changing anything as far as our
20 investments.”).

21 39. Consumers also did not understand that the in-home review
22 meetings CLA provided as part of the Lifetime Estate Plan would be conducted by
23 an insurance agent who would attempt to sell them annuities. *E.g.*, Ottosen Dep.
24 at 21:5-22:1 (“Q. Did you understand that CLA USA would talk to you about
25 insurance products? A. No.”); D. Clawson Dep. at 33:22-34:9 (“Q. Is [offering a full
26 line of insurance and related products] consistent with your understanding of

1 | what CLA USA was offering? A. No.”); Fogelman Dep. at 33:10-13 (“Q. Based on
2 | information you received from CLA, did you expect the CLA agents who came to
3 | your home to sell annuities to you? A. No.”).

4 | 40. Only after consumers participated in the hours-long estate-planning
5 | seminar and received CLA’s marketing materials and workbook that promised
6 | robust estate planning services did CLA have consumers sign a Consumer
7 | Information and Disclosure Agreement that stated in fine print that CLA agents
8 | “may discuss insurance solutions that would benefit planning” at in-home
9 | meetings. *See* Ex. 1005.

10 | 41. When shown the disclosure agreements they had signed, some
11 | consumers testified that this provision was not consistent with their expectations.
12 | Consumer James Ottosen, was asked whether a portion of a paragraph titled
13 | “Coordination of Services” in the disclosure form, which states “After your
14 | attorney completes your estate planning documents a CLA USA agent, who are
15 | licensed insurance representative [*sic*], will come to your home to assist you in
16 | implementing your estate plan, including notarization of necessary documents,”
17 | was consistent with his understanding. He testified “Didn’t know that.” Ottosen
18 | Dep. at 32:23-33:6. Similarly, when consumer Myrna Lindenthal was asked if the
19 | “Coordination of Services” paragraph was consistent with her understanding of
20 | CLA’s services, she testified “I – if you – I mean, when my husband and I signed
21 | up for this we thought we were getting just say a trust, things put in a trust. We
22 | never thought we would be changing anything as far as our investments.”
23 | Lindenthal Dep. at 92:6-93:10.

24 | 42. CLA USA’s Regional Manager David Nelson acknowledged that “no
25 | client bought a [Lifetime Estate Plan] to buy insurance or annuity; they bought it .
26 |

1 . . because they love someone, and they want to make sure their kids are fine.”

2 Nelson Dep. at 36:21-36:24.

3 **B. In-home Meetings**

4 **1. Delivery Meetings**

5 43. After a consumer purchased a Lifetime Estate Plan, a CLA referral
6 attorney prepared a revocable living trust and other estate documents. Benson
7 Testimony (Nov. 30, 2020). One of CLA’s insurance salespeople (none of whom
8 were attorneys) contacted the client to set up a delivery meeting to review and
9 notarize the estate documents and help the client transfer assets into the trust.
10 Gammel Testimony (Nov. 17, 2020).

11 44. CLA hired insurance agents who were not required to have any
12 expertise in estate planning, securities, or financial planning to conduct its in-
13 home meetings with consumers. Bradshaw Dep. at 23:16-24:11; Nelson Dep. at
14 21:3-21:14.

15 45. CLA’s agents conducted 219 delivery meetings since November 3,
16 2015. Ex. 455 (CR 30(b)(6) Supplemental Responses stating number of delivery
17 meetings was 221); Dkt. No. 188 at 4 (adjusting number of delivery meetings to
18 219).

19 46. CLA prepared a Delivery and Review Outline for its agents, which
20 listed tasks to perform and questions to ask clients at delivery and review
21 meetings. The information to be gathered from the clients was for the preparation
22 of their estate distribution documents. Ex. 397.

23 47. At delivery meetings, CLA agents reviewed estate documents with
24 the clients, inquired whether any changes or corrections were needed to the trust
25 documents, such as the names of trustees, successor trustees and beneficiaries, or
26 the terms of the trust, and notarized the trust documents. Gammel Testimony

1 (Nov. 17, 2020); Van Winkle Dep. at 71:17-73:10; Garrett Dep. at 72:14-73:11;
2 Conger. Dep. at 106:22-108:17; Bradshaw Dep. at 25:14-26:15. The agents also
3 asked clients to identify all assets comprising their estates, representing that this
4 information was needed to assist funding their trusts. Gammel Testimony (Nov.
5 17, 2020); Van Winkle Dep. at 71:17-73:10; Conger Dep. at 106:22-108:17;
6 Bradshaw Dep. at 25:14-26:15. If the attorney requested information and the
7 client was delaying in getting it to them, CLA agents would help collect the
8 information for the attorney. Conger Dep. at 83:19-83:25, 87:1-87:12.

9 48. Former CLA USA agent Alan Gammel testified that agents could
10 make some changes to trust documents on the spot, such as changing a name if a
11 fiduciary got married. Gammel Testimony (Nov. 17, 2020). For other changes,
12 agents completed a Change Form. *Id.*; *see, e.g.*, Ex. 492.

13 49. At delivery meetings, CLA's agents completed a Delivery Receipt that
14 required them to confirm that they had offered to gather or gathered various
15 information for the preparation of the client's estate distribution documents. The
16 Delivery receipt required the agent and client to sign a page confirming that they
17 had "verified that all applicable documents have been properly signed by all
18 parties, dated, initialed, and notarized," that all assets to be transferred to the
19 trust had been disclosed, that the client had received living trust warranty deeds
20 on all property to be placed in the trust, that any changes needed had been
21 submitted to CLA on a Change Form for processing, and that a deed request form,
22 if needed, had been filled out and submitted to CLA for processing. *E.g.*, Ex. 177.

23 50. CLA's agents used CLA's proprietary Road of Retirement software to
24 collect and discuss the client's asset information at each delivery and review
25 meeting. Johnson Dep. at 157:16-158:16; Van Winkle Dep. at 62:12-62:22; Garrett
26 Dep. at 78:12-78:16; Gammel Testimony (Nov. 17, 2020). CLA's training script

1 stated that the Road of Retirement enabled “CLA to confirm the assets funded to
2 the trust, to inspect the titles and beneficiaries on insurance and IRAs, and to
3 make sure everything is titled correctly to protect your family.” Ex. 414 at CUSA
4 000802. It produced a detailed profile of the consumer’s financial circumstances
5 and assets. Johnson Dep. at 157:16-158:16; Van Winkle Dep. at 62:12-62:22;
6 Gammel Testimony (Nov. 17, 2020).

7 51. Although CLA agents represented to consumers that the Road of
8 Retirement’s purpose was to gather information for estate planning purposes,
9 CLA expected its agents to use the Road to Retirement as a sales tool, to gather
10 lists of assets that could be moved into annuity products the agents sold to clients.
11 Johnson Dep. at 157:16-158:16; Van Winkle Dep. at 62:12-62:22; Gammel
12 Testimony (Nov. 17, 2020).

13 52. CLA agent Mitchell Johnson testified that assisting with and
14 delivering consumers’ estate documents caused consumers to place their trust in
15 him, which in turn allowed him to sell them insurance products. Johnson Dep. at
16 128:3-129:6; 130:9-130:12.

17 53. CLA’s customers confirmed that they put their trust in CLA.
18 Clawson Dep. 85:22-86:1; Fogelman Dep. at 18:4-12; Lindenthal Dep. at 39:2-7,
19 40:8-17.

20 54. No customers requested information about insurance products during
21 delivery meetings. Johnson Dep. at 130:17-130:21. CLA Regional Manager David
22 Nelson testified that: “No -- no client bought a service package to buy insurance or
23 annuity. They bought it to make sure – because they love someone, and they want
24 to make sure their kids are fine.” Nelson Dep. 36:17-36:24; *see also* Fogelman Dep.
25 at 33:10-33:13; Lindenthal Dep. at 15:17-16:3, 93:6-10; Clawson Dep. 38:23-39:4.
26

1 55. Consumers did not always understand that agents at delivery
2 meetings were acting as both estate planning agents and insurance sale
3 representatives. Johnson Dep. at 130:22-131:6.

4 56. CLA USA agent Mitchell Johnson testified that, in his experience,
5 clients sometimes assumed he was the attorney who prepared estate documents
6 because “to them, notarizing a legal document is a complicated thing and . . . you’d
7 have to explain . . . what [a] durable power of attorney was, health care directive. .
8 . . [s]o from their perspective, you were very knowledgeable and professional
9 regarding the legal documents and finances.” Johnson Dep. at 129:7-130:5.

10 57. Insurance agents benefited from CLA’s business model because it
11 provided “warm clients to visit.” Nelson Dep. at 36:9-36:24. In other words,
12 according to CLA Regional Manager David Nelson, CLA had clients expecting to
13 be seen every year, and “[t]he likelihood of them saying no to you once they’ve paid
14 for your free – your continued services is slim, so it’s a much easier call-to-
15 appointment ratio. . . .” Nelson Dep. at 52:3-52:14.

16 58. CLA agent Mitchell Johnson found delivery meetings to be the most
17 desirable meetings from a sales perspective. Johnson Dep. at 141:20-142:14. He
18 estimated that 65 percent of the “money generated” occurs at the delivery meeting
19 and within two weeks afterwards. Johnson Dep. at 143:6-143:12.

20 59. CLA paid its agents only \$25 to conduct delivery meetings. Ex. 189 at
21 WA-AG 0001841; Ex. 514 at CLA 002842; Van Winkle Dep. at 36:2-36:5; Johnson
22 Dep. at 143:19-143:21; Garrett Dep. at 56:16-56:25. At times, CLA’s agents would
23 spend hours driving to and from delivery and review meetings. Van Winkle Dep.
24 at 40:19-42:6. Any additional compensation an agent received was only through
25 commissions earned by selling annuities or other insurance products to the CLA
26

1 clients whose homes they visited. Van Winkle Dep. at 42:7-42:14; Conger Dep. at
2 28:3-28:9.

3 60. The clear and strong inference to be drawn from this compensation
4 scheme, coupled with the fact the CLA's agents were not required to have any
5 expertise in estate planning or financial planning, is that the sale of annuity
6 products to CLA's clients was CLA's overriding objective.

7 **2. Review Meetings**

8 61. CLA's Lifetime Estate Plan provided that approximately 90 days
9 after the delivery meeting, and annually thereafter, CLA representatives would
10 meet with clients in their homes with the stated purpose of determining whether
11 the client's trust had been properly funded and whether any changes were needed
12 to the client's estate distribution documents. Ex. 421 at CESI 000046; Ex. 483 at
13 CLA_ESI001392-93.

14 62. CLA's agents conducted 1,259 review meetings since November 3,
15 2015. Ex. 455 (CR 30(b)(6) Supplemental Responses stating number of review
16 meetings was 1,258); Dkt. No. 188 at 4 (adjusting number of review meetings to
17 1,259).

18 63. At 90-day and annual review meetings, CLA agents reviewed clients'
19 estate distribution documents and inquired about any changes that had occurred
20 regarding their estate documents or assets since the previous review meeting.
21 Garrett Dep. at 74:13-75:4; Bradshaw Dep. at 32:10-34:4; Gammel Testimony
22 (Nov. 17, 2020).

23 64. At each review meeting, CLA agents offered to gather, or gathered,
24 information for the preparation of the client's estate distribution documents. This
25 included completing a Periodic Review Form (Ex. 416) at each meeting. Gammel
26 Testimony (Nov. 17, 2020); Van Winkle Dep. at 45:14-46:3; Nelson Dep. at 77:5-

1 77:17. Agents completed this form even when a review meeting took place by
2 phone. Van Winkle Dep. at 45:14-46:3.

3 65. The Periodic Review Form identified the CLA agent as an “Estate
4 plan review agent,” and contained an acknowledgement stating that “CLA Estate
5 Services reviewed my estate plan on ____.” Ex. 416. When completing the Periodic
6 Review Form, the CLA agent asked the consumer a series of questions about
7 estate documents, property, beneficiary status and assets. Gammel Testimony
8 (Nov. 17, 2020); *see* Exs. 265, 266, 416, 515, 664. Specifically, completing the
9 Periodic Review Form required the agent to answer the following questions:

10 (1) Are all of the names in the documents spelled correctly? If no,
11 change/correction form attached? (2) Has all of the property, that the client wants
12 transferred, been transferred to the trust? (3) Have all of the financial documents,
13 that the client wants retitled, been retitled into the trusts? (4) Are all the
14 beneficiaries correct on every insurance policy? (5) Are there any changes in
15 beneficiary status (death or disassociation)? (6) Did any trustee die since initial
16 application? If yes, whom? Settlement assistance provided or requested? (7) Has
17 any property been purchased, sold, inherited, or gifted since last review? (8) Have
18 any CDs, Mutual Funds, IRAs, Pension Plans, Stock Funds, or Insurance policies
19 been cashed in? (9) How does the client plan on funding their long term care
20 needs?

21 66. If the client or agent identified a change that was needed to the
22 client’s estate distribution documents during a review or delivery meeting, CLA
23 agents would either call the attorney to provide the information needed for the
24 change, or collect the information on a Change Form and submit the change
25 request to the referral attorney. Ex. 492; Garret Dep. at 85:9-85:25; Conger Dep.
26 at 109:18-110:1; Van Winkle Dep. at 81:1-82:1.

1 67. According to CLA, it collected 94 written requests for changes,
2 corrections, or amendments to clients' estate distribution documents since
3 November 3, 2015. Ex. 455.

4 68. Agents were paid only \$10 to conduct a review meeting. They
5 obtained the bulk of their compensation through insurance sales at the meetings.
6 Ex. 189 at WA-AG 0001841; Ex. 514 at CLA 002842; Van Winkle Dep. at 36:17-
7 36:25; Johnson Dep. at 143:15-143:18; Garrett Dep. at 57:1-57:6.

8 **3. Insurance Products Sold by CLA**

9 69. CLA USA agents sold Washington consumers fixed indexed annuities
10 from a limited number of insurance carriers. *See* Conger Dep. at 36:6-36:13.

11 70. The parties presented testimony of expert witnesses to opine on the
12 characteristics of the equity indexed or fixed indexed annuities (“indexed
13 annuities”) CLA marketed and sold to Washington consumers. The State
14 presented the testimony of Dr. Craig J. McCann. Dr. McCann is a Chartered
15 Financial Analyst with 30 years of experience as a financial economist. McCann
16 Testimony (Nov. 18, 2020). The Court finds the testimony of Dr. McCann credible.
17 CLA presented the testimony of John L. Olsen. Mr. Olsen holds certification
18 related to the selling of insurance products, including indexed annuities, which he
19 did for a number of years. Olsen Testimony (Dec. 1, 2020).

20 71. Indexed annuities, like those marketed and sold by CLA in
21 Washington, are deferred annuities that are derivative contracts that can be tied
22 to external equity indices, such as the S&P 500. McCann Testimony (Nov. 18,
23 2020).

24 72. Dr. McCann testified that indexed annuities like those marketed and
25 sold by CLA pay a “very high commission that is not disclosed” to consumers,
26 which he described as “extraordinary” compared to other financial products.

1 McCann Testimony (Nov. 18, 2020). For example, Dr. McCann testified that other
2 financial products, such as bonds, mutual funds, or variable annuities typically
3 charge 0 to 4.5 percent commissions, whereas indexed annuities charge 10 to 12
4 percent. *Id.*

5 73. Dr. McCann further testified that the commission rate is important
6 because issuers of indexed annuities recoup the commissions from consumers who
7 purchase the products. He testified: “It creates a conflict of interest where the
8 agents selling these products are motivated or incentivized to sell products that
9 pay high commissions since they are not disclosed. That’s a conflict in part
10 because those commissions are paid by the investor. They come out of the
11 investor’s funds. Not directly, but indirectly, with absolute certainty they do.”

12 McCann Testimony (Nov. 18, 2020). Mr. Olsen also acknowledged that
13 commissions are “recouped over a period of years,” if the purchaser does not incur
14 surrender penalties, and that such penalties can also be a way the commissions
15 are recouped. Olsen Testimony (Dec. 1, 2020).

16 74. Mr. Olsen also acknowledged that, for the CLA-offered annuity
17 contracts he reviewed, surrender charges and market value adjustments can
18 invade a consumer’s principal, meaning that the principal is not inviolate. Olsen
19 Testimony (Dec. 1, 2020).

20 75. According to Dr. McCann, indexed annuities like those marketed and
21 sold by CLA in Washington are also notable for their illiquidity. This illiquidity
22 stems from various aspects of the annuity, but especially due to the fact that the
23 annuities have lengthy surrender-charge periods, such as 10 years. McCann
24 Testimony (Nov. 18, 2020); *see also* Ex. 145 at WA-AG 170851 (reflecting a 10-year
25 surrender-charge period, with a 10% charge rate for the first year of the annuity).

1 76. Dr. McCann testified that the riders on CLA customers' contracts are
2 "insurance-like features" of annuity contracts that "add zero value" to the
3 contracts. McCann Testimony (Nov. 18, 2020).

4 77. Dr. McCann testified that indexed annuities are derivative contracts
5 that are "extraordinarily complex." McCann Testimony (Nov. 18, 2020). He also
6 described the annuities CLA marketed and sold to Washington consumers as
7 "opaque" to such a degree that even someone with a math Ph.D. would have
8 difficulty understanding the likely future payoffs of the annuities. *Id.*

9 78. Dr. McCann opined that the indexed annuities CLA marketed and
10 sold to Washington consumers are "the most complex investments that I believe I
11 have ever observed." McCann Testimony (Nov. 18, 2020).

12 79. Dr. McCann testified that "market value adjustments" that issuers
13 can make under the annuity contracts operate to shift the risk of the annuity from
14 the issuer to the consumer. McCann Testimony (Nov. 18, 2020). Indeed, Dr.
15 McCann testified that the consumer "bears all the risk," whereas the issuer "bears
16 no risk." *Id.*

17 80. According to Dr. McCann, the lack of disclosure of the "true
18 underlying economics, covered over by this Rube Goldberg machine of crediting
19 formulas and insurance-like features, ensures . . . that no investor would ever
20 understand these products." McCann Testimony (Nov. 18, 2020).

21 81. Dr. McCann's opinions regarding the complexity of the indexed
22 annuities that CLA marketed and sold is support by consumer testimony. When
23 asked whether she is familiar with annuities, Washington resident Dorothy
24 Clawson answered, "No. I still don't know how they work. I just know that I lose
25 money on them." Clawson Dep. at 70:24-71:2. With regard to surrender penalties,
26 Mrs. Clawson testified that the CLA USA agent who sold her indexed annuities,

1 Mitchell Johnson, “did not describe that there is a penalty on them if you draw
2 your money out.” Clawson Dep. at 71:3-13.

3 82. Dr. McCann’s opinions are further supported by the testimony of
4 CLA USA agents operating in Washington. Agent David Van Winkle testified that
5 the average customer, and even the average agent, would not understand how the
6 policies “are put together and made.” Van Winkle Dep. at 98:2-98:5. He continued,
7 “if you ask the average customer if they understood a rider, they won’t. And the
8 average agent probably wouldn’t either.” Van Winkle Dep. at 98:6-98:8. Likewise,
9 CLA USA agent Alan Gammel, when asked about his impression of consumers’
10 general understanding of indexed annuities, testified, “I found that they often did
11 not understand very well.” Gammel Testimony (Nov. 17, 2020). This included, Mr.
12 Gammel testified, consumers conflating a percentage cap on returns with a
13 guaranteed minimum rate of return. *Id.*

14 83. Dr. McCann also valued the annuity contracts CLA marketed and
15 sold to Washington consumers. Employing the “risk neutral valuation” technique,
16 which he testified is a standard set of methodologies for valuing derivative
17 contracts like indexed annuities, Dr. McCann found that the value of the contracts
18 is not more than 73 to 86 cents on the dollar when purchased. McCann Testimony
19 (Nov. 18, 2020). According to Dr. McCann, the actual value is “substantially less
20 than that” when “the extreme illiquidity in these contracts” is taken into account.
21 *Id.* CLA’s expert did not attempt to provide a valuation to any of the annuity
22 contracts that he reviewed and conceded that he is not qualified to employ the risk
23 neutral valuation to value indexed annuity contracts. Olsen Testimony (Dec. 1,
24 2020).

25 84. Dr. McCann opined that the likely returns of the indexed annuities
26 that CLA marketed and sold to Washington consumers “are far less than the

1 likely returns of [more liquid] diversified portfolios of stocks and bonds. McCann
2 Testimony (Nov. 18, 2020). Dr. McCann also stated that even for a risk-adverse
3 investor, it would be preferable to purchase short and intermediate-term treasury
4 securities, or a mix of such securities with some amount allocated to a stock
5 portfolio. *Id.*

6 85. Dr. McCann ultimately concluded that “[n]o fully informed consumer
7 who understood [the type of indexed annuity CLA sold Washington consumers]
8 would ever purchase it,” and that he “feel[s] confident that there is zero chance
9 that a fully informed investor would ever purchase one of these.” McCann
10 Testimony (Nov. 18, 2020).

11 86. CLA and its agents received commissions for every annuity they sold.
12 CLA retained 65% to 70% of the commission, and the CLA agent received the
13 remainder. See Ex. 189 at WA-AG 0001841; *see also* Ex. 455.

14 87. Since it began operating in Washington in 2008, CLA’s review and
15 delivery meetings resulted in the sale of hundreds of financial products to
16 consumers, with commissions to CLA of \$3,597,287.93 and to its agents of
17 \$1,826,163.16. Pl. Ex. 455.

18 4. CLA’s Sales Requirements

19 88. CLA USA agents were evaluated based on the amount of insurance
20 premiums they sold. Conger Dep. at 45:21-45:23; Garret Dep. at 62:16-63:11; Ex.
21 189 at WA-AG 0001841.

22 89. As of February 2014, sales agents had a minimum sales quota of
23 \$300,000 per month, which was communicated to the agents on a weekly basis.
24 Ex. 417 at CUSA 037268.

1 90. CLA USA Regional Director David Nelson was also compensated in
2 part based on sales that the agents he supervised made. Nelson Dep. at 111:6-
3 111:8.

4 **5. CLA's Oversight of Agents**

5 91. CLA provided little training to or oversight of its agents who
6 conducted in-home meetings with consumers. CLA USA Regional Manager David
7 Nelson, who supervised CLA's Washington agents, testified that CLA's agents
8 were independent insurance agents who did not receive training from CLA.
9 Nelson Dep. at 36:5-36:13, 37:13-37:21.

10 92. Mr. Nelson testified that he believed insurance companies provided
11 training for CLA's agents, Nelson Dep. at 36:9-36:13, but CLA's expert John Olsen
12 testified that insurance companies rarely provided such training. Olsen Testimony
13 (Dec. 1, 2020). There is no evidence that any of CLA's Washington sales agents
14 received training from any insurance company.

15 93. The EMC2 Ethics Handbook that CLA offered into evidence, Ex.
16 1210, bears a date of 2010, but CLA's Washington agents, Mitchell Johnson,
17 David Van Winkle, and Michael Kelly began working for CLA in 2009 (Johnson
18 Dep at 8:17-8:23; Exs. 1208, 1209) , before Ex. 1210 was created. None of these
19 agents testified that they received ethics training from CLA, nor did any CLA
20 employee testify that they witnessed any Washington agent being so trained.

21 94. Although CLA created the opportunity and motivation for its agents
22 to aggressively market insurance products to seniors in their homes and derived
23 significant financial benefit from the sales of these products, CLA took few steps
24 to ensure that consumers were not taken advantage of or subjected to coercive
25 sales tactics.

1 95. David Nelson, the CLA USA Regional Manager who supervised
2 CLA's insurance agents in Washington, testified that he oversaw the service part
3 of the CLA agents' work, but he did not exercise any oversight over the annuities
4 sales part of the agents' work because he believed they were independent
5 contractors responsible for their own behavior. Nelson Dep. at 112:19-113:9.

6 96. CLA did not take any steps to investigate allegations of Washington-
7 agent misconduct, including the following:

8 a. Two CLA USA agents, David Van Winkle and Michael Kelly,
9 had their contracts with the insurance carrier Forethought terminated for
10 engaging in templating, or submitting multiple applications with identical
11 information with just the name changed. Ex. 407. Their manager, David Nelson,
12 did not take any disciplinary action against them or take any steps to determine
13 whether they engaged in templating with any other carrier's contracts. Nelson
14 Dep. at 100:23-101:23, 103:15-104:1. Nor did Mr. Nelson investigate whether any
15 other agents were engaged in templating after learning about Forethought's
16 termination of CLA's agents. Nelson Dep. at 101:24-102:1.

17 b. While he was a CLA USA agent, Alan Gammel reviewed an
18 annuity sale made by CLA USA agent Mitchell Johnson that Mr. Gammel
19 believed was unsuitable for the client because of penalties the client had incurred
20 to move money into the account and would incur in the future to access the funds.
21 Gammel Testimony (Nov. 17, 2020). Accordingly, Mr. Gammel suggested that the
22 client cancel the contract. *Id.* Mr. Gammel also provided un rebutted testimony
23 that the sales application contained incorrect information. *Id.* When he sent a
24 detailed letter with an attached spreadsheet, Ex. 194, to his supervisor, Mr.
25 Nelson, explaining why the sale was improper, Mr. Nelson did not investigate Mr.
26 Johnson or the sale, and instead told Mr. Gammel to "back off," Ex. 196. Mr.

1 Nelson admitted that, rather than investigate Mr. Johnson, he investigated the
2 whistleblower, Mr. Gammel. Nelson Dep. at 123:14-123:20.

3 c. CLA USA agent David Van Winkle complained to his
4 manager, David Nelson, that CLA USA agent Mitchell Johnson was engaged in
5 the unethical practice of churning: “With Mitch [c]hurning his old book of CLA
6 clients this is also cutting the dollars available for the few reviews assigned to
7 me.” Ex. 517. Churning, according to CLA USA National Director Chris Garrett, is
8 “when you replace business just for the purpose of commission.” Garrett Dep. at
9 102:19-102:24. Mr. Nelson admitted that he took no action to investigate the
10 validity of Mr. Van Winkle’s claim. Nelson Dep. at 119:19-120:24. Instead he
11 chastised Mr. Van Winkle for sending the email. Ex. 517. Mr. Nelson was the
12 Regional Manager in charge of supervising CLA’s Washington insurance sales
13 agents, but he believed that taking steps to ensure that the agents he managed
14 were not churning “was not part of my responsibility.”² Nelson Dep. at 41:23-
15 41:25.

16 d. CLA USA agent Michael Kelly would attempt to preserve his
17 sales by instructing customers to tell their brokerage company that they did not
18 want their advisor or anyone else with the brokerage firm to speak with them,
19 thus giving Mr. Kelly full control over the client’s knowledge. Ex. 516. Mr. Nelson
20 was aware of this conduct and did not seek to stop it. Nelson Dep. at 96:22-97:8

21 96. CLA received a disproportionately large number of complaints about
22 its Washington and Oregon agents. Ex. 401. CLA’s National Sales Director noted
23 that it was baffling “how agents can have so many clients upset enough to call and
24 complain.” Ex. 401.

25 _____
26 ² Although Mr. Nelson testified that he believed an employee in “new business” would notify him if
there was evidence of churning, Nelson Dep. at 145:7-145:10, no “new business” employee testified in this matter
about CLA’s processes and procedures.

1 97. Mr. Nelson testified that he never investigated any agents for
2 churning, for submitting inaccurate information in annuities applications, or for
3 failing to disclose material terms in insurance contracts like surrender penalties;
4 and that he investigated only one instance of templating. Nelson Dep. at 147:4-
5 147:12, 147:25-148:13.

6 98. On the other hand, Mr. Nelson admitted that he investigated every
7 instance of “selling away,” that is, selling products not offered by CLA, thus
8 depriving CLA of commissions. Nelson Dep. at 149:3-149:4. Both Mr. Nelson and
9 National Sales Director Chris Garrett testified that the only times they
10 terminated sales agents was when they sold non-CLA products to CLA customers
11 or did not meet sales requirements. Nelson Dep. at 47:4-47:8, 137:9-138:21; Garret
12 Dep. at 67:21-68:3.

13 99. Washington CLA clients Dorothy Clawson, Janice Ward, James
14 Ottosen, Myrna Lindenthal, and Diane Fogelman all credibly testified that CLA
15 agents engaged in improper sales practices or misconduct when selling them
16 annuities:

17 a. Ms. Clawson testified that Mitchell Johnson failed to disclose
18 material terms of the annuity he was selling her, including that should would be
19 charged a surrender penalty if she drew funds out of her annuity. Clawson Dep. at
20 70:21-71:13; 122:11-123:1. Ms. Clawson ultimately needed to draw money from the
21 annuity causing her to pay a penalty. Clawson Dep. at 78:18-79:7. Ms. Clawson
22 also testified that Mr. Johnson falsely promised that her annuity would make
23 seven percent interest per year. Clawson Dep. at 77:15-77:19, 123:23-124:1,
24 213:12-214:3. The Court finds the testimony of Ms. Clawson credible.

25 b. Ms. Lindenthal testified that CLA USA agent Mitchell
26 Johnson sold her an annuity that was not suitable for her family’s needs, that she

1 lost sleep over the sale, and that she ultimately cancelled it. Lindenthal Dep.
2 26:22-28:16. She further testified that she lost \$16,000 as a result of another
3 annuity she purchased from CLA. Lindenthal Dep. at 49:5-49:10. The Court finds
4 the testimony of Ms. Lindenthal credible.

5 c. Ms. Fogelman testified that CLA's agent failed to adequately
6 disclose that she would pay a rider fee for her annuity and that she lost
7 retirement savings as a result of purchasing the annuity. Fogelman Dep. 37:25-
8 38:5; 45:4-45:24. The Court finds the testimony of Ms. Fogelman credible.

9 d. Mr. Ottosen testified that CLA's sales agent engaged in high
10 pressure sales tactics, Ottosen Dep. at 44:23-45:5, 48:1-48:10, 120:24-121:17, and
11 signed him up for a Lifetime Income Benefit Rider without his knowledge, Ottosen
12 Dep. at 60:24-62:4. The Court finds the testimony of Mr. Ottosen credible.

13 e. Ms. Ward testified that many of the signatures on her
14 annuities applications were not hers. Ward Dep. 55:1-16, 57:19-58:1, 58:11-58:17,
15 87:11-87:20, 93:11-94:4. She further testified that information concerning her
16 assets that CLA USA agent Mitchell Johnson included on her annuities
17 applications was incorrect. Ward Dep. 89:15-90:11, 91:16-93:4. The Court finds the
18 testimony of Ms. Ward credible on this subject.

19 97. CLA USA's President, James Bradshaw admitted that "sadly I think
20 the Executive Leadership (me included) SAY that we value behaviors/standards
21 more than sales results but we really value SALES results first and handle
22 behavior/culture issues reactively rather than proactively." Ex. 417 at CUSA
23 037270.

24 98. CLA did not have any procedures established to ensure that agents
25 did not sell financial products to clients with diminished cognitive abilities. Nelson
26 Dep. at 38:18-39:6.

1 99. The client deposition testimony submitted as evidence, including the
2 testimony cited in the preceding paragraphs, establishes that many of the seniors
3 to whom CLA marketed its products were financially unsophisticated and
4 unequipped to understand the complex and opaque insurance products CLA sold
5 them.

6 **C. Eagle Financial Group and Eagle Estate Services**

7 100. Since this litigation began, CLA USA has rebranded itself as Eagle
8 Financial Group. When asked if the services Eagle offers are different from those
9 offered by CLA USA, former CLA USA Regional Manager (now Eagle Regional
10 Manager) David Nelson testified: “No. Some of the verbiage is different, so we use
11 ‘Eagle’ now. We don’t – we only call them – we may call them to tell them that
12 we’re the folks at CLA USA, you know, but when we get there, we have a flyer
13 that we give them and explain that we’ve rebranded.” Nelson Dep. at 19:16-19:22.
14 Eagle Financial Group does not currently operate in Washington. Bradshaw Dep.
15 at 14:2-14:12. Elsewhere in the country, Eagle Financial Group now performs the
16 in-home reviews for the clients who purchased Lifetime Estate Plans from CLA
17 ESI. Bradshaw Dep. at 17:11-17:16.

18 101. Similarly, CLA ESI no longer exists, and its former executives hold
19 similar or identical posts in a new company called Eagle Estate Services. Former
20 CLA ESI Vice President John Long (now Eagle Estate Services Vice President)
21 testified that the services Eagle Estate Services offers are similar to those
22 formerly offered by CLA ESI with “some changes and things in the way we market
23 . . . and acquire clients, and meet people. Long Dep. at 12:1-12:19.

24 **II. CONCLUSIONS OF LAW**

25 1. This Court has jurisdiction over the persons and subject matter at
26 issue in this case.

1 2. King County is the appropriate venue for this action.

2 **A. Consumer Protection Act**

3 3. The Consumer Protection Act (CPA), RCW 19.86, prohibits “unfair or
4 deceptive acts or practices in the conduct of any trade or commerce.” RCW
5 19.86.020. The CPA is to be “liberally construed that its beneficial purposes may
6 be served.” RCW 19.86.920. To establish liability under the CPA, a plaintiff must
7 show the existence of: “(1) an unfair or deceptive act or practice, (2) occurring in
8 trade or commerce, and (3) public interest impact.” *State v. Mandatory Poster*
9 *Agency, Inc.*, 199 Wn. App. 506, 518, 398 P.3d 1271 (2017).

10 4. For a private plaintiff, Washington courts apply two additional
11 requirements for showing liability under the CPA: injury and causation. These
12 additional elements do not apply, however, to a CPA action brought by the
13 Attorney General. *Id.* (“Unlike a private plaintiff under the CPA, the State is not
14 required to prove causation or injury.”); *State v. Kaiser*, 161 Wn. App. 705, 719,
15 254 P.3d 850 (2011) (same). Thus, no showing of injury or causation is required to
16 establish liability in this case.

17 5. The plaintiff in a CPA action, whether brought by the Attorney
18 General or a private party, may establish liability on the basis of either “unfair” or
19 “deceptive” acts, or both. *Klem v. Washington Mut. Bank*, 176 Wn.2d 771, 787, 295
20 P.3d 1179 (2013).

21 6. The terms “unfair” and “deceptive” are not defined under the CPA.
22 The Washington Supreme Court, accordingly, “has allowed the definitions to
23 evolve through a gradual process of judicial inclusion and exclusion.” *Id.* at 785.

24 7. In *Panag v. Farmers Ins. Co. of Washington*, 166 Wn.2d 27, 50, 204
25 P.3d 885 (2009), the Supreme Court held that, for purposes of the CPA, deception
26

1 exists “if there is a representation, omission or practice that is likely to mislead a
2 reasonable consumer.”

3 8. “[A] communication may be deceptive by virtue of the *net impression*”
4 it conveys. *Panag*, 166 Wn.2d at 50 (emphasis added); *Mandatory Poster*, 199 Wn.
5 App. at 519 (“A deceptive act or practice is measured by the net impression on a
6 reasonable consumer.”). This means that a communication may be deceptive, for
7 purpose of the CPA, “even though it contains truthful information.” *Panag*, 166
8 Wn.2d at 50; *see also F.T.C. v. Cyberspace.Com LLC*, 453 F.3d 1196, 1200 (9th Cir.
9 2006) (“A solicitation may be likely to mislead by virtue of the net impression it
10 creates even though the solicitation also contains truthful disclosures.”).³

11 9. A CPA plaintiff “need not show the act in question was intended to
12 deceive, only that it had the *capacity to deceive* a substantial portion of the public.”
13 *Panag*, 166 Wn.2d at 47 (emphasis added).

14 10. In evaluating capacity to deceive, the Court should look not to the
15 most sophisticated consumers, but rather to the least. *Id.* at 50.

16 11. “The purpose of the capacity-to-deceive test is to deter deceptive
17 conduct before injury occurs.” *Hangman Ridge*, 105 Wn.2d 778, 785, 719 P.2d 531
18 (1986).

19 12. Whether an act had the capacity to deceive a substantial portion of
20 the public is a question of law. *State v. LA Investors, LLC*, 2 Wn. App. 2d 524, 538-
21 39, 410 P.3d 1183 (2018); *Mandatory Poster*, 199 Wn. App. at 519-20.

22 13. The State is not required to prove that the unfair or deceptive acts
23 actually injured consumers or that consumers relied on deceptive acts. *State v.*
24

25 ³ In construing and applying the CPA, Washington courts may look to, but are not bound by,
26 federal court decisions interpreting the Federal Trade Commission Act. *Panag*, 166 Wn.2d at 47; RCW
19.86.920.

1 *Living Essentials, LLC*, 8 Wn. App. 2d 1, 15, 436 P.3d 857 (2019); *cert. denied*, No.
2 19-988, 2020 WL 5882220 (U.S. Oct. 5, 2020).

3 14. Because a CPA claim does not require a finding of an intent to
4 deceive or defraud, “good faith on the part of the seller is immaterial.” *Id.* at 15-16.

5 15. Unfair acts or practices violate the CPA, even if they are not
6 deceptive. *See Klem*, 176 Wn.2d at 787. An act may be “unfair” if it offends public
7 policy, as established by statutes, the common law, or otherwise; is immoral,
8 unethical, oppressive, or unscrupulous; or causes substantial injury to consumers.
9 *Rush v. Blackburn*, 190 Wn. App. 945, 962-63, 361 P.3d 217 (2015).

10 16. “Trade” and “commerce” are defined in the CPA and include “the sale
11 of assets or services, and any commerce directly or indirectly affecting the people
12 of the state of Washington.” RCW 19.86.010(2).

13 17. In determining whether unfair or deceptive conduct affects the public
14 interest, courts look to the following factors: (1) whether the alleged acts were
15 committed in the course of defendant’s business; (2) whether there was a pattern
16 or generalized course of conduct; (3) whether the acts were repeated; (4) whether
17 there is a real and substantial potential for repetition of defendant’s conduct; and
18 (5) if the act complained of involved a single transaction, whether many
19 consumers were affected or likely to be affected by it. *See Hangman Ridge*,
20 105 Wn.2d at 790; *see also* RCW 19.86.093 (setting forth elements of public
21 interest in private CPA actions). No factor is dispositive, nor is it necessary that
22 all be present to establish public interest impact. *Hangman Ridge*, 105 Wn.2d at
23 791.

24 18. “[I]t is the likelihood that additional plaintiffs have been or will be
25 injured in exactly the same fashion that changes a factual pattern from a private
26 dispute to one that affects the public interest.” *Stephens v. Omni Ins. Co.*, 138 Wn.

1 App. 151, 178, 159 P.3d 10 (2007), *aff'd sub nom. Panag*, 166 Wn.2d 27 (2009)
2 (quoting *Hangman Ridge*, 105 Wn.2d at 790). Even a deceptive act that affects
3 only one consumer may impact the public interest, if it is capable of repetition.
4 *Travis v. Wash. Horse Breeders Ass'n, Inc.*, 111 Wn.2d 396, 407, 759 P.2d 418
5 (1988).

6 19. The Court granted the State's motion for partial summary judgment
7 on July 19, 2019, finding that CLA violated the CPA during its estate-planning
8 seminars and one-on-one meetings with consumers by misrepresenting probate
9 law, trust law, federal law, and the relative advantages of estate-planning
10 methods in Washington, and by creating a deceptive net impression that a
11 revocable trust is necessary to protect assets and heirs. Dkt. No. 171 (Order dated
12 July 19, 2019). The Court also determined that "[e]ach deceptive act or practice is
13 a separate violation of the CPA." *Id.*

14 20. The Court now finds that CLA's marketing of its Lifetime Estate
15 Plan at its estate-planning seminars was unfair and deceptive, and violated the
16 CPA. CLA deceptively promoted its Lifetime Estate Plan as a robust package of
17 estate-planning services that included in-home meetings with CLA agents to
18 review consumers' estate plans to ensure they were up to date. CLA's marketing
19 failed to disclose in any meaningful way that the agents conducting the in-home
20 meetings would be licensed insurance agents working on commission who would
21 use the meetings as opportunities to learn about seniors' finances and
22 aggressively market annuities and insurance products to them. CLA's failure to
23 adequately disclose these facts left consumers with the deceptive net impression
24 that they were purchasing robust estate planning services, and not in-home visits
25 from commission-motivated insurance agents. *Panag*, 166 Wn.2d at 50 (deception
26

1 exists “if there is a representation, omission or practice that is likely to mislead” a
2 reasonable consumer).

3 21. Two ambiguous references to insurance in CLA’s workbook, which
4 discusses estate planning on nearly every page, are insufficiently prominent and
5 unambiguous to cure the multiple hours’ worth of deceptive representations CLA
6 made to consumers at its estate planning seminars. *LA Investors*, 2 Wn. App. 2d
7 at 544 (disclosures do not cure potential for deception unless they are “sufficiently
8 prominent and unambiguous to change the apparent meaning of [misleading
9 impressions] and to leave an accurate impression.”). Even if these references were
10 noticed by consumers, they did not adequately disclose that CLA agents would use
11 review meetings as opportunities to market insurance products to them and would
12 be compensated only if they succeeded in doing so.

13 22. It was only after consumers participated in the hours-long estate-
14 planning seminar and received CLA’s marketing materials and workbook that
15 promised robust estate planning services that CLA had consumers who decided to
16 purchase a Lifetime Estate Plan sign a densely worded Consumer Information
17 and Disclosure Agreement. The Disclosure Agreement stated in fine print that
18 CLA agents “may discuss insurance solutions that would benefit planning” at in-
19 home meetings. *See Ex. 1005*. This language is not sufficient to cure the potential
20 for deception created at CLA’s estate planning seminars. *See LA Investors*, 2 Wn.
21 App. 2d at 543-44 (holding that numerous disclosures in all capital letters on a
22 two-page mailer were insufficient to cure the mailer’s capacity for deception);
23 *Mandatory Poster*, 199 Wn. App. At 523-24 (holding that numerous disclaimers in
24 a mailer stating it was not a government document not did not cure the
25 misleading net impression that the sender was associated with a government
26 agency). Moreover, the timing of the disclosure in the agreement renders it

1 insufficient. *Robinson v. Avis Rent a Car System, Inc.*, 106 Wn. App. 104, 116
2 (2001) (“[A] practice is unfair or deceptive if it induces contact through deception,
3 even if the consumer later becomes fully informed before entering into the
4 contract.”).

5 23. CLA created the opportunity for its agents to market insurance
6 products to consumers in their homes, stood to benefit financially from its agents’
7 sales, and created a compensation system that ensured its agents would have to
8 sell its clients annuities to make a living. Yet CLA made little effort to provide
9 safeguards to protect its clients from being taken advantage of by overly
10 aggressive or improper sales tactics.

11 24. CLA’s marketing and sales of Lifetime Estate Plans and insurance
12 products to Washington consumers represent “trade or commerce” under the CPA.

13 25. CLA’s conduct affected the public interest. The conduct occurred in
14 the course of CLA’s business, was part of a pattern or generalized course of
15 conduct, was repeated, and affected thousands of consumers.

16 **B. The Estate Distribution Documents Act**

17 26. The Estate Distribution Documents Act, RCW ch. 19.295, makes it is
18 unlawful to use “living trusts” as a marketing tool by non-lawyers to generate
19 sales leads. It expressly prohibits persons not licensed to practice law from the
20 “unscrupulous practice of marketing legal documents as a means of targeting
21 senior citizens for financial exploitation.” The legislature prohibited the practice
22 because it endangers consumers’ financial security and may frustrate their estate-
23 planning objectives. RCW 19.295.005.

24 27. The EDDA prohibits a person from marketing estate distribution
25 documents, directly or indirectly, unless the person is authorized to practice law in
26 Washington.

1 28. “Market’ or ‘marketing’ includes every offer, contract, or agreement
2 to prepare or gather information for the preparation of, or to provide
3 individualized advice about an estate distribution document.” RCW 19.295.010(4).

4 29. “Gathering information” means “collecting data, facts, figures,
5 records and other particulars about a specific person or persons for the
6 preparation of an estate distribution document.” RCW 19.295.010(3).

7 30. Because the EDDA prohibits gathering, or offering to gather,
8 information, it does not matter for purposes of establishing liability whether the
9 information is ultimately used by an attorney in preparing estate documents. The
10 EDDA contains no provision releasing a party who gathered or offered to gather
11 information in violation of the statute from liability if an attorney later decides to
12 use or not to use the information.

13 31. Violations of the EDDA are *per se* violations of the CPA. RCW
14 19.295.030.

15 32. In its ruling on Plaintiff’s motion for partial summary judgment, Dkt.
16 No. 135, the Court found that CLA violated the EDDA by (1) offering, at its estate-
17 planning seminars, to coordinate with consumers’ referral attorneys by gathering
18 information for the preparation of consumers’ estate distribution documents;
19 (2) gathering information for the preparation of estate distribution documents on
20 Client Information Forms when consumers purchased a Lifetime Estate Plan; and
21 (3) gathering information about changes needed to the client’s estate documents
22 and submitting Change Forms to attorneys describing these changes. Dkt. No. 171
23 (Order dated July 19, 2019).

24 33. The Court now finds that CLA violated the EDDA by offering to
25 gather (at CLA estate-planning seminars), and by gathering (at in-home
26

1 meetings), information for the preparation of estate distribution documents at
2 each of the delivery and review meetings it held with Washington consumers.

3 34. At its estate-planning seminars, CLA offered to gather information
4 for the preparation of estate distribution documents in violation of the EDDA by
5 promoting, as part of its Lifetime Estate Plan delivery and review meetings to
6 ensure estate plans are kept up to date with any necessary changes. The
7 workbook CLA used at estate-planning seminars marketed the Lifetime Estate
8 Plan by offering “Annual Reviews throughout lifetime of the Estate Plan to ensure
9 plan is kept up to date with tax, financial and family changes.” Ex. 421 at CESI
10 000046. The script that workshop agents followed at the seminars also contained
11 offers to gather information for the preparation of estate distribution documents
12 at delivery, 90-day, and review meetings:

13 [Y]our CLA Planner will be coordinating the legal work
14 done by your attorney. If you have chosen a Revocable
15 Living trust as your legal foundation we will bring it to
16 your home, notarize it, and go over everything with you.
17 This will be done under the direction of the estate
18 planning attorney who prepared the documents. I like to
19 put it this way. The attorney does the legal work. CLA
20 does the leg work. Does that make sense? Do you
21 remember earlier when I told you about how important
22 it is to get your assets funded into your trust[?] Your
23 CLA planner will do that work with you. We will help
24 you with the deed work done by your attorney. We will
25 help with all your financial accounts, your insurance,
your IRAs and any other things that are included in
your estate. By the way. Do you think a typical
document preparing attorney will do all of this for you?
Of course not.

Three months after we deliver your documents we are
going to come back out to your home for a Review. Why
do you think we do that? Just to make sure nothing was
left out and everything is going smoothly. Also, you
might need to fine tune your wishes and directions at
that time. Does that make sense?

Finally, there is a[n] Annual Review. Many of our
clients feel that this might be the most important thing
CLA does for them. This annual review will be

1 conducted in your home, every year, by a CLA financial
2 planner. These folks can help you in many ways
3 including financial guidance, tax evaluation, long term
4 health planning, and legacy planning. They will help
5 you keep your planning on the right track.

6 Ex. 483 at CLA_ESI001392-93.

7 35. After offering to gather information for the preparation of estate
8 distribution documents in marketing the Lifetime Estate Plan, CLA offered to
9 gather, and gathered, information for the preparation of estate distribution
10 documents at each of the delivery and review meetings it held with Washington
11 consumers who purchased the Plan.

12 36. At each delivery meeting, CLA's agents completed a Delivery Receipt
13 that required them to confirm that they had offered to gather or gathered various
14 information for the preparation of the client's estate distribution documents. The
15 Delivery receipt required the agent and client to sign a page confirming that they
16 had "verified that all applicable documents have been properly signed by all
17 parties, dated, initialed, and notarized," that all assets to be transferred to the
18 trust had been disclosed, that the client had received living trust warranty deeds
19 on all property to be placed in the trust, that any changes needed had been
20 submitted to CLA on a Change Form for processing, and that a deed request form,
21 if needed, had been filled out and submitted to CLA for processing. *E.g.*, Ex. 177.

22 37. At each 90-day and annual review meeting, CLA agents offered to
23 gather, or gathered, information for the preparation of estate distribution
24 documents by reviewing clients' estate distribution documents and inquiring
25 about any changes that had occurred regarding their estate documents or assets
26 since the previous review meeting. At each meeting, agents completed a Periodic
Review Form that required them to ask the consumer a series of specific questions
about whether estate documents were up to date, whether all property had been

1 transferred to the trust, whether all financial documents were retitled into the
2 trust, whether all beneficiaries were correct, whether there were any changes in
3 beneficiary status, whether any trustee had died, whether any property or
4 investments had been sold, and how the consumer planned to fund long-term care
5 needs.

6 38. CLA also gathered information for the preparation of estate
7 distribution documents when a client or agent identified a change that was needed
8 to the client's estate distribution documents during a review or delivery meeting.
9 In that event, CLA agents would either call the attorney to provide the
10 information needed for the change, or collect the information on a Change Form,
11 and submit the change request to the referral attorney.

12 39. CLA used living trusts as a marketing tool for purposes of gathering
13 information for estate distribution documents, which the legislature has deemed a
14 "deceptive means of obtaining personal asset information and of developing and
15 generating leads for sales to senior citizens." RCW 19.295.005. CLA's conduct in
16 delivery and review meetings is precisely the type of unfair or deceptive conduct
17 the EDDA prohibits. CLA's EDDA violations created the opportunity for it to sell
18 annuities to consumers, which is the culmination of CLA's scheme and the precise
19 outcome the legislature intended the EDDA to prevent.

20 40. As the Court has already recognized, each EDDA violation is a
21 separate violation of the CPA. Dkt. No. 171 (Order dated July 19, 2019).

22 **C. Remedies**

23 41. The CPA provides for a range of remedies for CLA's violations of the
24 CPA, including injunctive relief, restitution, costs and fees, and civil penalties of
25 up to \$2,000 per violation. RCW 19.86.080(1)-(2); RCW 19.86.140. These remedies
26 are complementary components that, together, comprehensively address unfair

1 and deceptive practices: civil penalties deter such practices; injunctive relief
2 prevents such practices from continuing; and restitution restores money or
3 property acquired unlawfully from such practices. Thus, this array of remedies
4 broadly protects and benefits the public by deterring future violations of the CPA,
5 halting current violations, and restoring the status quo after past violations.

6 **1. Restitution**

7 42. The CPA confers broad equitable powers upon Washington trial
8 courts to fashion appropriate equitable remedies, including authorizing restitution
9 of “moneys or property which may have been acquired by means of any act
10 declared unlawful or prohibited” by the Act. RCW 19.86.080(2).

11 43. Disgorgement of illegal gains, rather than consumer loss, is the usual
12 measure of restitution under the CPA and analogous Federal Trade Commission
13 Act case law. *See State v. LG Electronics, Inc.*, 185 Wn. App. 123, 144 n.33, 340
14 P.3d 915 (2014) (distinguishing between damages and restitution, and recognizing
15 the latter “measures the remedy by the defendant’s gain and seeks to force
16 disgorgement of that gain”), *aff’d*, 186 Wn.2d 1, 375 P.3d 636 (2016); *FTC v.*
17 *Commerce Planet, Inc.*, 815 F.3d 593, 603 (9th Cir. 2016).

18 44. Illegal or unjust gains are measured by the defendant’s net revenues,
19 which is the amount consumers paid for the product or service minus refunds and
20 chargebacks, not by net profits. *See FTC v. Bronson Partners, LLC*, 654 F.3d 359,
21 374-75 (2d Cir. 2011) (“[I]t is well established that defendants in a disgorgement
22 action are ‘not entitled to deduct costs associated with committing their illegal
23 acts.’”); *FTC v. Direct Mktg. Concepts, Inc.*, 624 F.3d 1, 14-16 (1st Cir. 2010).

24 45. No statute of limitations applies to claims for restitution brought by
25 the Attorney General under the CPA. *State v. LG Electronics, Inc.*, 186 Wn.2d 1, 9-
26 12, 375 P.3d 636 (2016).

1 46. The Court rejects Defendants’ argument that the amount of
2 restitution should be reduced to account for alleged (largely hypothetical) value
3 Defendants claim that consumers received from the Lifetime Estate Plan. Even if
4 Defendants could establish that their services provided some value to consumers,
5 it is “the fraud in the selling, not the value of the thing sold” that informs a
6 restitution award. *FTC v. Figgie Int’l, Inc.*, 994 F.2d 595, 606 (9th Cir. 1993)
7 (explaining that customers who purchase rhinestones sold as diamonds should get
8 all of their money back, not only the difference between what they paid and a fair
9 price for rhinestones because the seller’s misrepresentations tainted the
10 customers’ purchasing decisions; if told the truth, perhaps they would not have
11 purchased rhinestones at all). CLA sold the Lifetime Estate Plan, and ultimately
12 gained access to seniors’ living rooms to sell annuities to them, only by
13 misrepresenting probate law, trust law, federal law, and the relative advantages
14 of estate-planning methods in Washington and creating a deceptive net
15 impression that a revocable trust is necessary to protect assets and heirs in
16 violation of the CPA; by creating a deceptive net impression regarding the nature
17 of the in-home meetings included in the Plan and failing to adequately disclose
18 those meetings would be conducted by insurance agents paid by commission in
19 violation of the CPA; and by promising to gather information for the preparation
20 of estate distribution documents in violation of the EDDA. Moreover, a restitution
21 award cannot be reduced by any alleged value provided by in-home meetings
22 when Defendants violated the EDDA at each meeting by offering to gather, and
23 gathering information for the preparation of estate distribution documents.

24 47. Moreover, “the existence of some satisfied customers does *not*
25 constitute a bar to liability or an award of restitution.” *FTC v. Inc21.com Corp.*,
26 745 F. Supp.2d 975, 1011 (N.D. Cal. 2010) (emphasis in original).

1 48. CLA ESI received \$2,565,626 in revenue from sales of the Lifetime
2 Estate Plan (also referred at certain times during this trial as a “Service
3 Package”). Ex. 454.

4 49. CLA USA received \$3,597,287.93 in commissions for the sale of
5 insurance products in Washington. Ex. 455. This figure does not include the
6 \$1,826,163.16 CLA USA agents received in commissions in Washington. *Id.*

7 50. “An award of prejudgment interest is appropriate where a party
8 retains funds rightly belonging to another party and thereby denies the party the
9 use value of the money.” *Arzola v. Name Intelligence, Inc.*, 188 Wn. App. 588, 595,
10 355 P.3d 286 (2015). Here, CLA’s sales data and amounts are readily
11 ascertainable. Ex. 456. Accordingly, the Court orders that CLA shall pay
12 prejudgment interest on the restitution it provides at a rate of 12% per annum.
13 *See Public Utility Dist. No. 2 of Pacific Co. v. Comcast of Washington IV, Inc.*, 184
14 Wn. App. 24, 80-81, 336 P.3d 65 (2014)

15 51. The Court orders Defendants to pay \$2,565,626 in restitution to who
16 purchased CLA’s Lifetime Estate Plan (or Service Package) in Washington, plus
17 prejudgment interest at a rate of 12% per annum. Defendants shall pay to each
18 consumer who purchased a Lifetime Estate Plan the amount of revenue CLA ESI
19 received from the sale plus prejudgment interest at a rate of 12% per annum.

20 52. The Court also orders Defendants to pay \$3,597,287.93 in restitution
21 to each consumer to whom they sold insurance products in Washington, plus
22 prejudgment interest at a rate of 12% per annum. Defendants shall pay to each
23 consumer who purchased such a product the total amount of commission CLA
24 USA received for the sale plus prejudgment interest at the rate of 12% per annum.

25 53. In the event that Defendants are unsuccessful after diligent attempts
26 to locate and compensate any consumer to whom they are required to pay

1 restitution under this Order, the funds due to that consumer shall go to the State.
2 Any such amount distributed to the State shall be used for future monitoring and
3 enforcement of this Order, future enforcement of RCW 19.86 and RCW 19.295, or
4 for any lawful purpose in the discharge of the Attorney General’s duties at the sole
5 discretion of the Attorney General.

6 **2. Civil Penalties**

7 **a. Number of CPA Violations Subject to Penalties**

8 54. The CPA mandates that “[e]very person who violates RCW 19.86.020
9 shall forfeit and pay a civil penalty of not more than two thousand dollars for each
10 violation.”

11 RCW 19.86.140.

12 55. The CPA does not limit the possible number of violations to the
13 number of aggrieved consumers; rather, each unfair or deceptive act is a separate
14 violation. *Ralph Williams’ North West Chrysler Plymouth, Inc.*, 87 Wn.2d 298,
15 316-17, 553 P.2d 423 (1976) (“We decline to follow the one-violation-per-consumer
16 rule.”); *LA Investors*, 2 Wn. App. 2d at 545-46 (holding that “[e]ach deceptive act is
17 a separate violation”).

18 56. The Court has previously determined that CLA engaged in “unfair
19 and deceptive practices in its estate-planning seminars and one-on-one meetings
20 with consumers by (a) misrepresenting probate law, trust law, federal law, and
21 the relative advantages of estate-planning methods in Washington in its estate-
22 planning seminars; and (b) creating a deceptive net impression that a revocable
23 trust is necessary to protect assets and heirs.” Dkt. No. 171.

24 57. The Court has now also determined that CLA’s marketing of its
25 Lifetime Estate Plan at its estate-planning seminars was unfair and deceptive,
26 and violated the CPA. CLA deceptively promoted its Lifetime Estate Plan as a

1 robust package of estate-planning services that included in-home meetings with
2 CLA agents to review consumers' estate plans to ensure they were up to date, and
3 failed to disclose in any meaningful way that the agents conducting the in-home
4 meetings would be licensed insurance agents working on commission who would
5 use the meetings as opportunities to learn about seniors' finances and
6 aggressively market annuities and insurance products to them. CLA's failure to
7 adequately disclose these facts left consumers with the deceptive net impression
8 that they were purchasing robust estate planning services, and not in-home visits
9 from commission-motivated insurance agents.

10 58. Accordingly, CLA's CPA violations include: (1) its misrepresentations
11 regarding probate law, trust law, federal law, and the relative advantages of
12 estate-planning methods in Washington, and its creation of a deceptive net
13 impression that a revocable trust is necessary to protect assets and heirs, at estate
14 planning seminars which collectively were attended by 1,765 consumers since
15 November 3, 2015; (2) its deceptive marketing of the Lifetime Estate Plan and
16 creation of a deceptive net impression that consumers were purchasing robust
17 estate planning services (rather than in-home visits from insurance agents) at
18 estate planning seminars, which collectively were attended by 1,765 consumers
19 since November 3, 2015.⁴

20 59. The Court has already found that CLA violated the EDDA at its
21 estate planning seminars by (1) offering at estate-planning seminars to coordinate
22 with consumers' referral attorneys; (2) gathering information for the preparation
23 of estate distribution documents on Client Information Forms when consumers
24 purchased a Lifetime Estate Plan; and (3) gathering information about changes
25

26 ⁴ The State does not seek penalties for acts and practices that occurred prior to November 3, 2015, the date on which the parties entered a tolling agreement. Limiting penalties to conduct occurring after November 3, 2015 renders moot any argument that penalties should be reduced based on the timing of the State's lawsuit.

1 needed to the client's estate documents on Change Forms for attorneys describing
2 these changes. Dkt No. 171 (Order dated July 19, 2019).

3 60. The Court has now also determined that CLA also violated the
4 EDDA by offering at estate-planning seminars to conduct regular review meetings
5 to review consumers' estate distribution documents for needed changes if
6 consumers purchased CLA's Lifetime Estate Plan, and by gathering such
7 information at each review meeting with consumers who purchased the Plan.

8 61. Accordingly, CLA's EDDA violations include (1) its offers to gather
9 information for the preparation of estate documents at its estate-planning
10 seminars, which collectively were attended by 1,765 consumers since November 3,
11 2015; (2) each of the 210 instances in which CLA agents gathered information on
12 the Client Information Forms that agents completed when CLA sold Lifetime
13 Estate Plan since November 3, 2015; (3) each of the 94 instances in which CLA
14 agents gathered information on Change Forms indicating to referral attorneys
15 changes needed to client's estate documents since November 3, 2015; and (4) each
16 of the 219 delivery meetings and 1,259 review meetings since November 3, 2015 at
17 which CLA agents reviewed consumers' estate documents or financial
18 information.

19 62. CLA distributed its workbook, which (1) contained the
20 misrepresentations regarding probate law, trust law, federal law, and the relative
21 advantages of estate-planning methods in Washington that violated the CPA, and
22 created a deceptive net impression that a revocable trust is necessary to protect
23 assets and heirs, also in violation of the CPA; (2) contained the deceptive
24 marketing of the Lifetime Estate Plan that created a deceptive net impression
25 that consumers were purchasing robust estate planning services and not in-home
26

1 visits from insurance agents; and (3) offered to gather information for estate
2 distribution, to every seminar attendee.

3 63. CLA's seminar presenters further repeated the workbook's contents
4 to every seminar attendee by following the workbook and a CLA script to guide
5 their presentations.

6 64. CLA also offered to gather, or gathered, information for the
7 preparation of estate distribution documents at each of the 1,478 delivery
8 meetings and review meetings it conducted in Washington.

9 65. Accordingly, CLA violated the CPA the following number of times
10 within the November 3, 2015 statute of limitations period:

Violation	Calculation Method	Total
Deceptive probate and trust representations	1 per seminar attendee	1,765
Offer to gather information for estate distribution at seminars	1 per seminar attendee	1,765
Deceptive Marketing of In-Home Meetings	1 per seminar attendee	1,765
Client Information Forms	1 per Lifetime Estate Plan sale	210
Delivery and review meetings	1 per meeting	1,478 (includes 94 instances when Change Forms were completed)

21 **b. Amount Per Violation**

22 66. The penalty amount for each CPA violation, and the factors to
23 consider in making the determination, are within the Court's discretion. *Living*
24 *Essentials*, 8 Wn. App. 2d at 17 ("While RCW 19.86.140 provides that a statutory
25 penalty for violating the CPA is mandatory, it leaves the amount of the penalty
26 and the factors to consider within the trial court's discretion.").

1 67. The CPA does not specify the factors to be considered in determining
2 the size of a civil penalty, but elimination of the benefits of noncompliance with
3 the law is an “essential element” of a penalty award, so that there is no incentive
4 to violate the law. *U.S. Department of Justice v. Daniel Chapter One*, 89 F. Supp.
5 3d 132, 152-53 (D.D.C. 2015); *Living Essentials*, 8 Wn. App. 2d at 36 (“[N]o one
6 should be permitted to profit from unfair and deceptive conduct.”). “[T]he need to
7 eliminate any benefits a defendant received from the violation[s] . . . is completely
8 separate from any consumer redress or disgorgement ordered by the Court.”
9 *Daniel Chapter One*, 89 F. Supp. 3d at 152 (internal citations and quotation marks
10 omitted). To have any deterrent effect, a penalty “must be large enough to be more
11 than just an acceptable cost of doing business,” and therefore “should be higher
12 than the amount the defendants benefitted and the amount of any consumer
13 redress award.” *Id.* at 152-53.

14 68. In addition to deterrence, courts may consider factors such as a lack
15 of good faith, public injury, ability to pay, and necessity of vindicating the
16 government’s authority when assessing penalties. *See, e.g., U.S. v. Reader’s Digest*
17 *Ass’n, Inc.*, 662 F.2d 955, 967 (3d Cir. 1981).

18 69. A penalty of four times the amount of restitution awarded is “clearly
19 reasonable” under Washington law. *State v. WWJ Corp.*, 138 Wn.2d 595, 600, 980
20 P.2d 1257 (1999). When restitution is also awarded, Washington courts have
21 commonly awarded penalties in the amount of two to five times the amount of
22 restitution. *See, e.g., Mandatory Poster*, 199 Wn. App. at 513 (\$793,540 penalty,
23 \$362,625 restitution); *LA Investors*, 2 Wn. App. 2d at 530, 535 (\$2,569,980 penalty,
24 \$862,855 restitution); *Ralph Williams*, 87 Wn.2d at 309 (\$857,500 total penalties,
25 \$142,000 total restitution).

1 70. CLA’s conduct warrants a significant penalty award. CLA did not act
2 in good faith, it caused public injury, it has not demonstrated an inability to pay,
3 and a significant penalty is necessary to deter further misconduct.

4 **i. Lack of Good Faith**

5 71. The Court finds that CLA did not act in good faith because its
6 violations of the CPA and EDDA were not isolated instances or the result of
7 occasional poor judgment, but represented a deliberate scheme to develop and
8 exploit leads for the sale of annuities. CLA used scare tactics to instill fear in
9 seniors that they would be left vulnerable and their families unprotected unless
10 they purchased CLA’s Lifetime Estate Plan and set up revocable living trusts,
11 which in turn gave CLA agents access to their living rooms and their assets to
12 aggressively market complex annuities.

13 72. CLA failed to provide any meaningful oversight for its agents, and
14 ignored repeated complaints of agent misconduct, including churning allegations,
15 templating allegations, and issues with falsified information on annuities sales
16 applications. CLA was aware that its Washington agents in particular were the
17 subject of a disproportionately high number of complaints.

18 73. CLA USA’s President admitted that “sadly I think the Executive
19 Leadership (me included) SAY that we value behaviors/standards more than sales
20 results but we really value SALES results first and handle behavior/culture issues
21 reactively rather than proactively.” Ex. 417 at CUSA 037270.

22 74. CLA USA represented itself as a “financial services” company, but
23 the only financial services it provided was the sale of a narrow range of high-
24 commission insurance products. The annuities CLA sold were incomprehensively
25 complex, so consumers placed their full trust in CLA to have their best interests in
26 mind. CLA took advantage of the trust relationship they established through

1 ostensibly assisting consumers with their estate affairs in order to market
2 annuities that, according to Plaintiff's expert, no fully informed consumer would
3 ever purchase.

4 75. CLA was on notice of the EDDA's requirements no later than 2009,
5 when it received a letter from attorney Caroline-Suissa Edmiston bringing the
6 EDDA to the attention of CLA's executives and encouraging them to consider
7 whether their practices were in compliance with the law, but CLA did not change
8 any practices after receiving the letter. *See Ex. 485.*

9 76. CLA likewise ignored trust mill concerns of its own agent, Michael
10 Kelly. *See Ex. 395*

11 77. The Washington Supreme Court's holding in *WWJ* is particularly
12 relevant here. In *WWJ*, 138 Wn.2d at 604-05, the Supreme Court considered the
13 trust relationship that the defendant created with consumers as pertinent factor
14 in determining that the maximum penalty of \$2,000 per violation was warranted.
15 Here, as in *WWJ*, the Court finds that CLA's conduct abused the trust of seniors, a
16 class of consumers who are particularly vulnerable to financial harm.

17 **ii. Public Injury**

18 78. Another factor courts have considered in awarding penalties is harm
19 to the public. *Daniel Chapter One*, 89 F. Supp. 3d at 149-150. Injury to the public
20 may be found when consumers have lost money due to the defendant's unfair and
21 deceptive conduct. *Id.* at 151. Courts also find injury to the public when deceptive
22 materials reach the public. *Id.*; *Reader's Digest*, 662 F.2d at 969. Neither
23 consumer confusion nor actual deception is required, as the CPA is intended to
24 prevent material having a capacity to deceive consumers from reaching the public.
25 *See Reader's Digest*, 662 F.2d at 969.

1 79. This factor also weighs in favor of substantial civil penalties. CLA
2 and its agents gained \$7,989,077.09 in revenue in Washington from sales of
3 Lifetime Estate Plan and the commissions it received from annuity sales.
4 Consumers who purchased CLA’s Lifetime Estate Plan paid money for the
5 opportunity to have CLA insurance agents review their private asset information
6 and aggressively sell them annuities at meetings the consumers believed were to
7 review and update their estate plans. Moreover, the public was harmed each and
8 every time CLA distributed its workbooks, which the Court has determined were
9 deceptive, to consumers at its estate-planning seminars. CLA created a
10 compensation system that incentivized aggressive sales, but exercised little
11 oversight over its agents’ sales practices. The annuities CLA sold Washington
12 consumers at the culmination of the scheme were complex, opaque, and illiquid
13 products that were difficult for consumers to understand and that typically
14 included significant surrender penalties and lengthy surrender periods.

15 iii. **Ability to Pay**

16 80. From 2013 through 2017, CLA ESI had gross national receipts or
17 sales of \$24,027,334. CLA ESI 30(b)(6) Dep. (Oct. 30, 2020). During that same
18 time period, CLA USA collected \$82,198,126 in gross national sales. CLA USA
19 30(b)(6) Dep. (Oct. 30, 2020). CLA collected \$6,162,913.93 in net revenues in
20 Washington. Exs. 454, 455. To the extent CLA’s balance sheets reflect a loss, it is
21 due to CLA paying over \$39 million in “management fees” between 2013 and 2017
22 to a company that has the same ownership as CLA. *See* CLA ESI 30(b)(6) Dep. of
23 Charles Loper III at 10:10-11: 20; *see generally* CLA ESI 30(b)(6) Dep. of Charles
24 Loper III (Oct. 30, 2020); CLA USA 30(b)(6) Dep. of Charles Loper III (Oct. 30,
25 2020). CLA did present any evidence regarding its financial position in 2018,
26 2019, or 2020, and has not demonstrated an inability to pay a significant penalty.

1
2 **iv. Total Penalties**

3 81. Taking all of the above factors into consideration, the Court finds
4 that a substantial penalty award is warranted to ensure that CLA does not profit
5 from its numerous violations of Washington law, and to protect the public.

6 82. The Court awards penalties as follows:

	Number of Violations	Amount Per Violation	Total
Estate Planning Seminars:			
Probate/Trust Misrepresentations (CPA)	1,765	\$667	\$1,177,255
Deceptive Marketing of LEP & In-Home Meetings (CPA)	1,765	\$667	\$1,177,255
Offering to gather information for EDD (EDDA)	1,765	\$666	\$1,175,490
Sale of Lifetime Estate Plans:			
Client Information Forms (EDDA)	210	\$2,000	\$420,000
In-Home Meetings:			
In-Home Delivery Meetings (EDDA)	219	\$2,000	\$438,000
In-Home Review Meetings (EDDA)	1,259	\$2,000	\$2,158,000
TOTAL			\$6,546,000

14 **3. Injunctive Relief**

15 83. The CPA empowers the Attorney General to bring an action “to
16 restrain and prevent the doing of any act herein prohibited or declared to be
17 unlawful.” RCW 19.86.080.

18 84. The Court finds that injunctive terms are needed to ensure that
19 CLA’s violations do not reoccur.

20 85. Although CLA represents that it has largely ceased operating in
21 Washington and Nationwide since this Court entered a preliminary injunction,
22 Dkt. No. 83 (Order dated Aug. 24, 2018), “[v]oluntary cessation of allegedly illegal
23 conduct does not moot the need for injunctive relief because there is still a
24 likelihood of the illegal conduct recurring.” *State v. Ralph Williams’ North West*
25 *Chrysler Plymouth, Inc.*, 82 Wn.2d 265, 272, 510 P.2d 233 (1973). “A heavier
26 burden is placed on parties alleging abandonment of practices where the practices

1 are discontinued subsequent, rather than prior, to institution of suit.” *Id.* Here,
2 CLA did not cease doing business in Washington until the State filed its lawsuit
3 and the Court issued a preliminary injunction. Defendants’ principals still engage
4 in the marketing and sale of estate plans and insurance products in other states
5 through Eagle Financial Group and Eagle Estate Services, Inc., demonstrating a
6 potential for ongoing misconduct.

7 86. Accordingly, the Court hereby orders that Defendants and their
8 successors, assigns, employees, contractors, representatives, officers, directors,
9 principals, owners, and all others who are acting or have acted in concert or active
10 participation with Defendants shall permanently engage in or refrain from
11 engaging in the following acts and practices:

12 a. Defendants shall not engage in the following acts or practices
13 without being authorized to practice law or without a statutory exemption:

14 i. Marketing estate distribution documents, as defined by
15 RCW 19.295.010, in Washington or to Washington consumers;

16 ii. Providing individualized advice about a will, a trust, or
17 an estate distribution document as defined by RCW 19.295.010 in Washington or
18 to Washington consumers;

19 iii. Gathering or offering to gather data, facts, figures,
20 records, or other particulars about a specific person or persons for the preparation
21 of an estate distribution document as defined by RCW 19.295.010 in Washington
22 or with regard to Washington consumers; or

23 iv. Engaging in any other conduct in violation of RCW ch.
24 19.295.

25 b. Defendants shall not collect financial, asset, or estate
26 information from any Washington consumer for use to develop or generate leads

1 for sales of annuities, insurance, or any other financial product to consumers, or
2 use such information collected by another person or entity to develop or generate
3 such leads.

4 c. Defendants shall not make, directly or by implication, any
5 material misrepresentations or omissions about Washington probate law, trust
6 law, federal law, or the relative advantages of estate distribution mechanisms to
7 consumers.

8 d. Defendants shall not attempt to dissuade any Washington
9 consumer from consulting with a financial advisor, attorney, family member, or
10 other advisor regarding estate planning.

11 e. Defendants shall not misrepresent the purpose of, nor
12 deceptively market any meeting with Washington consumers or any meeting that
13 takes place, including but not limited to delivery meetings, 90-day review
14 meetings, annual review meetings, death settlement meetings, or any other
15 meetings with Washington consumers or that take place in Washington.

16 f. Defendants shall not collect financial or asset information from
17 any Washington consumer without clearly disclosing the reasons for the collection
18 of such information and obtaining the consumer's express consent for each use of
19 the consumer's data.

20 g. Defendants shall not attempt to sell annuities or any other
21 insurance products to Washington consumers at any meeting that Defendants
22 represent as being for any other purpose, including but not limited to estate
23 planning or settlement.

24 h. Defendants shall not attempt to sell annuities or other
25 insurance products to a Washington consumer at any meeting, in the consumer's
26 home or elsewhere, without first taking the following steps:

1 i. At the time of scheduling a meeting with a Washington
2 consumer, and again at least one week prior to the meeting if no response has
3 been received, Defendants shall transmit a written notice to the consumer that
4 clearly, conspicuously, and unambiguously explains the following:

5 1. If the consumer consents in writing, Defendants
6 will market and/or discuss annuities and other insurance products at the
7 meeting;

8 2. If the consumer does not consent in writing,
9 Defendants will refrain from marketing or discussing annuities and other
10 insurance products at the meeting;

11 3. The consumer is welcome to invite others to the
12 meeting, including but not limited to family members, advisors, and
13 financial planners;

14 4. The consumer may end the meeting at any time.

15 ii. The notice must contain the name, license number,
16 mailing address and phone number of all persons who will attend the meeting.
17 The notice must also contain a signature line on which the consumer may sign to
18 indicate consent to having Defendants market and/or discuss annuities and other
19 insurance products at the meeting.

20 iii. Defendants may contact a consumer to whom they have
21 sent the notice but from whom they have not received written consent by phone to
22 ask whether the consumer wishes to discuss annuities or other financial products
23 during the meeting. During the call, Defendants must clearly and unambiguously
24 provide the consumer oral notice of each item listed in paragraph (h)(i) and ask
25 the consumer whether he or she wishes to sign the written notice.

26

1 iv. Defendants shall refrain from marketing or discussing
2 annuities or other financial products during any meeting with a consumer who
3 has not provided the written notice described in this paragraph.

4 i. Defendants shall use due diligence to ensure that each
5 application for an insurance product it submits on behalf of a Washington
6 consumer contains complete and accurate information about the consumer,
7 including but not limited to the consumer's assets and financial information.

8 j. Defendants shall not misrepresent, directly or by implication
9 or omission, to Washington consumers any material term of a sale, including but
10 not limited to surrender periods, surrender penalties, income rider fees, and
11 commissions that will be paid on the sale of any product.

12 k. Defendants shall provide clear, conspicuous and unambiguous
13 notification in writing to Washington consumers about each and every material
14 term in any insurance products marketed to such consumers. Such notification
15 shall be provided in addition to any information provided to the consumer in the
16 insurance company's materials.

17 l. Defendants shall not provide investment advice to Washington
18 consumers without being properly registered with the Washington Department of
19 Financial Institutions, and shall not misrepresent their credentials to Washington
20 consumers.

21 **4. Costs and Fees**

22 87. The CPA provides that "the prevailing party may, in the discretion of
23 the court, recover the costs of said action including a reasonable attorney's fee."
24 RCW 19.86.080(1). A plaintiff becomes a "prevailing party," for this purpose, "if
25 the plaintiff has succeeded on any significant issue in litigation which achieved
26

1 some of the benefit the parties sought in bringing suit.” *State v. Living Essentials,*
2 *LLC*, 8 Wn. App. 2d at 38.

3 88. In addition, “[c]entral to the calculation of an attorney fees award is
4 the underlying purpose of the statute authorizing the attorney fees.” *Id.* Applying
5 that principle here, “[a]warding the State its fees and costs after a CPA action will
6 encourage an active role in the enforcement of the CPA, places the substantial
7 costs of these proceedings on the violators of the act, and will not drain the State’s
8 public funds.” *Id.* at 38-39 (*quoting Ralph Williams*, 87 Wn.2d at 314-15).

9 89. The Court finds that the State is the prevailing party in this matter
10 and CLA shall pay the State’s costs and fees incurred in this matter. The State
11 shall provide the Court and CLA its petition for costs and fees within twenty-one
12 (21) days of the entry of these findings and conclusions.

13 DATED this 21st day of December, 2020.

14 *Electronic signature appended*

15 JUDGE MICHAEL R. SCOTT
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King County Superior Court
Judicial Electronic Signature Page

Case Number: 18-2-06309-4
Case Title: STATE OF WASHINGTON VS CLA ESTATE SERVICES INC ET
AL
Document Title: FINDINGS OF FACT AND CONCLUSIONS OF LAW

Signed By: Michael R. Scott
Date: December 21, 2020



Judge: Michael R. Scott

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

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