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| DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202 | DATE FILED: July 18, 2017 6:27 PM CASE NUMBER: 2013CV32572 |
| STATE OF COLORADO, ex rel. CYNTHIA H. COFFMAN, ATTORNEY GENERAL, Plaintiff, v. SEA TO SKI VACATIONS, LLC; TRADITIONS TRAVEL GROUP, LLC; AND STEPHEN WUNDER, ANDREW WUNDER, BETHANY WUNDER, AND CHRISTIAN WUNDER, individually, Defendants/Judgment Debtors. | <p style="text-align: center;">COURT USE ONLY</p> |
| | Case No.: 2013CV32572 Div: 409 |
| FINDINGS OF FACT AND CONCLUSIONS OF LAW FROM HEARING REGARDING RESTITUTION, CIVIL PENALTIES AND INJUNCTIVE RELIEF | |

Introduction

The Court previously entered a default judgment against defendants without a hearing. That order was appealed by Defendants and affirmed in part and reversed in part with direction to conduct a hearing regarding restitution, civil penalties and the breadth of the injunction. After rescheduling, at the request of Defendant Stephen Wunder, the matter came before the Court for hearing on March 30, 2017, regarding restitution and imposition of civil penalties and the injunction. Defendants, for the most part, have not participated in these proceedings with the exception of Stephen Wunder. However, Stephen Wunder failed to appear for the March 30, 2017, damages hearing, which had been reset at his request, and instead, submitted to the Court a “Notice of Intent to Discontinue His Active Participation in This Matter.” The Court proceeded to the hearing and took the testimony of Leann Lopez, criminal investigator the Colorado Attorney General’s Office, and the following consumers: Wendy Wolf; Maria Jones; Kathy Hatz; Susan Heffern; Raymond Joe Schaffer; Jay Brewer; and Jeanne Marie

Sheridan. For this Order the Court also considers the testimony previously offered at the preliminary injunction hearing. The Court has reviewed, adopts, and incorporates much of the Attorney General's proposed findings of fact and conclusions of law.

The Wunders, Stephen, Andrew, Bethany and Christian were all involved in companies purporting to offer travel services at discounted prices. Their operations involve a maze of companies with distinct names that are all owned and operated by one of the Wunders. The Demonstrative Exhibit provided at the hearing, demonstrates the bewildering number of agencies connected to Sea to Ski Vacations including Traditions Travel Group, Discovery Club Services, STS Acquisitions, Lifetime Travel Group and Horizons Vacation Club, American Travel Planners, Top of the Line Productions, Waters Edge, STS Travel, Dos Marketing, Blue Water Group, Pennies to Paradise, Sky Group and Vacation Junkies. Some of the agencies were incorporated in Colorado, others in Wyoming and registered in Colorado. They conducted business from Colorado and in other states, including New York and California. The common thread, through all these companies, as owners and directors, however, were the Wunders.

The services promised by Sea to Ski and its "distributers," from Traditions Travel Group to Top of the Line Productions, was to provide exclusive, steeply discounted vacations to members. The consumers would get a sophisticated, polished post card in the mail promising a free trip or air travel for attending one of the companies promotions held at a nearby hotel or conference area. Consumers, intrigued at the promise of deep travel discounts, and the promise of a free trip, would reserve a place at the presentation. Once there, a presenter they believed to be with Sea to Ski, showed a power point presentation of high end vacation opportunities in luxury accommodations with promises that a week would cost no more than \$899.00. Once the presentation was finished, another assumed representative of Sea to Ski would sit with a couple and again go over the benefits of club membership. The individual presentations included flyers promoting exciting destinations, at higher quality resorts, worldwide cruises and discounts for airfare, hotels, tours, and more. Again, the information was provided in brochures that appear very polished, professional and credible. Ex. 66. It was promised that membership would provide deep vacation discounts because of the "exclusive industry affiliations and vast array of [] partners." *Id.* If club members became dissatisfied with the program, they could simply ask, and receive a full refund of their membership. As is shown below, while customers paid the initial cost, and then yearly renewal fees, the promises of a free trip, and deeply discounted, exclusive travel, rarely, if ever, came to fruition.

PROCEDURAL HISTORY

1. On June 6, 2013, the State filed an action against Defendants Sea to Ski Vacations, LLC (“Sea to Ski”), Traditions Travel Group, LLC (“Traditions Travel”), Stephen Wunder, Andrew Wunder, Bethany Wunder, and Christian Wunder for violations of the Colorado Consumer Protection Act, C.R.S. § 6-1-101, *et seq.* (2016) (“CCPA”). The State alleged that Defendants violated §§ 6-1-105(1)(e), (l), (r), and (u) of the CCPA. The State also filed an *ex parte* Motion for Temporary Restraining Order and Preliminary Injunction concurrently with its Complaint.

2. Pursuant to the State’s Motion, the Court entered a Temporary Restraining Order against all Defendants on June 7, 2013. After a four day hearing on preliminary injunction, the Court ultimately denied the State’s request for a preliminary injunction. While the Court found that the State had shown a reasonable probability of success on the merits at trial, the Court denied the State’s Motion because there was no danger of real, immediate, and irreparable injury and because the Court believed there was a plain, speedy and adequate remedy at law . See **Ex. F** at 133:14 – 141:12, *Trial Court’s Order*.¹

3. On February 5, 2014, the State filed a Motion for Summary Judgment on all four of its claims under the CCPA, and on March 11, 2014, the Court granted the State’s Motion with respect to all four claims.

4. On April 17, 2014, the State filed its Motion for Permanent Injunctive Relief and Other Damages and on August 22, 2014 the Court ordered Defendants to pay \$6,562,500 in disgorgement and restitution and \$515,000 in civil penalties. The Court also permanently enjoined Defendants from certain business activities including maintaining any ownership, managerial, or financial interest in, or receiving any financial benefit from, any entity that advertises, markets, or otherwise solicits consumers on behalf of any person or entity that provides vacation or travel related products or services.²

¹ **Ex. A** is the full transcript of the damages hearing, March 30, 2017.

Ex. B are excerpts from Vol. I of IV of the transcript of the preliminary injunction hearing, Aug. 5, 2013.

Ex. C are excerpts from Vol. II of IV of the transcript of the preliminary injunction hearing, Aug. 6, 2013.

Ex. D are excerpts from Vol. III of IV of the transcript of the preliminary injunction hearing, Aug. 6, 2013.

Ex. E are excerpts from Vol. IV of IV of the transcript of the preliminary injunction hearing, Aug. 7, 2013.

Ex. F are excerpts from the Defendants’ Case-in-Chief at the preliminary injunction hearing, Aug. 20, 2013.

² On October 23, 2014 Defendants Stephen and Christian Wunder filed separate Motions Pursuant to C.R.C.P. 65(d); 62(b) and (c); and 60(b)(3)(4) and (5) to Vacate, Stay, or Clarify, Modify and Amend the Court’s Permanent Injunction of August 22, 2014. On November 20, 2014, the Court granted that Motion in part because of a technical deficiency in the August 22 Order which imposed the permanent injunction by reference to the State’s April 17 Motion. The Court denied Defendants’ Motion on all other parts, and reissued the permanent injunction with the injunctive terms in the body of the order.

5. On May 27, 2015, Defendant Stephen Wunder appealed the Court's orders on summary judgment and permanent injunction and other damages. On March 24, 2016, the Colorado Court of Appeals issued its opinion affirming the trial court's order on summary judgment, and affirming in part the trial court's order on permanent injunctive relief and other damages. While the Court of Appeals did not disagree with the trial court's original calculation of disgorgement, restitution, and civil penalties, it reversed the trial court's order on monetary relief on the basis that an evidentiary hearing on damages should have been conducted and remanded for that purpose. The Court of Appeals also found that part of the permanent injunction was vague and overbroad and remanded for a reformulation of that injunctive term.³

6. On remand, a one day evidentiary hearing on damages was held on March 30, 2017. Although notice of the hearing was provided, and the date set was at Stephen Wunders request, no Defendants appeared.

FINDINGS OF FACT

I. Sea to Ski Vacations, LLC

A. Operational Background

7. Defendant Christian Wunder incorporated Sea to Ski in Colorado on February 14, 2011. *See* Pl.'s Damages Hearing ("DH") Ex. 10. Christian Wunder registered Sea to Ski to 2202 W. 118th Avenue, Westminster, Colorado 80234, which was the former residence for his father and step mother, Defendants Andrew and Bethany Wunder. *See id.*; **Ex. A** at 32:18-21, *Testimony of Investigator LeAnn Lopez*. However, Sea to Ski primarily operated from 11570 Colony Row, Bromfield, Colorado 80021. *See Ex. A* at 32:22-25, *Testimony of Investigator LeAnn Lopez*; **Ex. G** at 12:10-13:7, Civil Investigative Demand Hearing ("CID") Designations of Andrew Wunder. Sea to Ski also operated from 8791 Wolff Court, Westminster, Colorado 80031 along with a company called American Travel Planners, LLC, which Andrew Wunder testified was "identical" and built "on the same mold" as Sea to Ski. *See Ex. G* at 33:7-34:13.

8. Stephen Wunder managed Sea to Ski's distributors, like Traditions Travel. *See* Pl.'s DH Ex. 22; **Ex. H** at 15:11-23, CID Designations of Christian

³ The injunctive terms at issue on appeal were articulated in Section II(A) of the trial court's November 20, 2014 orders granting in part Stephen and Christian Wunder's Motions to Vacate. The Court of Appeals remanded for reformulation of the injunctive term articulated in Section II(A)(5) of those orders, and affirmed the injunctive terms in Section II(A)(8) of the orders.

Wunder. Andrew Wunder was a Director at Sea to Ski and oversaw the day-to-day fulfillment of consumers' travel requests and managed Traditions Travel. **Ex. H** at 14:24-15:4, 30:11-17. Christian Wunder was the owner of Sea to Ski and Traditions Travel and its Director of Concierge Services. *See* **Ex. H** at 9:21-10:25; **Ex. I** at 16:12-17:2, CID Designations of Stephen Wunder; **Ex. G** at 24:7-25. Bethany Wunder was the office manager at Sea to Ski and managed the company's travel concierges. *See* **Ex. F** at 76:14-84:11, *Testimony of Bethany Wunder*; **Ex. H** at 17:7-21. According to Christian Wunder, he was the owner of Sea to Ski and Traditions Travel in name only because of his creditworthiness – Andrew and Stephen Wunder were the true owners of Sea to Ski and Traditions Travel. *See* **Ex. H** at 29:5-33:12, 35:22-37:24. Traditions Travel was organized for the purposes of financing Sea to Ski's operations. *See* **Ex. G** at 29:1-16.

9. Sea to Ski solicited consumers through third party distributors, like Traditions Travel, Sky Group, Inc., Vacation Junkies, LLC, and Pennies to Paradise, LLC. *See* Pl.'s DH Exs. 14-17. The distributors had exclusive rights to certain geographic markets. For example, Traditions Travel had exclusive rights to the California market and Sky Group had exclusive rights to New York. *See* Pl.'s DH Exs. 15 and 16; **Ex. A** at 37:1-57:4, *Testimony of Investigator LeAnn Lopez*; **Ex. I** at 40:1-44:12, 94:24-97:25, 114:2-19. According to Andrew Wunder, Traditions Travel was the only distributor who sold Sea to Ski memberships in California. *See* **Ex. G** at 98:7-99:5; **Ex. I** at 96:7-25. A distributor called Discovery Club Services, LLC also sold Sea to Ski memberships in California. *See, e.g.* **Ex. A** at 118:23-126:20, *Testimony of Kathy Hatz*, Pl.'s DH Exs. 39-44; **Ex. I** at 96:8-25. Discovery Club Services was also owned by Defendants. *See* **Ex. A** at 29:15-30:4, 39:10-49:24, *Testimony of Investigator LeAnn Lopez*, Pl.'s DH Exs. 38, 78.1, 94-98; **Ex. G** at 10:2-15.

10. Approximately 36% of Sea to Ski's members came from California, 28% came from New York, 11% came from Nevada, and 5% came from Colorado. *See* **Ex. A** at 23:3-25:4, 30:13-31:10, *Testimony of Investigator LeAnn Lopez*; Pl.'s DH Ex. 1; **Ex. G** at 32:24-33:12. Other members came from states like Washington, Texas, and North Carolina. *See* Pl.'s DH Ex. 1.

11. Sea to Ski and its distributors, including Traditions Travel, solicited consumers by mail. *See* **Ex. G** at 83:1-84:11. The mailers offered consumers "free" airline tickets, cruises, and other travel-related incentives if they attended a 90 minute sales presentation about Sea to Ski's travel club. *See, e.g.,* **Ex. A** at 97:18-18, *Testimony of Wendy Wolf*, Pl.'s DH Ex. 71. The Court found the "free" incentive representations made on these mailers violated § 6-1-105(1)(u). Of the fifteen consumers who testified at the hearing on preliminary injunction or at the hearing on damages, thirteen were solicited by the deceptive mailers. *See* **Ex. A** at 89:16-

91:3, *Testimony of Wendy Wolf* **Ex. A** at 103:19-104:23, *Testimony of Maria Jones*; **Ex. A** at 115:22-117:6, *Testimony of Kathy Hatz*; **Ex. A** at 130:12-132:16, *Testimony of Susan Heffern*, Pl.'s DH Ex. 79; **Ex. A** at 147:9-148:23, *Testimony of Joseph Schaffer*; **Ex. A** at 165:4-166:6, *Testimony of Jay Brewer*; **Ex. A** at 176:15-179:24, *Testimony of Jeanne Sheridan*, Pl.'s DH Ex. 64; **Ex. B** at 104:6-16, *Testimony of Erika Hall*; **Ex. C** at 67:22-68:20, *Testimony of Jeremy Kula*; **Ex. D** at 187:12-189:2, *Testimony of Chris Meagher*; **Ex. D** at 225:13-226:15, *Testimony of Jesse Moore*; **Ex. D** at 250:14-251:23, *Testimony of David Swan*; **Ex. E** at 62:15-64:8, *Testimony of Sidney Dansby*.

12. When consumers arrived at the sales presentations, they were typically joined by 20-40 other consumers. *See, e.g., Ex. A* at 91:4-92:6, *Testimony of Wendy Wolf*. After a 30 minute multimedia presentation about Sea to Ski, consumers met with sales representatives individually for a question and answer session. *See, e.g., Ex. A* at 116:22-118:17, *Testimony of Kathy Hatz*; **Ex. A** at 133:19-134:25, *Testimony of Susan Heffern*.

13. Throughout the sales presentations, consumers were confused about who the sales representatives worked for. Some thought the sales representatives worked for Sea to Ski, others thought they worked for the distributor. *See, e.g., Ex. A* at 135:1-136:8, *Testimony of Susan Heffern*, Pl.'s DH Ex. 81.

14. Consumer Kathy Hatz testified at the damages hearing that she met Stephen Wunder at one of Sea to Ski's sales presentations hosted by Discovery Club Services in Laguna Nigel, California. *See Ex. A* at 126:2-20, *Testimony of Kathy Hatz*, Pl.'s DH Ex. 43. Consumer Erika Hall testified at the Preliminary Injunction Hearing that she met Andrew Wunder at a sales presentation hosted by Vacation Junkies, LLC in Littleton, Colorado. *See Ex. B* at 92:9-94:3, *Testimony of Erika Hall*. Christian Wunder testified that Stephen and Andrew Wunder managed Traditions Travel. **Ex. G** at 29:5-30:17, 36:22-36:1.

15. During the sales presentations, Defendants employed high pressure sales tactics to convince consumers to purchase a Sea to Ski membership. *See Ex. A* at 182:24-183:15, *Testimony of Jeanne Sheridan*. They offered price discounts and extra incentives, like additional airline tickets or a free cruise, to entice consumers to purchase a Sea to Ski membership. *See, e.g., Ex. A* at 119:23-121:14, *Testimony of Kathy Hatz*, Pl.'s DH Ex. 40.

16. One of those incentives was a Buyback Guarantee, which promised consumers a full refund if they were not satisfied with their Sea to Ski membership. *See, e.g., Ex. A* at 154:12-158:4, *Testimony of Joseph Schaffer*, Pl.'s DH Exs. 90-92; **Ex. A** at 95:24-, *Testimony of Wendy Wolf*, Pl.'s DH Exs. 74, 76. Consumers were

oftentimes confused about whether Sea to Ski was the guarantor of the Buyback Guarantee, or whether the distributor was responsible. *See, e.g.*, **Ex. A** at 158:11-162:21, *Testimony of Joseph Schaffer*, Pl.’s DH Exs. 92. The Court found that the Buyback Guarantee violated §§ 6-1-105(1)(r) and (u) of the CCPA.

17. In total, 1,750 consumers from around the country purchased a Sea to Ski membership. *See* **Ex. G** at 55:2-12; **Ex. I** at 151:18-25; **Ex. H** at 32:24-33:12; **Ex. A** at 23:14-24, *Testimony of Investigator LeAnn Lopez*; Pl.’s DH Ex. 1.

B. Misrepresentations About Sea to Ski’s Business

18. According to Sea to Ski’s website:

[B]ased on [Sea to Ski’s] exclusive industry affiliations and vast array of networked partners, Sea to Ski Vacations offers the highest quality resort inventory to our members at deeply discounted wholesale pricing. Simply submit a request and based upon availability, the cost of an 8 day/7 night luxury resort condo accommodation ranges between \$99 and \$899.

Pl.’s Preliminary Injunction Hearing (“PIH”) Ex. 1 at STS_AGO_000023 (attached hereto).

19. The membership booklets Defendants handed out to consumers before and after the sales presentations make the same representation. *See, e.g.*, Pl.’s DH Ex. 81 at STS_Heffern_000037; **Ex. G** at 46:10-54:2.

i. Misrepresentation about Sea to Ski’s “exclusive” industry affiliations

20. According to Stephen Wunder, the primary benefit of a Sea to Ski membership, and the “crux” of Defendants’ business, was its “exclusive industry affiliation[]” with a timeshare exchange company called the San Francisco Exchange (“SFX”). *See* **Ex. I** at 32:8-33:8; **Ex. F** at 10:9-18. Also according to Andrew Wunder, the term “exclusive” in the context of Sea to Ski’s website and membership booklet meant that consumers could only access SFX’s timeshare inventory with a Sea to Ski membership. *See* **Ex. I** at 49:12-51:1.

21. However, Sea to Ski’ contract with SFX explicitly stated that the two companies’ relationship was “non-exclusive” and that consumers could gain access to SFX’s inventory through hundreds of timeshare companies and travel clubs other

than Sea to Ski. *See* **Ex. F** at 40:18-43:15, Defs.’ PIH Ex. GG (attached hereto); Pl.’s Mot. for Summ. J., Ex. 19 at ¶¶ 7-8, *Affidavit of Mel Grant*. Sea to Ski’s own records showed that only 10% of the timeshare accommodations reserved for Sea to Ski’s members came from SFX. *See* Pl.’s Mot. for Summ. J., Ex. 9 at ¶ 16, *Affidavit of Investigator LeAnn Lopez*.

22. The owner of SFX, Mel Grant, confirmed that Sea to Ski’s relationship with SFX was explicitly *non*-exclusive and that SFX offered the same timeshare inventory to hundreds of other companies, including other travel clubs like Sea to Ski. *See* Pl.’s Mot. for Summ. J., Ex. 19, *Affidavit of Mel Grant*. Indeed, many of the “exclusive” condominium resorts offered by Defendants could be found on publicly available commercial travel websites. *See, e.g., Ex. A* at 107:17-108:1, *Testimony of Maria Jones*.

23. Because Defendants blatantly misrepresented the “crux” of its business, the Court found that Defendants violated § 6-1-105(1)(e) of the CCPA.

24. Defendants misrepresented the “crux” of its business on Sea to Ski’s website, which was available for the entire consuming public to view, and in the membership booklets that were distributed to consumers during and after Sea to Ski’s sales presentations. *See* Pl.’s PIH Ex. 1 at STS_AGO_000023 (attached hereto); Pl.’s DH Ex. 81 at STS_Heffern_000037; **Ex. G** at 74:18-77:23.

25. All 1,750 consumers who purchased a Sea to Ski membership were told about Sea to Ski’s “exclusive” affiliation during the sales presentation, on Sea to Ski’s website, and in Sea to Ski’s membership booklets.

ii. Misrepresentation about the price of Sea to Ski’s condominium accommodations

26. Sea to Ski represents that “the cost of an 8 day/7 night luxury resort condo accommodation ranges between \$99 and \$899.” *See* Pl.’s PIH Ex. 1 at STS_AGO_000023 (attached hereto); Pl.’s DH Ex. 81 at STS_Heffern_000037.

27. Sea to Ski’s records reflect that only 37% of Sea to Ski’s members seeking condominium quotes received one costing less than \$899 per week. And only 7% of Sea to Ski’s members seeking condominium quotes received one from the SFX inventory that cost less than \$899. *See* Order on Summ. J. § II, March 11, 2014; Pl.’s Mot. for Summ. J., Ex. 9 at ¶ 16. Indeed, most of the “discounted” condominium inventory offered to consumers can be found on publicly available commercial travel websites. *See, e.g., Ex. A* at 107:17-108:1, *Testimony of Maria Jones*.

28. Defendants' price misrepresentations were made during Sea to Ski's sales presentations, on Sea to Ski's website, and in the membership booklets. *See* Pl.'s PIH Ex. 1 at STS_AGO_000023 (attached hereto); Pl.'s DH Ex. 81 at STS_Heffern_000037; **Ex. A** at 105:6-106:14, *Testimony of Maria Jones*; **Ex. A** at 167:9-22, *Testimony of Jay Brewer*. Because a majority of Sea to Ski's members who sought a price quote for a condominium received one for more than \$899, the Court found that Defendants violated § 6-1-105(1)(l) of the CCPA.

29. All 1,750 members who purchased a Sea to Ski membership were told about the deceptive price range for condominiums during Sea to Ski's sales presentations, on Sea to Ski's website, and/or in the membership booklets.

iii. Misrepresentations about Defendants' Buyback Guarantee

30. To entice consumers to purchase a Sea to Ski membership, Defendants offered a Buyback Guarantee, or full refund, if consumers were not satisfied with their Sea to Ski membership. *See, e.g., Ex. A* at 117:7-118:5, *Testimony of Kathy Hatz*; Pl.'s DH Exs. 44, 59.1, 59.3, 92.

31. Sea to Ski's third party distributors, including Traditions Travel and Discovery Club Services, were the guarantors of the Buyback Guarantee and were responsible for fulfilling any refund requests from Sea to Ski's members. *See* Pl.'s DH Exs. 44, 59.1, 59.3, 92. Andrew Wunder put the "guarantee" into place and distributed it on Sea to Ski letterhead: "If You're Not Satisfied Simply Request a Full Refund of Your Purchase Price." *See Ex. F* 71:12-72:5, *Testimony of Stephen Wunder*; *See Ex. A* at 95:13-96:10, Pl.'s DH Ex. 76. While Stephen Wunder testified that Defendants stopped distributing the Buyback Guarantee, twelve of the fifteen consumers who testified at the preliminary injunction hearing or the hearing on damages received a Buyback Guarantee. *See Ex. F* at 60:5-21, *Testimony of Stephen Wunder*; **Ex. A** at 96:4-97:4, *Testimony of Wendy Wolf*, Pl.'s DH Ex. 74; **Ex. A** at 117:21-118:5, *Testimony of Kathy Hatz*; **Ex. A** at 143:2-145:10, *Testimony of Susan Heffern*; **Ex. A** at 153:14-154:19, *Testimony of Joseph Schaffer*, Pl.'s DH Ex. 90; **Ex. A** at 170:20-174:22, *Testimony of Jay Brewer*, Pl.'s DH Exs. 59, 59.1, 59.3, 59.4, 59.7; **Ex. B** at 26:16-23, *Testimony Eileen Himes*; **Ex. B** at 102:21-103:23, *Testimony of Erika Hall*; **Ex. C** at 84:14-21, *Testimony of Jeremy Kula*; **Ex. D** at 192:2-16, *Testimony of Chris Meagher*; **Ex. D** at 235:20-237:15, *Testimony of Jesse Moore*; **Ex. D** at 260:1-261:1, *Testimony of David Swan*; **Ex. E** at 72:23-74:9, *Testimony of Sidney Dansby*.

32. In order to redeem their Buy Back Guarantee, consumers had to satisfy eleven conditions, which included the following: 1) registering the

“guarantee” with the distributor or Sea to Ski; 2) submitting a signed and notarized affidavit to the distributor; 3) maintaining the Sea to Ski membership for two years, and paying Sea to Ski’s annual renewal fees; 4) paying Sea to Ski to make at least one travel reservation; and 5) enforcing the “guarantee” within only three months of that two year anniversary. *See, e.g.*, Pl.’s DH Ex. 74 at STS_Wolf_000028; *see also* Order on Summ. J. § III, Mar. 11, 2014.

33. Defendants concealed the onerous conditions of the guarantee. *See* Order on Summ. J. § III, Mar. 11, 2014.

34. Defendants concealed as well the true identity of the guarantor so as to avoid responsibility for issuing any refunds. *See id.* (citing **Ex. F** at 63:4-64:19, *Testimony of Stephen Wunder*). Even when Traditions Travel or Discovery Club Services was the “guarantor,” consumers were unable to reach anyone at either company to get their refund. *See id.* When Joseph Schaffer spoke to Christian Wunder about enforcing the Buyback Guarantee issued by Discovery Club Services, Christian Wunder told him “that it was a situation between [him] and their distributor and that they weren’t responsible, meaning Sea to Ski wasn’t responsible.” **Ex. A** at 162:9-14, *Testimony of Joseph Schaffer*.

35. Defendants knew consumers would be unable to enforce the “guarantee” because they would not be able to identify and locate the true guarantor and because the conditions of the “guarantee” were so onerous that they were rendered effectively unenforceable. As such, the Court found that the Buy Back Guarantee violated §§ 6-1-105(1)(r) and (u) of the CCPA.

iv. Defendants’ deceptive mail solicitations

36. Defendants and their third party distributors, including Traditions Travel, solicited consumers by mail to attend Sea to Ski’s sales presentations. *See, e.g.*, **Ex. A** at 90:8-91:3, *Testimony of Wendy Wolf*; **Ex. A** at 131:2-132:22, *Testimony of Susan Heffern*, Pl.’s DH Ex. 79. The mail solicitations offered prizes like airline tickets, cruises, and other travel-related incentives if the consumer completed Sea to Ski’s sales presentation. *See, e.g., id.*

37. After consumers completed Sea to Ski’s sales presentation, they learned that the prizes required the consumer to pay previously undisclosed fees and satisfy a number of terms and conditions. *See* Order on Summ. J § IV. The Court found that Defendants’ mail solicitations violated § 6-1-105(1)(u) of the CCPA.

38. Sea to Ski and its distributors, including Traditions Travel and Discovery Club Services, distributed these mail solicitations as a matter of course to all consumers it solicited, including thirteen of the fifteen consumers who testified at the preliminary injunction hearing or damages hearing. *See supra* ¶ 12.

C. Defendants' Revenues

39. Other than an initial production in response to the State's investigatory subpoenas in 2012, Defendants produced no records related to their revenues, profits, losses, or other financial records. *See Ex. A* at 26:6-20, *Testimony of Investigator LeAnn Lopez*. However, Andrew and Stephen Wunder testified about the average cost of a Sea to Ski membership and Defendants did produce records reflecting the total Sea to Ski membership base. *See id.* at 26:21-28:3; Pl.'s DH Ex. 1.

40. Andrew Wunder testified that the average cost of a membership is between \$3,700 and \$4,000. *See Ex. G* at 149:10-20. Stephen Wunder testified that the average cost of a membership is \$4,000. *See Ex. I* at 23:23-24:9.

41. If Andrew and Stephen Wunder's range for the average cost of a Sea to Ski membership is \$3,700-\$4,000, then the average cost of a membership can be reasonably estimated to be \$3,850. *See Ex. A* at 26:6-28:3, *Testimony of Investigator LeAnn Lopez*.

42. Andrew and Stephen Wunder also testified that Sea to Ski had approximately 1,700 members. *See Ex. G* at 55:2-12; *Ex. I* at 151:18-25.

43. Christian Wunder testified that Sea to Ski's "All Accounts" spreadsheet identifies all of Sea to Ski's members. *See Ex. H* at 32:24-33:12; Pl.'s DH Ex. 1. Defendants' "All Accounts" spreadsheet identifies 1,750 consumers who purchased a Sea to Ski membership. *See id.*

44. If 1,750 consumers purchased a Sea to Ski membership, at an average cost of \$3,850, then Defendants' total revenues were \$6,737,500. *See Ex. A* at 26:21-28:3.

45. Andrew and Stephen Wunder also claimed that Sea to Ski's distributors retained a large majority of consumers' membership fees. *See Ex. G* at 94:7-24, 99:6-100:2; *Ex. I* at 23:23-24:6, 49:6-50:5.

46. Andrew Wunder testified that Traditions Travel was the only Sea to Ski distributor in the State of California. *See Ex. G* 98:9-99:5. According to

Defendants' "All Accounts" spreadsheet, which can be filtered by members' state of residence, 631 of Sea to Ski's members came from the State of California, which is 36% of Sea to Ski's membership base. *See* Pl.'s DH Ex. 1; **Ex. A** at 28:4-30:18, *Testimony of Investigator LeAnn Lopez*. If Traditions Travel was Sea to Ski's only distributor in California, and there were 631 Sea to Ski members from California who paid, on average, \$3,850 for a Sea to Ski membership, then Traditions Travel collected \$2,429,350 from consumers. *See id.*

D. Entities and Individuals Used to Conceal Defendants' Activities

47. Defendants operated their business and interacted with consumers through a network of affiliated corporate entities and individuals. *See supra* ¶ 10. Defendants most recently collected annual renewal fees from consumers in New York on March 13, 2017 through an affiliated entity called Member Club Services, LLC. *See Ex. A* at 190:21-194:6, *Testimony of Jeanne Sheridan*, Pl.'s DH Exs. 99, 100.

i. *Distributors*

48. Defendants contracted with distributors to solicit consumers to purchase a Sea to Ski membership. *See supra* ¶ 10. Traditions Travel and Discovery Club Services were Defendants' only distributors in California, and solicited the majority of Sea to Ski members (36%). *See supra* ¶¶ 10, 11, 15, 32, 47. Defendants claim that the distributors received the membership dues consumers paid for a Sea to Ski membership, and Defendants therefore should not be liable for monies paid by consumers. *See, e.g., Ex. G* at 99:3-100:2; Defs.' Resp. to Pl.'s Mot. for Permanent Inj. Relief and Other Damages/Obj. to Pl.'s Mot. and Brief for Summ. J. on All Four of Its Claims for Relief, §§ 6-1-105(1)(e),(l), (r), and (u), C.R.S. (2013) p. 8, May 28, 2014. This argument ignores 1) that Defendants controlled the distributors' conduct and the deceptive practices at issue here were directed by Defendants and 2) that Traditions Travel and/or Discovery Club Services, which were both owned by Defendants, took more money from consumers than any other distributors. *See supra* ¶ 11; *and see infra* ¶¶ 56-61.

a. Traditions Travel

49. Traditions Travel was incorporated by Christian Wunder on October 6, 2011 to Andrew and Bethany Wunder's former residence, 2202 W. 118th Avenue in Westminster. *See* Pl.'s DH Ex. 8. Traditions Travel was managed by Stephen and Andrew Wunder and was originally formed to finance Sea to Ski's operations. *See supra* ¶9.

50. Traditions Travel’s contract with Sea to Ski was the same as those between Sea to Ski and other distributors. *See supra* ¶ 10. The agreement between Sea to Ski and Traditions Travel included the following reimbursement language for any fines, penalties, or costs Sea to Ski would incur because of any prosecution for “improper advertising or sales techniques”:

[Traditions Travel] shall be solely responsible for any problems related to advertising, and pay any fines, penalties, costs and any attorney fees resulting from improper advertising or sales techniques. If [Sea to Ski] is prosecuted or fined due to business practices from [Traditions Travel]’s marketing efforts, [Traditions Travel] shall immediately *reimburse* [Sea to Ski] for the fines, penalties, costs and attorney fees associated with each occurrence.

Pl.’s DH Ex. 16 at STS_000565 (emphasis added).

51. Defendants admit to owning Traditions Travel. *See supra* ¶ 9. Defendants claimed that Traditions Travel was the only Distributor in the state of California. *See supra* ¶ 10. However, Discovery Club Services was also a Sea to Ski Distributor in California. *See id.* Like Traditions Travel, Defendants owned Discovery Clubs Services. *See id.*

52. According to membership records produced by Defendants, Traditions Travel was Sea to Ski’s largest distributor. *See supra* ¶ 11. Andrew Wunder testified that Traditions Travel was Sea to Ski’s only distributor in California. Of Sea to Ski’s 1,750 members, 631 were from California (36%). *See supra* ¶¶ 11, 47.

53. Traditions Travel hosted sales presentations for Sea to Ski. *See supra* ¶ 15. Stephen Wunder attended Traditions Travel’s sales presentation and met with consumers, including Kathy Hatz. *See id.*

54. Traditions Travel was the guarantor of some of the Buyback Guarantees distributed to consumers, but issued no refunds to consumers. *See supra* ¶ 32; **Ex. F** at 63:4-64:18, *Testimony of Stephen Wunder*.

b. Discovery Club Services, LLC

55. Although Andrew Wunder testified that Traditions Travel was the only Sea to Ski distributor in California, California consumers Kathy Hatz and Joseph

Schaffer attended sales presentations hosted by Discovery Club Services. *See supra* ¶¶ 10, 15; **Ex. A** at 147:9-153:13, *Testimony of Joseph Schaffer*.

56. Defendants owned Discovery Club Services. *See supra* ¶ 10. Like Traditions Travel, Discovery Club Services was the guarantor of some of the Buyback Guarantees, and also like Traditions Travel, Discovery Club Services issued no refunds. *See supra* ¶ 32.

57. Discovery Club Services' principal office address was 2202 118th Avenue in Westminster, Colorado, the same address as Sea to Ski, Traditions Travel, and Andrew and Bethany's former residence. *See Pl.'s DH Ex. 38*.

58. Discovery Club Services' registered agent had an address at 555 Alter Street, Broomfield, Colorado 80020. *See id.* This address also belonged to a company called RMM Performance, where a man named Jared Trent was the Shop Manager. *See Pl.'s Ex. 78.1*. Jared Trent was a personal friend of Christian Wunder. *See Ex. A* at 40:10-43:25, *Testimony of Investigator LeAnn Lopez*.

59. Jared Trent was also the registered agent for a Wyoming company called Steamboat Delivers. *See Pl.'s DH Ex. 94*. Steamboat Delivers is a d/b/a for a company called Blue Water Group, LLC. *See Pl.'s DH Ex. 95*. The authorized owner/signatory on a Great Western Bank account belonging to Blue Water, LLC d/b/a Steamboat Delivers was Andrew Wunder. *See Pl.'s DH Ex. 96*.

60. Blue Water Group, LLC was a Wyoming company of which Andrew Wunder is the Manager. *See Pl.'s DH Ex. 97*. Blue Water, LLC was also a Wyoming company that Andrew Wunder was the Manager of. *See Pl.'s DH Ex. 98*. Top of the Line Productions, LLC paid to file the Articles of Dissolution for both Blue Water Group and Blue Water in Wyoming. *See Pl.'s DH Ex. 97* at STS_AGO_002949; *Pl.'s DH Ex. 98* at STS_AGO_002952.

c. STS Acquisitions, LLC

61. STS Acquisitions was a Colorado company registered to 2202 W. 118th Avenue in Westminster, the same address as Sea to Ski and Andrew and Bethany Wunder's former residence. *See Pl.'s DH Ex. 11*.

62. Domenic Selitti was the registered agent of STS Acquisitions. *See id.* Domenic Selitti also owned other travel-related companies affiliated with the Defendants. *See infra* ¶¶ 92, 94. Andrew Wunder testified that Mr. Selitti did marketing for Sea to Ski. *See Ex. G* at 17:5-9.

63. Andrew Wunder testified that STS Acquisitions was formed to market Sea to Ski's memberships. *See id.* STS Acquisitions marketed Sea to Ski's travel club and was the guarantor on some of the Buyback Guarantees. *See Ex. E* at 72:23-74:9, *Testimony of Sidney Dansby*, Pl.'s PIH Ex. 26 at STS_Dansby_000006 (attached hereto); Pl.'s Mot. for TRO and Prelim. Inj., Ex. 17 at STS_LoVerde_000011, June 6, 2013.

d. Pennies to Paradise

64. Pennies to Paradise was another one of Sea to Ski's distributors. According to its agreement with Sea to Ski, Pennies to Paradise had exclusive rights to market Sea to Ski's travel club in the Seattle metro area. *See Pl.'s DH Ex. 14* at STS_000541.

65. Pennies to Paradise entered into a contract with Sea to Ski much like the one Sea to Ski entered into with Traditions Travel. *Compare Pl.'s DH Ex. 16 to Pl.'s DH Ex. 14.* Like the agreement between Sea to Ski and Traditions Travel, the agreement between Sea to Ski and Pennies to Paradise contained the same reimbursement language for prosecutions resulting from deceptive advertising. *Compare Pl.'s DH Ex. 16* at STS_000565 *to Pl.'s DH Ex. 14* at STS_000542.

e. Vacations Junkies

66. Vacation Junkies was another one of Sea to Ski's distributors. According to its agreement with Sea to Ski, Vacation Junkies had exclusive rights to market Sea to Ski's travel club in Denver, Colorado. *See Pl.'s DH Ex. Ex. 17* at STS_000574.

67. Vacation Junkies entered into a contract with Sea to Ski much like the one Sea to Ski entered into with Traditions Travel and Pennies to Paradise. *Compare Pl.'s DH Ex. 16 to Pl.'s DH Ex. 17.* And like those agreements, Vacation Junkies was responsible for reimbursing Sea to Ski for any fines or penalties resulting from a prosecution for deceptive advertising. *Compare Pl.'s DH Ex. 16* at STS_000565 *to Pl.'s DH Ex. 17* at STS_000575.

f. Sky Group

68. Sky Group was another one of Sea to Ski's distributors, and according to its agreement with Sea to Ski, had exclusive rights to market Sea to Ski's travel club in Hawaii. *See Pl.'s DH Ex. 15* at STS_000552.

69. However, Stephen Wunder testified that Sky Group was also Sea to Ski's exclusive distributor in New York. **Ex. I** at 97:14-98:1. Indeed, consumer Jeanne Sheridan testified that she and her husband were solicited by Sky Group in Long Island, New York and attended a sales presentation about Sea to Ski, hosted by Sky Group, in Long Island. *See Ex. A* at 176:22-180:25, *Testimony of Jeanne Sheridan*.

70. Like the other agreements between Sea to Ski and its distributors, Sky Group is responsible for reimbursing Sea to Ski for any fines or penalties resulting from a prosecution for deceptive advertising. *Compare* Pl.'s Ex. DH Ex. 16 at STS_000565 to Pl.'s DH Ex. 15 at STS_000553.

71. On August 8, 2012, an attorney for Sea to Ski sent a cease and desist letter to Sky Group for, among other things, issues related to the Defendants' violations of the CCPA. *See* Pl.'s DH Ex. 23.

72. Nonetheless, Sea to Ski continued to collect annual renewal fees from consumers who were solicited by Sky Group, including the Sheridans, as recently as March 13, 2017. *See supra* ¶ 48.

ii. Collecting Annual Renewal Fees

73. In addition to paying on average \$3,850 for a Sea to Ski membership, consumers paid Sea to Ski annual renewal fees ranging from \$149 to \$199. *See, e.g., Ex. A* at 108:2-10, *Testimony of Maria Jones*. Through other affiliated entities, Sea to Ski continued their efforts to collect these fees as recently as March 13, 2017. *See, e.g., supra* ¶ 48.

a. Top of the Line Productions, LLC

74. Top of the Line Productions, LLC ("Top of the Line") solicited consumers to pay Sea to Ski's annual renewal fees, including fees from consumer Wendy Wolf on September 15, 2014. *See Ex. A* at 100:3-101:22, Pl.'s DH Ex. 37.

75. Top of the Line's website indicates that David Perez is the Director of the company. *See* Pl.'s DH Ex. 30 at STS_PJ_TOL_000007. In an email exchange with the State on September 15, 2014, Mr. Perez claimed that Top of the Line entered into an agreement to serve Sea to Ski's members in March 2014. *See* Pl.'s DH Ex. 29 at STS_AGO_002506. Mr. Perez made that the claim on the same day that Top of the Line solicited payment from Ms. Wolf. *Compare* Pl.'s DH Ex. 29 to Pl.'s DH Ex. 37.

76. Documents for a website domain account Andrew Wunder maintained with GoDaddy.com, show that Andrew Wunder created the domain www.tlpusa.com on October 24, 2013. *See* Pl.'s DH Ex. 32 at GD000249. That domain belongs to Top of the Line and was created approximately five months before David Perez claims the company entered into a contract with Sea to Ski. *Compare* Pl.'s DH Ex. 32 at GD000249 to Pl.'s DH Ex. 29.

77. The GoDaddy documents also show changes to Andrew Wunder's account information: name changes from David Perez to Andrew Wunder, address changes from 11570 Colony Row, which is Sea to Ski's former address, to 2028 East Ben White Boulevard, and then to 542 Homestead Street, which was another former residence for Andrew and Bethany Wunder in Lafayette, Colorado. *See* Pl.'s DH Ex. 32 at GD00551-553.

78. On September 11, 2014, three days before the aforementioned email exchange with the State, a credit card belonging to Bethany Wunder made a \$148.52 purchase on Andrew Wunder's GoDaddy account related to the following website domains: steamboatdelivers.com; americantravelplanners.com; and tlpusa.com. *See id.* at 003359-60. The shipping information for that purchase was Sea to Ski's address, 11570 Colony Row, and the billing information address for Bethany Wunder was 5042 Wilshire Boulevard, Suite 28268, Los Angeles, California 90036. *See id.*

79. On October 24, 2013, Andrew Wunder used his own credit card to register the domain tlpusa.com and listed the shipping information for that purchase as Sea to Ski's address in Broomfield, Colorado. *See id.* at GD003374.

80. David Perez's GoDaddy account listed his address as 5042 Wilshire Boulevard in Los Angeles, the same address listed for Bethany Wunder on Andrew Wunder's GoDaddy account. *Compare* Pl.'s DH Ex. 32 at GD003359-60 to Pl.'s DH Ex. 33 at GD000001.

81. David Perez was also associated with the creation of horizonsvacationclub.com on May 14, 2013, seatoskivacations.com on July 27, 2010, and americantravelplanners.com on October 8, 2012. *See* Pl.'s DH Ex. 33 at GD000002.

82. On May 18, 2015, Andrew Wunder made a \$15 purchase on David Perez's GoDaddy account, using his own credit card, related to horizonsvacationclub.com. *See id.* at GD003335.

83. On July 28, 2015, David Peraz (sic) made a \$23 purchase from his GoDaddy account, using his own credit card, related to seatoskivacations.com. *See id.* at GD003334.

b. Member Club Services, LLC

84. Defendants also collected annual membership fees from consumers through a company called Member Club Services, LLC, including from consumer Jeanne Sheridan on March 13, 2017. *See supra* ¶ 48; *see also* **Ex. A** at 108:2-112:5, *Testimony of Maria Jones*; Pl.'s Exs. 54-55, 104.

85. Member Club Services is a trade name for a Wyoming company called Waters Edge, LLC. *See* Pl.'s DH Ex. 102. The application to register Member Club Services as a trade name for Waters Edge was submitted to the Wyoming Secretary of State by Andrew Wunder on March 9, 2015. *See id.* The mailing address for the trade name was 2028 East Ben White Boulevard, Suite 240 # 6767, Austin, Texas 78741. *See id.* That is the same address identified in Andrew Wunder's GoDaddy account. *Compare* Pl.'s DH Ex. 32 at GD000551-553 to Pl.'s DH Ex. 102. Blue Water, LLC paid to register Member Club Services as a trade name for Waters Edge. *See* Pl.'s DH Ex. 102. As discussed above, Blue Water is another company controlled by Andrew Wunder. *See supra* ¶¶ 60-61.

86. Member Club Services has been collecting Sea to Ski's annual renewal fees from consumers, even without their permission. *See* **Ex. A** at 190:21-194:6, *Testimony of Jeanne Sheridan*, Pl.'s DH Exs. 99 and 100.

iii. Defendants' Other Travel Companies

a. Condos and Cruises Worldwide, LLC

87. Condos and Cruises Worldwide, LLC ("Condos and Cruises") is a Utah company registered to 1901 Prospector Avenue, #12, Park City, Utah 84060. Patricia Lesmes is the registered agent for Condos and Cruises and mother to Andrew and Stephen Wunder. *See* Pl.'s DH Ex. 27.

88. Stephen Wunder opened an account with GoDaddy on behalf of Condos and Cruises on September 26, 2013 (www.condosandcruisesworldwide.com). *See* Pl.'s DH Ex. 34.

89. Stephen Wunder submitted a rental application to Summit Pacific, Inc. to rent office space at the Prospector Avenue address. *See* Pl.'s DH Ex. 24. Stephen Wunder paid the rental deposit of \$1,500 drawn on an account belonging to a

company called STS Travel, LLC. *See id.* at STS_PJ_Porter_000022. STS Travel is a Colorado company owned by Christian Wunder, and its address, 11570 Colony Row, is the same as Sea to Ski. *Compare* Pl.’s DH Ex. 12 *to* Pl.’s DH Ex. 24 at STS_PJ_DougPorter_000022.

90. Stephen Wunder submitted the rental application to Summit Pacific on behalf of STS Acquisitions, one of Sea to Ski’s distributors owned by Domenic Selitti, on December 30, 2011. *See* Pl.’s DH Ex. 24 at STS_PJ_DougPorter_000023-25; *see also supra* ¶¶ 62-64.

91. Rent for Condos and Cruises in 2014 was paid to Summit Pacific by Lifetime Travel Group, LLC, Dos Marketing, LLC, and Top of the Line. *See* Pl.’s DH Ex. 26.

92. Lifetime Travel Group’s address is 542 Homestead Street, Lafayette, Colorado 80026, which is one of Andrew and Bethany Wunder’s former residences. *See* Pl.’s DH Ex. 31 at STS_AGO_002510; **Ex. A** at 62:17-63:3, *Testimony of Investigator LeAnn Lopez*. Lifetime Travel Group paid to file articles of termination with the South Dakota Secretary of State for a company called Horizons Vacation Club, LLC. *See* Pl.’s DH Ex. 31 at STS_AGO_002510. Andrew Wunder submitted the articles of termination for Horizons Vacation Club. *See id.* at STS_AGO_002509.

93. Dos Marketing shares the 1901 Prospector Avenue address with Condos and Cruises. *See* Pl.’s DH Ex. 26 at STS_PJ_DougPorter_000041; Pl.’s DH Ex. 103. Dos Marketing is registered to Dominic Sellitti. *See id.* Mr. Sellitti was also the registered agent for STS Acquisitions, as discussed above. *See supra* ¶¶ 62-64.

94. Top of the Line is affiliated with Defendants and collected annual renewal fees from consumers on behalf of Sea to Ski. *See supra* ¶¶ 75-84.

b. American Travel Planners, LLC

95. Andrew Wunder testified that American Travel Planners, LLC was “identical” and built “on the same mold” as Sea to Ski. *See Ex. G* at 33:7-38:13. It operated from the same address, 8791 Wolff Court in Westminster, as Sea to Ski. *See id.*

96. Andrew Wunder was the registered agent for American Travel Planners and registered the company to his former home, 2202 W 118th Avenue in Broomfield. *See* Pl.’s DH Ex. 13.

97. On April 4, 2013, Christian Wunder submitted a standard business questionnaire to the Washington DC Better Business Bureau on behalf of American Travel Planners. *See* Pl.’s DH Ex. 28 at STS_DCBBB_ATP_000005. That business questionnaire listed Christian Wunder as the Chief Operating Officer of the company and Andrew Wunder as the contact for complaints. *See id.* at STS_DCBBB_ATP_000006. The questionnaire further states that American Travel Planners has 7,000 annual customers and \$6,000,000 in annual revenues. *See id.*

iv. Defendants’ aliases

98. Defendants admit to using aliases when interacting with consumers, specifically when consumers called to complain about Sea to Ski’s services or when consumers lodged a complaint with the Better Business Bureau. *See Ex. G* at 40:21-42:17. Stephen Wunder used “Michael Miller” and Andrew Wunder used “Mark Dutell.” *See id.*; *Ex. I* at 5:22-7:2. A man named Stephen Andrews, claiming to be the President of Sea to Ski, signed letters on behalf of the company. *See* Pl.’s DH Ex. 39; *Ex. G* at 40:21-42:7; *Ex. I* at 40:2-42:19.

99. A man from Sea to Ski named “Skip” attempted to collect annual renewal fees from Maria Jones and Jeanne Sheridan. “Skip” left a voicemail for Maria Jones. *See* Pl.’s DH Ex. 54; *Ex. A* at 110:19-112:7, *Testimony of Maria Jones*. Skip’s voice is the same as Stephen Wunder’s. *Compare* Pl.’s DH Ex. 54 to Pl.’s DH Ex. 104. Jeanne Sheridan also testified about a conversation with “Skip.” *See Ex. A* at 189:19-190:14, *Testimony of Jeanne Sheridan*.

CONCLUSIONS OF LAW

100. As noted above, the Court found that Defendants violated §§ 6-1-105(1)(e), (l), (r), and (u) of the CCPA. The Colorado Court of Appeals affirmed that finding and remanded for an evidentiary hearing on damages to calculate an appropriate amount of disgorgement, restitution, civil penalties, and to reformulate some of the injunctive relief originally ordered by this Court.

I. Remedies for Violations of the CCPA

101. Once a violation of the CCPA has been established,

[t]he Court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice *or which may be necessary to completely compensate or restore to the*

original position of any person injured by means of any such practice or to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice.

C.R.S. § 6-1-110(1) (emphasis added).

102. The remedial authority set forth in section 6-1-110(1) “must be read in light of the broad legislative purpose to provide prompt, economical, and readily available remedies against consumer fraud.” *W. Food Plan, Inc. v. Dist. Court*, 598 P.2d 1038, 1041 (Colo. 1979). The Court had “considerable discretion in entering orders and judgment” to completely compensate injured consumers under C.R.S. § 6-1-110(1). *In re Jensen*, 395 B.R. 472, 485 (Bankr. Colo. 2008); *see also Showpiece Homes Corp. v. Assur. Co. of Am.*, 38 P.3d 47, 51 (Colo. 2001) (“[A]n expansive approach is taken in interpreting the CCPA in its entirety and interpreting the meaning of any one section by considering the overall legislative purpose.”).

A. Restitution and Disgorgement

103. “Under the CCPA, the term ‘restitution’ refers ‘solely to a district court’s orders or judgments . . . which may be necessary’ to completely compensate or restore to the original position any person injured or to prevent any unjust enrichment.” “Order of Judgment,” April 20, 2011, *People v. Shifrin*, 342 P.3d 506, 522 (Colo. App. 2014) (citing *W. Food Plan, Inc.* 598 P.2d at 1039, n.1). Further, “[The CCPA’s] mechanisms do not merely compensate consumers, as would tort damages. The CCPA ‘serves more than a merely restitutionary function. A primary purpose of the CCPA is to deter and punish deceptive trade practices.’ In bringing a CCPA action, the Attorney General’s interest is ‘in deterrence, punishment, and protection of the public at large, rather than the victim’s desire for compensation.” *Shifrin*, 342 P.3d at 525 (citing *In re Jensen*, 395 B.R. at 486).

104. Restitution may be awarded for all affected consumers, not just those consumers who testified at the preliminary injunction hearing or who will testify at the upcoming hearing on damages. *FTC v. Freecom Comm., Inc.*, 401 F.3d 1192, 1206 (10th Cir. 2005); *Kuykendall*, 371 F.3d at 765; *McGregor v. Chierico*, 206 F.3d 1378, 1388 (11th Cir. 2000); *FTC v. Febré*, 128 F.3d 530, 536 (7th Cir. 1997); *FTC v. Figgie Int’l, Inc.*, 994 F.2d 595, 605 (9th Cir. 1993), *cert. denied*, 510 U.S. 1110 (1994); *FTC v. Security Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991); *People, ex rel. Lockyer v. Fremont Ins. Co.*, 128 Cal. Rptr. 2d 463, 482 (Cal. App. 2003); *State ex rel. Kidwell v. Master Distribs.*, 101 Idaho 447, 456 (Idaho 1980); *see also Hall*, 969 P.2d at 232-33 (“[I]t is helpful . . . to examine other states’ interpretation of their consumer protection statutes.”). “To limit restitution to the

consumers who testified at trial would unduly complicate future consumer protection trials. Consumer witnesses would recount repetitious claims of deceptive practices and prolong the litigation.” *State v. Ralph Williams’ N. W. Chrysler Plymouth*, 553 P.2d 423, 439 (Wash. 1976); *Hall v. Walter*, 969 P.2d 224, 233 (Colo. 1998) (noting that the Washington Supreme Court “has long served as a model for the development of consumer protection legislation.”). To limit restitution to those consumers who testified would also be inconsistent with “the broad legislative purpose [of the CCPA] to provide prompt, economical, and readily available remedies against consumer fraud.” *W. Food Plan, Inc.*, 598 P.2d at 1041.

105. “[U]sing the Defendant’s gross receipts is a proper baseline in calculation the amount of sanctions necessary to compensate injured consumers.” *See FTC v. Kuykendall*, 371 F.3d 745, 766 (10th Cir. 2004) (en banc); *FTC v. Freecom Commc’ns., Inc.*, 401 F.3d 1192, 1206 (10th Cir. 2005). The Colorado Court of Appeals in this case noted that the trial court must employ a reasonable method to calculate restitution in this case. *See* Ct. of Appeals’s Op. 21-22. “The restitution amount should equal an amount that ‘completely compensate[s] or restore[s] to the original position’ any person injured by [Defendants’] deceptive trade practices.” *Id.* (quoting C.R.S. § 6-1-110(1). “The calculation of that amount must be supported by evidence with some ‘reasonable basis for computation,’ even if the result is an approximation.” *Id.* (quoting *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 988-89 (9th Cir. 2015)).

106. In order to compensate the injured consumers here, and to prevent Defendants from being unjustly enriched by the employment of deceptive trade practices, the Court concludes that it is proper to hold Defendants jointly and severally liable for restitution and disgorgement. As in other consumer fraud cases, the Court may use its equitable discretion to determine a disgorgement figure. *See, e.g., FTC v. QT, Inc.*, 472 F. Supp. 2d 990, 995 n.2 (N.D. Ill. 2007).

107. The Court considers the testimony of Andrew, Stephen, and Christian Wunder during civil investigative demand hearings, as well as Stephen and Bethany Wunder’s testimony during the preliminary injunction hearing on August 20, 2013. The Court also considers the “All Accounts” membership database Defendants produced to the State during the State’s investigation and the testimony of the State’s Investigator, LeAnn Lopez, on her analysis of that database based on Defendants’ testimony. *See supra* ¶¶ 44, 47.

108. Defendants Andrew and Stephen Wunder testified that Sea to Ski had approximately 1,700 members. *See supra* ¶ 43. Sea to Ski’s “All Accounts” database showed that Sea to Ski had 1,750 members. *See supra* ¶¶ 18, 44. Andrew Wunder testified that the average Sea to Ski membership cost was between \$3,700

and \$4,000. *See supra* ¶ 41. Stephen Wunder testified that the average membership cost was \$4,000. *See supra* ¶ 41. Based on Andrew and Stephen Wunder’s testimony, the Court finds that the average cost of a Sea to Ski membership was \$3,850. *See supra* ¶ 42. If 1,750 consumers paid, on average, \$3,850 for a Sea to Ski membership, then they collectively paid \$6,737,500. *See supra* ¶ 45.

109. Defendants did not appear to defend themselves at the damages hearing. However, in previous pleadings Defendants argued that any restitution amount should be discounted because the distributors received consumers’ payments, not Defendants. *See supra* ¶ 49. Even if Defendants’ claims are true, the law and facts at issue here do not justify such a discount. “As between the innocent purchaser and the wrongdoer, who, though not a privy to the fraudulent contract, nonetheless induced the victim to make the purchase, equity requires the wrongdoer to restore the victim to the status quo.” *FTC v. Figgie Int’l, Inc.*, 994 F.2d 595, 607 (9th Cir. 1993) (quoting *FTC v. Int’l Diamond Corp.*, 1983 U.S. Dist. LEXIS 15504, 10 (N.D. Cal. 1983)); *see also Gordon v. Burr*, 506 F.2d 1080, 1085 (2d Cir. 1974). Here, Defendants are the wrongdoers.

110. Defendants misrepresented the “crux” of their business – the “exclusive” relationship with SFX. *See supra* ¶¶ 21, 24-25. This misrepresentation was not made by any distributor, but by Defendants on Sea to Ski’s website and in its membership booklets. *See supra* ¶¶ 20, 25. Defendants’ representations about the “crux” of their business is “a false representation with the capacity or tendency to deceive the public, and violate[d] § 6-1-105(1)(e)” Order on Summ. J. § I, Mar. 11, 2014. A Sea to Ski membership was supposed to give consumers access to a timeshare inventory that could not be accessed by any other means. *See supra* ¶ 21. But as Sea to Ski’s contract with SFX details, the relationship was *non*-exclusive, and consumers testified that they were able to find the same or similar condominiums on publically available commercial travel websites. *See supra* ¶¶ 22, 23. And as the State’s analysis of Sea to Ski’s membership records showed, fewer than 10% of Sea to Ski members ever received a quote for a condominium from SFX. *See supra* ¶ 22.

111. The misrepresentations about the price of Sea to Ski’s condominium inventory were also not the fault of any distributor. Defendants made the representations on Sea to Ski’s website and in their membership booklets. *See supra* ¶ 29. The State’s analysis of Sea to Ski’s membership records showed that only 37% of Sea to Ski’s members received a quote for a condominium that cost less than \$899. *See supra* ¶ 28. Defendants’ price misrepresentations constituted a violation of § 6-1-105(1)(l). Order on Summ. J. § II, Mar. 11, 2014.

112. The deceptive mail solicitations that promised “free” prizes were distributed to entice consumer attendance at a Sea to Ski sales presentation. *See supra* ¶¶ 12, 37. Defendants and their distributors, including the Wunder-owned Traditions Travel, utilized these deceptive mailers and distributed them to thousands of consumers throughout the country. *See id.*

113. Similarly, the deceptive Buyback Guarantees were distributed by Defendants and their distributors alike, including Traditions Travel and Discovery Club Services. *See supra* ¶¶ 17, 31-32, 35, 55, 64. The Buyback Guarantees were Andrew Wunder’s idea and he put them into practice. *See supra* ¶ 32. The Buyback Guarantees were distributed as an incentive to convince consumers to purchase a Sea to Ski membership. *See supra* ¶ 17.

114. Defendants not only directed the deceptive affiliation and pricing representations themselves, but controlled the mail solicitation and Buyback Guarantee misrepresentations. As such, they are jointly and severally liable for the full amount of restitution and disgorgement to consumers who were induced to purchase a Sea to Ski membership based on those deceptive practices.

115. The Court also considers the contracts between Sea to Ski and its distributors. *See supra* ¶ 10. All of those contracts included a clause that acknowledged the possibility that Sea to Ski could be liable for misrepresentations made by the distributors. *See supra* ¶¶ 10, 51, 66, 68, 71. Those contract clauses gave Defendants the authority to seek reimbursement for any fines or penalties paid in connection with any deceptive marketing. *See id.* If Defendants believe their distributors should be liable for any penalties resulting from this case, they have the ability to exercise that clause in their distributor contracts and seek reimbursement from the distributors.

116. The Court also considers Andrew Wunder’s testimony that Traditions Travel was Sea to Ski’s only distributor in the State of California.⁴ *See supra* ¶¶ 10, 49, 52-53. And the Court considers the State’s analysis of Sea to Ski’s membership database, which revealed that 631 consumers from California purchased a Sea to Ski membership. *See supra* ¶ 47. If the average consumer paid \$3,850 for a Sea to Ski membership, and 631 California consumers purchased a Sea to Ski membership, then Defendants received \$2,429,350 from California consumers directly through Traditions Travel and/or Discovery Club Services. *See supra* ¶ 47.

⁴ The State also presented evidence that California consumers were also solicited by Discover Club Services to purchase a Sea to Ski membership. However, as the State’s evidence shows, Defendants owned and controlled Discovery Club Services as well. *See supra* ¶¶ 10, 56-61.

117. In light of Defendants' lack of formal financial records, the Court will rely on testimony provided by Andrew, Stephen, and Christian Wunder, as well as the membership database ("All Accounts") produced by Defendants and Investigator Lopez's analysis of that database, and order Defendants, jointly and severally, to pay restitution in the amount of **\$6,737,500**.

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

B. Civil Penalties

119. Section 6-1-112(1) of the CCPA governs the imposition of civil penalties in this action:

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

C.R.S. § 6-1-112(1).

120. Civil Penalties are mandatory upon a finding that a defendant has violated or caused another to violate the CCPA. *May Dep't Stores Co. v. Woodard*, 863 P.2d 967, 972 (Colo. 1993). Further, "[i]n order to effectuate the broad remedial relief and deterrence purposes, the CCPA does not require proof of actual injury" for an award of penalties. *Id.* at 973.

121. The Court may order civil penalties on both a "transaction involved" and a "consumer . . . involved" basis. *Id.* at 973-74. The State has elected to seek civil penalties on a "transaction involved" basis. A transaction-based CCPA violation is distinct from, and does not require proof of, consumer injury. *See id.* at 972. "[C]onsumer injury is not a necessary element of a CCPA violation, nor is it an essential element to the award of civil penalties." *Id.* at 976.

122. A transaction-based violation occurs in all instances where false and misleading information is disseminated, not just those circumstances in which the misleading information resulted in a sale to consumers. *Id.* at 973. A transaction need not include an act altering a legal relationship, such as the sale between a buyer and seller. *Id.*

123. The Court may infer that a company engaged in numerous uniform, material misrepresentations or omissions based on circumstantial evidence. *See Bp Am. Prod. Co. v. Patterson*, 263 P.3d 103, 109-10 (Colo. 2011); *see also Garcia v. Medved Chevrolet, Inc.*, 263 P.3d 92, 94 (Colo. 2011). Circumstantial evidence indicating that a large number of uniform misrepresentations occurred need not necessarily take the form of a script which is thereafter recited by rote. *See Patterson*, 263 P.3d at 112-13.

124. The Court finds and concludes that the circumstantial evidence here is sufficient to support an inference that the Defendants disseminated false and misleading information to every consumer solicited to attend a Sea to Ski sales presentation and engaged in deceptive trade practices during each of those sales presentations.

125. False and misleading information concerning Sea to Ski's "exclusive" affiliation with SFX and its pricing was made on Sea to Ski's website, which was available for all of the consuming public to see. *See supra* ¶¶ 19, 20, 25, 28-29. The "exclusive" affiliation misrepresentation was also made in all of Sea to Ski's membership booklets, which were at least distributed to all 1,750 of Sea to Ski's members. *See id.*

126. The circumstantial evidence also supports this Court's finding that nearly all of Sea to Ski's 1,750 members received the deceptive mailers, and most of them also received the deceptive Buyback Guarantees. *See supra* ¶¶ 12, 17, 31-35, 37, 55, 57, 64. Thirteen of the fifteen consumers who testified at either the preliminary injunction hearing or the damages hearing testified to receiving the mailers at issue. *See supra* ¶¶ 12, 39. And while Stephen Wunder testified that the Buyback Guarantees were taken out of distribution, twelve of the fifteen consumers who testified at either the preliminary injunction hearing, or the hearing on damages, received one. *See supra* ¶ 32.

127. In *State ex rel. Woodard v. May Dep't Stores Co.*, the court set forth the following factors to consider in imposing an appropriate amount in civil penalties:

- (a) the good or bad faith of the defendant;

- (b) the injury to the public;
- (c) the defendant's ability to pay; and
- (d) the desire to eliminate the benefits derived by violations of the CCPA.

May Dep't Stores, 849 P.2d 802 (Colo. App. 1992) *aff'd in relevant part* 863 P.2d 967 (1993).

128. Defendants in this matter have demonstrated significant bad faith and injury to the public through their deceptive business practices. Defendants in the operation of Sea to Ski, and Traditions Travel made blatant misrepresentations about the “crux” of their business, the price of their condominium inventory, the characteristics of their “free” prize mail solicitations, and the nature of their Buyback Guarantees. Defendants showed further bad faith by attempting to collect annual renewal fees from consumers, as recently as March 13, 2017, through a web of LLCs and by using aliases.

129. Defendants’ injury to the public is not only represented by the nearly \$6.8 million they took from consumers, but the reputational damage they did to legitimate market participants in this industry, including SFX, and the damage they did to competing travel clubs that solicit consumers without relying on deceptive business practices. *See* C.R.S. § 6-1-101(2) (“Evidence that a person has engaged in a deceptive trade practice shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.”).

130. Defendants did not present evidence of an inability to pay. Indeed, as argued by the Attorney General, evidence was presented that Defendants collected \$6 million in annual revenues through American Travel Planners, in addition to the monies collected through Sea to Ski and Traditions Travel. *See supra* ¶ 98.

131. Imposing civil penalties ensures that the benefits of Defendants’ CCPA violations are eliminated.

132. Accordingly, the Court finds and concludes that a civil penalty of \$200 per violation of the CCPA is appropriate in this case.

133. As set forth above, Defendants committed four separate violations of the CCPA. *See* C.R.S. § 6-1-105(1)(e), (l), (r), and (u). However, to impose the cap of \$500,000 for each separate violation, when considering the substantial amount of

restitution, would serve only to bury the Defendants in a judgment they may never get out from under.

134. Defendants misrepresented the nature of their “exclusive” violation with SFX to all consumers who saw their website and/or their membership booklets, in violation of § 6-1-105(1)(e). Because the total number of consumers who saw Sea to Ski’s website or membership materials is unknown, the Court finds that the affiliation misrepresentation was made to at least every consumer who purchased a Sea to Ski membership (1,750).

135. Defendants similarly misrepresented the price of their condominium inventory to all consumers who saw their website and/or membership materials, in violation of § 6-1-105(1)(l). Because the total number of consumers who saw Sea to Ski’s website or membership materials is unknown, the Court finds that the price misrepresentation was made to at least every consumer who purchased a Sea to Ski membership (1,750).

136. The circumstantial evidence suggests that Defendants’ mail solicitations, which failed to disclose that the offered prizes were riddled with undisclosed fees and conditions, were distributed to thousands of consumers throughout the country, in violation of § 6-1-105(1)(u). Thirteen of the fifteen consumers who testified at the preliminary injunction hearing or hearing on damages received the mailers in question. Because the total number of consumers who received a mailer is unknown, the Court finds that the deceptive mailers were distributed at least to every consumer who purchased a Sea to Ski membership (1,750).

137. The circumstantial evidence also suggests that Defendants’ Buyback Guarantees, which failed to disclose material information, including the true identity of the guarantor, were distributed to all consumers who purchased a Sea to Ski membership (1,750), in violation of § 6-1-105(1)(r) and (u). While Stephen Wunder testified that the Buyback Guarantees were taken out of distribution, Defendants presented no evidence about when they were taken out of distribution or how many consumers received the Buyback Guarantee before they were taken out of distribution. Indeed, twelve of the fifteen consumers who testified at the hearing on damages or the preliminary injunction hearing received a Buyback Guarantee.

138. The Court finds evidence sufficient to support, and concludes that at least 1,750 consumers were subjected to Defendants deceptive trade practices. The misrepresentations to each of the 1,750 consumer constitutes a separate violation of

the CCPA. The Court shall impose a \$200 penalty for each of the at least 1,750 consumers who were subjected to Defendants' misrepresentations.

139. The Attorney General argues that, "at \$2,000 per violation multiplied by 1,750 for violations of § 6-1-105(1)(e), (l), and (r), and (u)), the (maximum) statutory penalty for each of the four violations, which would vastly exceed the statutory cap of \$500,000." Therefore, Plaintiff argues that "the Court impose the statutory cap of \$500,000 for each of the four statutory violations, for a total of \$2 million." However, while the Wunders did not participate in the hearing, and did not present evidence regarding their ability to pay, as mentioned above, the restitution amount ordered by the Court is quite significant. And although the deception by Defendants was extensive, a maximum penalty for every violation appears excessive to the Court and is unnecessarily punitive. While the Court agrees that the lack of information regarding Defendants' assets stems from their lack of production of discovery, the Court is unaware to what extent Defendants can comply with a damages order. Nevertheless, the Court assumes that a restitution order of nearly \$7 million, is going to impact any Defendants' ability to pay. The civil penalties, therefore, are intended by the Court to punish for past violations and to deter Defendants from future violations of the CCPA, while recognizing the large restitution order vis a vis, ability to pay, as well as to eliminate any benefits derived by violations of the CCPA.

140. In light of the aforementioned considerations, the Court orders Defendants, jointly and severally, to pay civil penalties in the amount of **\$350,000**.

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

C. Injunction

142. In its opinion, the Court of Appeals affirmed the injunctive terms in Section II(A)(8) of the this Court's November 20, 2014 orders, but remanded for a reformulation of the injunctive terms in Section II(A)(5) of those orders.

143. An injunction is an extraordinary and equitable remedy that is intended to prevent future harm. *May Dep't Stores*, 863 P.2d at 978. Here, as in other consumer protection cases, the Court has a duty to ensure that the injunctive relief will effectively redress and prevent future violations. *See id.* As set forth above, the Court concludes that the Defendants engaged in a pattern and practice of

deceptive conduct and that Defendants have both the capacity and the tendency to continue such conduct if not permanently enjoined.

144. Where the Court finds that there have been numerous, long-range, and repeated violations of the CCPA, the Court must “ensure that the injunctive decree will effectively redress the proven violations and prevent further ones.” *May Dep’t Stores Co.*, 849 P.2d at 806. When assessing injunctive relief, the Court must consider whether the relief adequately addresses the Defendants’ violations of the CCPA and whether the relief will prevent future harm. *May Dep’t Stores Co.* 863 P.2d at 978; *see also Federal Trade Comm’n v. Think Achievement Corp.*, 144 F.Supp. 2d 1013 (N.D. Ind. 2000) (upholding permanent injunction based on federal courts’ broad authority to restrain acts which are of the same class or type as the unlawful acts defendant has committed), *aff’d in relevant part rev’d in part on other grounds*, 312 F.3d 259 (7th Cir. 2002). Past conduct can dictate the breadth of injunctive terms: “the purpose [of the injunction] being to prevent violations, the threat of which in the future is indicated because of their similarity or relation to those unlawful acts...found to have been committed...in the past.” *NLRB v. Express Publ’g Co.*, 312 U.S. 426, 435-37 (1941).

145. The injunctive terms in Section II(A)(8) of this Court’s November 20, 2014 order, as affirmed by the Court of Appeals, are articulated again here. Defendants Stephen, Andrew, Christian, and Bethany Wunder, their officers, directors, successors, assignees, agents, employees, and anyone in active concert or participation with them with notice of such injunctive orders, are permanently enjoined from engaging in any deceptive trade practices as defined in and proscribed by the CCPA and as set forth in Plaintiff’s Complaint. Specifically, Defendants Stephen, Andrew, Christian, and Bethany Wunder, their officers, directors, successors, assigns, agents, employees, and anyone in active concert or participation with them with notice of such injunctive orders, are permanently enjoined from:

- a. Making false representations to consumers regarding any affiliation between Defendants and any other entity or person, or any representations to consumers that they will receive any products, services, or benefits from Defendants that they cannot receive from other persons or entities;
- b. Making false representations to consumers that Defendants have approval from, or affiliation with, any person or entity without, in fact, having a contractual relationship reflecting such approval from or affiliation with that person or entity;

- c. Using logos, trade names, or otherwise implying any affiliation with any person or entity in any marketing, advertising, or solicitation materials without, in fact, having a contractual relationship with that person or entity to use such logos, trade names, or otherwise imply any affiliation;
- d. Making false or misleading statements of fact concerning the price of goods, services, or benefits being offered by Defendants, including but not limited to the price of any discount, refund, rebate, prize, or incentive offering;
- e. Making false or misleading statements of fact concerning the availability of goods, services, or benefits being offered by Defendants, including but not limited to the availability of any discount, refund, rebate, prize, or incentive offering;
- f. Offering any “guarantee,” assurance, pledge, or otherwise making any promise about any goods, services, or benefits without clearly and conspicuously disclosing the nature and extent of such a guarantee, assurance, pledge, or promise, including but not limited to the identity of the person or entity making such a guarantee, assurance, pledge, or promise;
- g. Offering any “guarantee,” assurance, pledge, or otherwise making any promise about any goods or services as an inducement to purchase any good, service, or benefit from Defendants without disclosing any and all information material to the goods, services, or benefits being provided by Defendants and the extent of the assurance, pledge, guarantee, or promise;
- h. Offering, pledging, assuring, guaranteeing, or otherwise promising any refund, rebate, credit or buyback to consumers that requires consumers to maintain any membership, association, affiliation, or relationship with Defendants, or any entity associated or affiliated with Defendants, for any amount of time in order to realize the benefits of that offer, pledge, assurance, guarantee or promise;
- i. Offering, pledging, assuring, guaranteeing, or otherwise promising any refund, rebate, credit or buyback to consumers that requires consumers to sign or notarize any affidavit in order to realize the benefits of that offer, pledge, assurance, guarantee, or promise.

- j. Offering, pledging, assuring, guaranteeing, or otherwise promising any refund, rebate, credit or buyback to consumers that requires consumers to purchase any good or service from Defendants in order to realize the benefits of that offer, pledge, assurance, guarantee, or promise.
- k. Failing to honor any request by a consumer to enforce any offer, pledge, assurance, guarantee, or promise made by Defendants, or any person or entity acting on behalf of Defendants or any entity under their control, for a refund, rebate, credit, or buyback within 30 days of such a request;
- l. Offering, pledging, assuring, or otherwise promising to give consumers incentives, such as free goods, services, benefits, gifts, or prizes, including but not limited any free airline tickets or cruises, in exchange for the purchase of any good, service, or benefit being offered by or on behalf of Defendants;
- m. Offering, pledging, assuring, or otherwise promising to give consumers incentives, such as free goods, services, benefits, gifts, or prizes including but not limited to any free airline tickets or cruises, in exchange for consumers' attendance at any seminar, training, or presentation relating to any good, service, or benefit being offered by or on behalf of Defendants;
- n. Contracting, employing, or maintaining any business relationship with any person or entity who makes any offer, pledge, assurance, or promise to give consumers incentives, such as free goods, services, benefits, gifts, or prizes, including but not limited to free airline tickets or cruises, in exchange for the purchase of any good, service, or benefit being offered by or on behalf of Defendants;
- o. Contracting, employing, or maintaining any business relationship with any person or entity who makes any offer, pledge, assurance, or promise to give consumer incentives, such as free goods, services, benefits, gifts, or prizes, including but not limited to free airline tickets or cruises, in exchange for consumers' attendance at any seminar, training, or presentation relating to any good, service, or benefit being offered by or on behalf of Defendants;

- p. Failing to maintain a centralized location, with at least one full time employee, to fulfill any request from a consumer for any good, service, or benefit being offered by or on behalf of Defendants;
- q. Failing to maintain a centralized location, with at least one full time employee, to fulfill any request from a consumer for any refund, rebate, credit, or buyback offered, pledged, assured, guaranteed, or otherwise promised to consumers in connection with any good, service, or benefit offered by or on behalf of Defendants;
- r. Failing to maintain a centralized location, with at least one full time employee, to fulfill any request from a consumer for any good, service, benefit, gift, or prize, including but not limited to airline tickets or cruises, offered to consumers in exchange for purchasing any good, service, or benefit being offered by or on behalf of Defendants; and
- s. Failing to maintain a centralized location, with at least one full time employee, to fulfill any request from a consumer for any good, service, benefit, gift, or prize, including but not limited to airline tickets or cruises, offered to consumers in exchange for consumers' attendance at any seminar, training, or presentation relating to any good, service, or benefit being offered by or on behalf of Defendants.

146. In addition, Defendants Stephen, Andrew, Christian and Bethany Wunder, as well as Sea to Ski Vacations, LLC and Traditions Travel Group, LLC, and any other persons or entities under their control or in active concert or participation with them who receive notice of the Court's order, are permanently enjoined from maintaining any ownership, managerial, or financial interest in, or receiving any financial benefit from, any entity that directly or indirectly sells or solicits consumers to purchase any timeshare interests, condominium reservations, hotel reservations, airline tickets, or cruise line reservations, or any entity that directly or indirectly sells or solicits consumers to purchase any membership to any group that offers timeshare interests, condominium reservations, hotel reservations, airline tickets, or cruise line reservations.

147. The Court finds such injunctive relief necessary in light of Defendants' capacity for widespread deception of consumers. Specifically, Defendants mislead consumers as to their professional affiliations, the price of their products or services, and the incentives they used to entice the purchase their goods or services.

148. Defendants hide behind a vast and complex network of LLCs and aliases when conducting business in the vacation or travel. *See supra* ¶¶ 48-98.

Andrew and Stephen Wunder admitted to using the aliases Michael Miller and Mark Duttell when dealing with consumers. *See supra* ¶¶ 99-100. A man named “Stephen Andrews,” was identified as the “President” of Sea to Ski. *See supra* ¶ 99. The Court believes this person did not exist, but was an alias made up of Stephen and Andrew Wunder’s first names. A man named “Skip” was soliciting annual renewal fees from Sea to Ski’s members in November 2014, at the same time this Court was issuing its original injunctive order in this case (November 2014). *See supra* ¶ 100. The Court also believes “Skip” did not exist, but was an alias used by Stephen Wunder as he made a last-ditch attempt to get money from consumers before the State could enforce a final judgment against him and his co-Defendants. Even Christian Wunder, the “owner” of Sea to Ski, admitted that he did not own the company for all practical purposes, but that his father, Andrew, and his uncle, Stephen, made him owner in name only because of his credit worthiness. *See supra* ¶ 9.

149. Defendants also solicited annual renewal fees from consumers as recently as March 13, 2017 through Top of the Line Productions, LLC and/or Member Club Services, LLC. *See supra* ¶¶ 48, 74-87. David Perez, the purported owner of the Top of the Line, claims to have taken over management of Sea to Ski’s members, but the Court believes Mr. Perez is either another alias for Andrew Wunder or was under the control of Defendants to allow them to avoid detection while they attempted to collect additional monies from consumers. *See supra* ¶ 75-84. Member Club Services similarly purports to be independent from Defendants, but a closer look at the company’s public filings shows that Andrew Wunder owns and controls Member Club Services. *See supra* ¶¶ 85-87.

150. Defendants also operated other companies similar or “identical” to Sea to Ski, like Condos and Cruises Worldwide and American Travel Planners. *See supra* ¶¶ 88-98. Condos and Cruises was registered to Patricia Lesmes, Andrew and Stephen Wunder’s mother – a woman Stephen Wunder claims has been “in declining health, suffering from advanced heart disease . . .” *See supra* ¶¶ 88-95; Def. Stephen Wunder’s Notice of Intent to Discontinue His Active Participation in This Matter ¶ 2, Mar. 29, 2017. When the State attempted to ask Stephen Wunder about Ms. Lesmes’s role with Condos and Cruises Worldwide, Stephen Wunder asserted his Fifth Amendment privilege against self-incrimination. *See Pl.’s DH Ex. 104 at 9:50-12:35.*

151. American Travel Planners operated from the same location as Sea to Ski, and was described by Andrew Wunder as “identical” to Sea to Ski. *See supra* ¶ 8, 96-98. According to Christian Wunder’s submission to the Washington D.C. Better Business Bureau, American Travel Planners collected \$6,000,000 in annual

revenues from consumers, presumably by employing the same deceptive tactics used by Sea to Ski here. *See supra* ¶ 98.

152. Given Defendants' propensity for widespread deception and fraud in the vacation and travel industry, the Court finds it necessary to protect the public welfare to impose the aforementioned injunctive terms on Defendants, in addition to the injunctive terms affirmed by the Court of Appeals.

D. Attorney's Fees

153. Section 6-1-113(4) of the CCPA provides that attorney fees and costs are mandatory when the Colorado Attorney General successfully enforces the CCPA: "Costs and attorney fees *shall* be awarded to the attorney general . . . in all actions where the attorney general . . . successfully enforces this article." (emphasis added.) As indicated by the awards of injunctive relief, civil penalties, and restitution and disgorgement, the Colorado Attorney General has successfully enforced the CCPA and is entitled to all reasonable attorney fees and costs.

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

Conclusion

Accordingly, in addition to the injunction, and in light of the above:

- a. Judgment is entered against Defendants for restitution in the amount of **\$6,737,500.**
- b. Judgment is entered against Defendants for civil penalties in the amount of **\$350,000.**

SO ORDERED this 18th day of July 2017.

BY THE COURT:



MICHAEL J. VALLEJOS
District Court Judge

