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7 **STATE OF WASHINGTON**
8 **KING COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 HOLIDAY TREASURE CHEST
13 CHARITY FOUNDATION, a Washington
14 nonprofit corporation (aka PIRATES
15 CHARITY FOUNDATION, HOLIDAY
16 TREASURE CHEST, and TUBIE
17 FRIENDS); and MARK STERLING
18 BERGESON (aka MARK JENSEN),

19 Defendants.

NO.

COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF

20 The plaintiff, State of Washington, by and through its attorneys Robert W. Ferguson,
21 Attorney General, and Joshua G. Studor, Assistant Attorney General, brings this action against
22 the defendants. The State alleges the following on information and belief:

23 **I. INTRODUCTION**

24 1.1 Since at least 2013, Defendant Mark Sterling Bergeson, ("Bergeson") has used
25 The Holiday Treasure Chest Charity Foundation, a registered charitable organization, to enrich
26 himself under the guise of giving toys to children during the holidays. Bergeson founded the
defendant charity as an arm of Seattle Seafair Pirates and served as executive director for most
of its existence. Bergeson exclusively managed, and actively participated in, its solicitations,
finances, and purported charitable activities. His position allowed Bergeson to withdraw and use

1 unaccounted-for cash, convert in-kind donations to his personal use, and prevent oversight of his
2 activities. This lawsuit seeks to protect Holiday Treasure Chest Charity Foundation's legitimate
3 purposes, prevent Bergeson from further deceiving and benefiting from the generosity of
4 Washington consumers, and hold Bergeson accountable for his unlawful actions.

5 **II. PARTIES**

6 2.1 The Plaintiff is the State of Washington (the "State").

7 2.2 Defendant Mark Sterling Bergeson ("Bergeson"), also known as Mark
8 "Keelhaul" Jensen, is an unmarried man who resides in Woodinville, Washington.

9 2.3 Defendant Holiday Treasure Chest Charity Foundation is a Washington nonprofit
10 corporation and registered charitable organization with a Unified Business Identifier (UBI)
11 Number of 602 792 037 and Charitable Organization Registration Number of 1128407. Its
12 principal place of business is 12337 30th Ave NE, Ste. S1 Seattle, WA 98125. It is also known
13 as Pirates Charity Foundation, Holiday Treasure Chest, and Tubie Friends. Holiday Treasure
14 Chest Charity Foundation was previously associated with the Seattle Seafair Pirates but the
15 organizations separated in 2013 and are no longer affiliated.

16 2.4 The Seattle Seafair Pirates is not a party to this action.

17 **III. JURISDICTION AND VENUE**

18 3.1 The State files this Complaint pursuant to its authority under the Consumer
19 Protection Act (RCW 19.86) (CPA), the Charitable Solicitations Act (RCW 19.09), the
20 Nonprofit Corporations Act (RCW 24.03), and the Charitable Trust Act (RCW 11.110). The
21 Attorney General has authority under RCW 19.86.080 to seek orders to prevent and restrain
22 violations of the CPA. The Attorney General has authority under RCW 19.09.340 to seek orders
23 to prevent and restrain violations of the Charitable Solicitations Act. The Attorney General has
24 authority under RCW 11.110.120 to seek orders to prevent and restrain violations of the
25 Charitable Trust Act. The Attorney General has authority to seek involuntary dissolution of a
26 nonprofit corporation under RCW 24.03.040.

3.2 This Court has personal jurisdiction over the defendants under RCW 19.86.080, RCW 19.09.340, and RCW 11.110.120. The defendants have submitted themselves to the jurisdiction of this Court by engaging in the conduct set forth in this Complaint in the State of Washington, including in King County. The defendants have engaged in conduct in King County and elsewhere in the state of Washington that violates the CPA and the Charitable Solicitations Act.

3.3 This Court has subject matter jurisdiction over this action pursuant to RCW 19.86.080, RCW 19.86.140, RCW 11.110.120, and RCW 24.03.266.

3.4 Venue is proper in King County pursuant to RCW 4.12.020 and RCW 4.12.025. Defendants conduct business, solicit donations, and reside in King County.

IV. FACTS

4.1 In Washington, organizations conducting charitable solicitations are governed by the Charitable Solicitations Act. Under the act, a charitable organization must register with the Secretary of State, report its activities annually, maintain clear and current records, and fully and fairly identify itself to potential donors. Moreover, charitable organizations are prohibited from making false or misleading statements during their solicitations and must not use donated funds in a manner contrary to their charitable purpose. Once a charitable organization receives a donation, it must follow the mandates of the Charitable Trust Act, which include specific requirements about how a trust is properly administered.

4.2 The Seattle Seafair Pirates (the “Pirates”), a social group and nonprofit corporation, is a long-standing fixture of a Puget Sound summer. Formed in 1949 as an offshoot of a group known as the Ale & Quail Society, the Pirates helped organize Seattle’s first Seafair Festival. The group now kicks off the annual Seafair festivities with a mock “landing” at Alki Beach in West Seattle and appears in parades and social events throughout the region.

4.3 In 2008, members of the Pirates organization formed a separate Washington nonprofit corporation called the Seafair Pirates Charity Foundation and, in 2009, registered with

1 the Secretary of State as a charitable organization with the name "Seafair Pirates Holiday
2 Treasure Chest." Its stated purpose was: "the disbursement of toys, food, and clothing to poor
3 families in the greater Seattle area."

4 4.4 Bergeson was among the first directors of the Seafair Pirates Holiday Treasure
5 Chest and served as the Executive Director from 2008 to September 2018.

6 4.5 In 2010, tension arose between the Pirates and its charitable arm. The conflict led
7 to a schism between the two groups and, eventually, a lawsuit.

8 4.6 On or about March 5, 2014, the Pirates and its charity settled the lawsuit and
9 agreed that the charity would no longer solicit on behalf of the Pirates or identify itself as "Seattle
10 Seafair Pirates" or another similar name.

11 4.7 Close in time to the conclusion of the lawsuit with the Pirates, the charity changed
12 its name to the Holiday Treasure Chest Charity Foundation ("Treasure Chest").

13 4.8 In 2012, Treasure Chest's long-time treasurer (and Bergeson's romantic partner)
14 died. Though Treasure Chest appointed a new treasurer, he and the other officers allowed
15 Bergeson to run Treasure Chest with little, if any, oversight.

16 4.9 Despite the split between the Pirates and Treasure Chest, Bergeson's organization
17 continued to solicit charitable contributions in much the same way, including affirmatively
18 representing itself as being associated with the Pirates or implying such a relationship existed.

19 4.10 Treasure Chest currently solicits funds, gift cards, and in-kind donations through
20 telephone solicitations, direct mail, e-mail, the Internet, and in-person requests.

21 4.11 If a potential donor pledges a charitable contribution during a telephone
22 solicitation, Treasure Chest sends out a pledge receipt that encourages the donor to complete the
23 donation. The pledge receipt includes the name of the charity, its contact information, a claim
24 that it was previously awarded "Favorite Local Charity" by The Best of Western Washington,
25 the purported name of the solicitor, a "thank you" note, a disclosure of its status as a 501(c)(3)
26 organization and Federal Tax ID number, the Secretary of State's contact information, and the

1 phrase "FOR THE COMMUNITY'S LESS FORTUNATE." Figure 1 (below). It also includes
2 a letter describing Treasure Chest's past and intended charitable activities. Figure 2 (below).



Holiday Treasure Chest Charity Foundation

P.O. Box 27638
Seattle, WA 98165-2638
206-365-1590

Previously Voted #1 Favorite Local Charity in

the BEST of western washington



Pledge #HTC171796

Date:	12/31/2017	Total:	\$300.00
Authorized by:	[REDACTED]	Amount Received:	\$300.00
Phone:	[REDACTED]	Check	☒
Contacted by:	Rick Snyder	Product	☐
SFC:	WMI	Note: Thank you for your continued support.	

[REDACTED]		
[REDACTED]		
[REDACTED]	[REDACTED]	[REDACTED]

Important
Please return
1 copy of
Receipt with
Payment

Please make all checks payable to:
Holiday Treasure Chest

FOR THE COMMUNITY'S LESS FORTUNATE

The Holiday Treasure Chest Charity Foundation is a registered Tax exempt 501 c 3 Charity with the IRS. Our Federal Tax ID # is 26-141845L. The Charity Foundation is registered with the Charities division of the Washington Secretary of State's office pursuant to RCW 19.91.010 et. Seq. Further information is available at the Secretary of State's office by contacting their toll free number at 1-800-332-6TIVE. No monies from this project will go to fund the activities or functions of the Seafair Pirates. They are a separate organization and are no longer involved in the charity work of the Foundation.

Figure 1



Holiday Treasure Chest Charity Foundation
Holiday Treasure Chest
206-365-1590



Dear Supporter

As we see the beginnings of fall, we know that Christmas will be upon on us in no time at all. There have been several changes last few years, including additional storage options for our year-round accumulation of Christmas gifts. To a record distribution of meat products for both the families that we serve and several important community feeding programs. We will be focusing on food portion of our program to grow this meat distribution to each quarter of the year.

Each year our distribution levels change due to donations, volunteers and a variety of other things. We are trying a couple of new things this year.

We are trying a direct mail campaign this year. It is our goal to utilize our resources and workforce as efficient as possible. It is gratifying to personally contact each one of our supporters and pick up your pledge in person. As our area grows, this is becoming more difficult. We hope that you will honor the pledge from last year (feel free to increase it) and send it back in.

In some cases, it is earlier than usual and others we are still running behind. PLEASE let us know your thoughts and if you would prefer for us to call you, please ring the office and leave a message and we will make sure we contact you. The pledge form you are seeing is the amount we believe you contributed last year and it is pending your approval.

We are going to drive our efforts to support those programs like ours to see that even more people are served. It is a huge undertaking, and we appreciate your efforts to assist us in making sure both families and other charities we support have a Christmas that they can remember with smiles.

Thank you for your time and consideration. We believe- "It only takes one person to make a difference, but together we can make an impact." Thank you for caring, and thank you most of all for helping us make an impact. Yes, Seattle, there is a Santa Claus, and he may be dressed like a Pirate!

Sincerely Yours,
Holiday Treasure Chest Board

P.O. Box 27638
Seattle, WA 98165-2638

Figure 2

1 4.12 Donations to Treasure Chest come in the form of cash, check, online payment,
2 gift card, or in-kind contributions like food or toys.

3 4.13 If an individual provides an in-kind donation, a courier from Treasure Chest
4 collects the donation and stores it in one of multiple storage units rented in Bergeson's name. In-
5 kind contributions generally take the form of toys, food, and gift cards/certificates. Treasure
6 Chest does not keep inventory of its in-kind contributions.

7 4.14 Cash and checks donated to Treasure Chest are often collected by a courier and
8 are deposited into one of Treasure Chest's checking accounts.

9 4.15 Funds donated using the Internet are processed through PayPal and are transferred
10 to one of Treasure Chest's checking accounts.

11 4.16 Treasure Chest does not account for cash contributions or donations of gift cards
12 or gift certificates.

13 4.17 At all relevant times Treasure Chest's primary solicitors were Bergeson and
14 Foundation employees Ronald Braschler and David Werven. On information and belief,
15 Bergeson identifies himself as "Rick Snyder" and Braschler identifies himself as "Rod Baxter"
16 when soliciting the public for charitable contributions.

17 4.18 Between 2012 and May 2018, Bergeson withdrew more than \$280,000 in cash
18 from Treasure Chest's checking account using Treasure Chest's ATM/debit card and by writing
19 checks to "cash." Bergeson did not keep records regarding how he used the cash.

20 4.19 For years, Bergeson used Treasure Chest's checking account as if it were his own.
21 For example, between 2013 and May 2018, Treasure Chest's account statements show more than
22 \$10,000 in purchases for fuel and groceries, \$3,000 spent at restaurants, \$6,000 for cell phone
23 bills, and \$14,000 for cable and internet. Bergeson also used Treasure Chest's account to pay for
24 a resort stay in Friday Harbor, Washington and a hotel room in Ocean Shores, Washington.
25 Figure 3. Treasure Chest also paid \$430 for a subscription to Match.com, an online dating
26 service. Figure 4.

Withdrawals and other debits

Date	Description	Amount
01/04/18	VZ WIRELESS VW DES:VZW WEBPAY ID:2891196 INDN:MARK *BERGESON CO ID:0000751800 WEB	-143.42
Card account # XXXX XXXX XXXX 6926		
01/02/18	CHECKCARD 1230 SPK*SPOKEO SEARCH 800-6994264 CA 24906417364048921046926 RECURRING CKCD 5968 XXXXXXXXXXXXX6926 XXXX XXXX XXXX 6926	-19.95
01/03/18	FRED MEYER 01/03 #000015289 PURCHASE FRED MEYER 179 SEATTLE WA	-42.59
01/04/18	CHECKCARD 0103 TUKWILA SELF STORAGE TUKWILA WA 24071058003432530000052 CKCD 4225 XXXXXXXXXXXXX6926 XXXX XXXX XXXX 6926	-189.00
01/04/18	SAFEWAY STORE 01/04 #000033015 PURCHASE SAFEWAY STORE 3 KENMORE WA	-41.81
01/10/18	SAFEWAY STORE 01/10 #000842823 PURCHASE SAFEWAY STORE 3 KENMORE WA	-43.18
01/12/18	COSTCO WHSE #0 01/12 #000562719 PURCHASE COSTCO WHSE #0740 LACEY WA	-83.57
01/16/18	CHECKCARD 0112 COMFORT SUITES OCEAN SHORES WA 24692168013100470886335 CKCD 3562 XXXXXXXXXXXXX6926 XXXX XXXX XXXX 6926	-268.29
01/16/18	BKOFAMERICA ATM 01/14 #000004886 WITHDRWL COTTAGE LAKE WOODINVILLE WA	-200.00
01/16/18	SAFEWAY STORE 01/16 #000229835 PURCHASE SAFEWAY STORE 3 KENMORE WA	-37.94
01/19/18	SAFEWAY STORE 01/19 #000733933 PURCHASE SAFEWAY STORE 3 KENMORE WA	-46.16
01/23/18	CHECKCARD 0122 SPK*SPOKEO SEARCH 800-6994264 CA 24906418022049906136668 RECURRING CKCD 5968 XXXXXXXXXXXXX6926 XXXX XXXX XXXX 6926	-9.85

continued on the next page

Figure 3 (Source: January 2018 Bank of America bank statements for Treasure Chest). Charges below "Card account..." are charges incurred using the account's debit card.

Withdrawals and other debits

Date	Description	Amount
04/05/17	PAYPAL DES:INST XFER ID:EBAYINCSHIP INDN:SEAFAIR PIRATES CHARIT CO ID:PAYPALS177 WEB	-7.04
04/06/17	PAYPAL DES:INST XFER ID:EBAYINCSHIP INDN:SEAFAIR PIRATES CHARIT CO ID:PAYPALS177 WEB	-9.97
04/06/17	PAYPAL DES:INST XFER ID:EBAYINCSHIP INDN:SEAFAIR PIRATES CHARIT CO ID:PAYPALS177 WEB	-7.20
04/06/17	PAYPAL DES:INST XFER ID:EBAYINCSHIP INDN:SEAFAIR PIRATES CHARIT CO ID:PAYPALS177 WEB	-7.04
04/21/17	COMCAST DES:CABLE ID:7578337 INDN:PIRATES *FOUNDATION CO ID:0000213249 WEB	-333.00
Card account # XXXX XXXX XXXX 6926		
04/03/17	SAFEWAY STORE 04/02 #000914833 PURCHASE SAFEWAY STORE 3 KENMORE WA	-45.00
04/03/17	BKOFAMERICA ATM 04/02 #000002908 WITHDRWL WOODINVILLE WOODINVILLE WA	-400.00
04/11/17	SAFEWAY STORE 04/11 #000543259 PURCHASE SAFEWAY STORE 3 KENMORE WA	-46.99
04/11/17	BKOFAMERICA ATM 04/11 #000001596 WITHDRWL LAKE CITY SEATTLE WA	-100.00
04/14/17	SAFEWAY STORE 04/14 #000490443 PURCHASE SAFEWAY STORE 3 KENMORE WA	-44.86
04/17/17	BKOFAMERICA ATM 04/16 #000002362 WITHDRWL COTTAGE LAKE WOODINVILLE WA	-300.00
04/20/17	CHECKCARD 0419 TUKWILA SELF STORAGE TUKWILA WA 24323007109253109010017 CKCD 4225 XXXXXXXXXXXXX6926 XXXX XXXX XXXX 6926	-375.00
04/21/17	CHECKCARD 0420 WMV*MATCH.COM 800-326-5161 TX 24692167110000832886086 CKCD 7273 XXXXXXXXXXXXX6926 XXXX XXXX XXXX 6926	-98.96
04/24/17	SAFEWAY STORE 04/24 #000372613 PURCHASE SAFEWAY STORE 3 KENMORE WA	-36.51
Subtotal for card account # XXXX XXXX XXXX 6926		-\$1,447.32
Total withdrawals and other debits		-\$1,811.57

Figure 4 (Source: April 2017 Bank of America bank statements for Treasure Chest)

1 4.20 On information and belief, Bergeson also converts donated gift cards to his
2 personal use. For example, Bergeson used gift cards donated from Stanford's restaurant in the
3 Northgate Mall to take friends and fellow Treasure Chest members to lunch.

4 4.21 On information and belief, Bergeson sold and sells items contributed to Treasure
5 Chest, including toys, electronic items, and collectibles, on the Internet using auction sites like
6 eBay. The items include donated collectibles from Funko sold for as much as four times the
7 recommended retail price. Figure 5. Bergeson's listings claim that "100% of the sale of this item
8 will benefit Pirates Charity Foundation." Treasure Chest does not keep an accounting of these
9 auction sales.

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FUNKO POP!! Breaking Bad JESSE PINKMAN #161 Rare EE Exclu

1 watched in last 24 hours

Condition: **New**

Time left: **5d 01h 43, 2:00PM**

Price: **US \$40.00**

Buy It Now

Add to cart

[Add to watch list](#)

All proceeds go to charity 30-day returns Ships from United States

Shipping: **Calculate**

Item location: **Seattle, Washington, United States**

Ships to: **United States, Canada, United Kingdom, Denmark, Romania, Slovakia, Bulgaria, Czech Republic, Finland, Hungary, Latvia, Lithuania, Malta, Estonia, Australia, Greece, Portugal, Cyprus, Slovenia, Japan, Sweden, Korea, South, Indonesia, Taiwan, South Africa, Thailand, Belgium, France, Hong Kong, Ireland, Netherlands, Poland, Spain, Italy, Germany, Austria, Israel, Mexico, New Zealand, Philippines, Switzerland, Norway, Saudi Arabia, Ukraine, United Arab Emirates, Qatar, Kuwait, Bahrain, Croatia, Republic of, Malaysia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Panama, Trinidad and Tobago, Guatemala, El Salvador, Honduras, Jamaica**

Delivery: **Varies**

Payments: **PayPal VISA MasterCard AMERICAN EXPRESS DISCOVER**

PayPal CREDIT

Special financing available. [Apply Now](#) | [See terms](#)

Returns: **30 day returns. Buyer pays for return shipping** | [See details](#)

Guarantee: **ebay MONEY BACK GUARANTEE** | [See details](#)

Get the item you ordered or get your money back.

Covers your purchase price and original shipping.

Figure 3

4.22 Ronald Braschler and others have received compensation from Treasure Chest either from cash payments or checks. Between 2013 and 2018, Braschler received at least \$58,000 from Treasure Chest.

4.23 Treasure Chest has made loans and/or distributed assets to members of the corporation and other insiders including Bergeson, Ataa Newman, Brittany Torres, David Werven, Jena Werven, Ron Braschler, Russ Brown, and Ken Coole (now deceased).

4.24 In filings with the Secretary, Treasure Chest reported it raised more than \$1 million in donations between 2012 and May 2018. It also reported spending an average of 82% on its program services.

4.25 In reality, Treasure Chest's failure to account and keep records makes it impossible to determine how much it *actually* spent on providing gifts and food to children. Checks and statements from its primary bank checking account show only \$414 spent at stores that sell toys. Moreover, the defendants' utter lack of inventory control, failure to identify beneficiaries, and conversion of donated goods renders useless any attempt to account for in-kind donations.

V. FIRST CAUSE OF ACTION

(Violations of the Charitable Solicitations Act RCW 19.09.100 the CPA RCW 19.86:

False and Misleading Charitable Solicitations)

5.1 Plaintiff realleges Paragraphs 1.1 through 4.25 and incorporates them herein as if set forth in full.

5.2 Defendants made false, misleading, and deceptive statements in charitable solicitations for Treasure Chest. Such misrepresentations include, but are not limited to:

a. Claims that monetary donations are used by Treasure Chest to purchase and distribute “countless tons of food and goods” and “tens of thousands of new gifts to children throughout the Puget Sound region.”

- 1 b. Claims that Treasure Chest's workers are "volunteers" when they are
2 actually compensated for work done for the nonprofit.
- 3 c. Claims that donated gift cards are given directly to needy families or used
4 to purchase specific gift requests when many are actually converted to
5 personal use by Bergeson and other members.
- 6 d. Claims that in-kind donations such as toys and food are given directly to
7 children in need.
- 8 e. Claims that Treasure Chest has been in operation for at least 17 years
9 when in fact it was incorporated in 2008.
- 10 f. Claims that Treasure Chest has been awarded BEST Favorite Local
11 Charity from Evening Magazine's "the BEST of Western Washington"
12 and has placed in the top five for six years, when in fact it has not been
13 awarded "BEST" since at least its split with the Pirates in 2013.

14 5.3 Practices covered by Charitable Solicitations Act "are matters vitally affecting
15 the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW.
16 A violation of this chapter is not reasonable in relation to the development and preservation of
17 business and is an unfair or deceptive act in trade or commerce and an unfair method of
18 competition for the purpose of applying the consumer protection act, chapter 19.86 RCW." RCW
19 19.09.340.

20 5.4 The conduct described in paragraphs 5.1 through 5.2 violates RCW
21 19.09.100(15) as currently and previously enacted. Pursuant to RCW 19.09.340, violations of
22 the Charitable Solicitations Act are *per se* violations of the Consumer Protection Act, RCW
23 19.86.

24 5.5 Notwithstanding the *per se* violation of the Charitable Solicitations Act, the
25 conduct described in paragraphs 5.1 through 5.2 constitutes unfair and/or deceptive acts or
26 practices in the conduct of trade or commerce, which violates the RCW 19.86.020. Making false

1 and misleading statements to consumers when soliciting charitable contributions has the capacity
2 to deceive a substantial portion of the public.

3 VI. SECOND CAUSE OF ACTION

4 **(Violations of the Charitable Solicitations Act RCW 19.09.100 and the CPA RCW 19.86:**

5 **Failure to fully and fairly disclose the organization's identity in solicitations)**

6 6.1 Plaintiff re-alleges Paragraphs 1.1 through 5.5 and incorporates them as if set fully
7 herein.

8 6.2 While directly soliciting for charitable contributions, the defendants failed to fully
9 and fairly disclosed their identities and/or misrepresented their identities at the point of the
10 solicitation:

11 a. Bergeson provided a false or fictitious name, to-wit: Rick Snyder.

12 b. Foundation employee, Ronald Braschler, provided a false or fictitious
13 name, to-wit: Ron Baxter.

14 c. Treasure Chest expressly or implicitly represented itself as being the
15 Seattle Seafair Pirates and/or failed to correct the misconception.

16 6.3 The conduct described in paragraphs 6.1 through 6.2 occurred in trade and/or
17 commerce and impacted the public interest.

18 6.4 The conduct described in paragraphs 6.1 through 6.2 has the capacity to deceive
19 Washington consumers.

20 6.5 The conduct described in paragraphs 6.1 through 6.2 violates RCW 19.09.100(15)
21 as currently and previously enacted. Pursuant to RCW 19.09.340, violations of the Charitable
22 Solicitations Act are *per se* violations of the Consumer Protection Act, RCW 19.86.

23 6.6 Notwithstanding the *per se* violation of the Charitable Solicitations Act, the conduct
24 described in paragraphs 6.1 through 6.2 constitutes unfair and/or deceptive acts or practices in the
25 conduct of trade or commerce, which violates the RCW 19.86.020. Solicitors' misrepresentations
26

1 of their identities and the identity of the charitable organization for which they are soliciting have
2 the capacity to deceive a substantial portion of the public.

3 **VII. THIRD CAUSE OF ACTION**

4 **(Violations of the Charitable Solicitations Act RCW 19.09: Use of Couriers to Collect** 5 **Donations)**

6 7.1 Plaintiff re-alleges Paragraphs 1.1 through 6.6 and incorporates them as if set fully
7 herein.

8 7.2 The defendants collected or attempted to collect cash and checks from donors in
9 person and/or by courier where the solicitation for a contribution was not made in person and where
10 the donor had not agreed to purchase any goods or items from the defendants;

11 7.3 The conduct described in paragraphs 7.1 through 7.2 violates RCW 19.09.100(18)
12 as currently and previously enacted. Pursuant to RCW 19.09.340, violations of the Charitable
13 Solicitations Act are *per se* violations of the Consumer Protection Act, RCW 19.86.

14 **VIII. FOURTH CAUSE OF ACTION**

15 **(Petition to Remove Executive Director and/or Dissolve the Nonprofit)**

16 8.1 Plaintiff re-alleges Paragraphs 1.1 through 7.3 and incorporates them as if set fully
17 herein.

18 8.2 Bergeson, at all relevant times, was the executive director and an officer of Treasure
19 Chest, a nonprofit corporation.

20 8.3 While serving as a director of Treasure Chest, Bergeson engaged in fraudulent
21 and/or dishonest conduct with respect to the corporation, which included but was not limited to:

- 22 a. Repeatedly violating provisions of the CPA, Charitable Solicitations Act,
23 and Nonprofit Corporations Act in a manner that is likely to jeopardize
24 the future of Treasure Chest;
25
26

- b. Controlling the finances of Treasure Chest without due skill, care, and diligence and without seeking the aid of a treasurer, bookkeeper, accountant, or attorney;
- c. Appropriating funds and merchandise belonging to Treasure Chest for his personal use;
- d. Paying himself and other members of the nonprofit corporation compensation for services rendered without first approving the compensation with Treasure Chest's Board of Directors;
- e. Failing to account and provide financial reports to the other directors and officers of Treasure Chest, even after such financial reports were requested;
- f. Distributing assets of the corporation and/or making loans to insiders and members.
- g. Making loans to directors and/or officers of the corporation in violation of RCW 24.03.140.
- h. Failing to present and/or approve an operating budget; and/or
- i. Wasting assets of Treasure Chest.

8.4 Removal of Bergeson is in the best interest of Treasure Chest, donors and potential donors, and the public interest.

8.5 The directors and/or those in control of Treasure Chest have acted, are acting, or will act in a manner that is illegal, oppressive, and/or fraudulent.

8.6 As a result of Bergeson's actions the corporate assets are being misapplied and/or wasted.

8.7 Under RCW 24.03.250, this Court should remove Bergeson from Treasure Chest or, in the alternative, dissolve the nonprofit corporation.

1 **IX. FIFTH CAUSE OF ACTION**

2 **(Breach of Duty to a Charitable Trust)**

3 9.1 Plaintiff re-alleges Paragraphs 1.1 through 8.7 and incorporates them as if set fully
4 herein.

5 9.2 Because it is a nonprofit corporation holding assets meant for charitable purposes,
6 Treasure Chest is a trustee of a charitable trust as defined by RCW 11.110.020.

7 9.3 Trustees of charitable trusts owe duties of good faith, care, loyalty, and integrity to
8 the charitable trust. Trustees also owe an additional duty to keep and render clear and accurate
9 accounts with respect to the administration of the trust, and furnish complete and accurate
10 information as to the nature and amount of the trust property (generally referred to as its "Duty to
11 Account").

12 9.4 Treasure Chest breached its duties of good faith, care, loyalty, and integrity by:

- 13 a. Misusing funds held subject to limitations permitting their use only for
14 charitable, eleemosynary, benevolent, educational, or similar purposes;
15 b. Engaging in self-dealing transactions;
16 c. Failing to adequately screen for and prevent conflicts of interest; and/or
17 d. Converting the funds to personal use.

18 9.5 Treasure Chest breached its Duty to Account by:

- 19 a. Failing to keep accurate financial books;
20 b. Failing to maintain financial records such as receipts, ledgers, and
21 invoices;
22 c. Conducting transactions in cash without maintaining records of the
23 transactions; and/or
24 d. Paying workers using false or fictitious names, "under-the-table" with
25 cash, and without first obtaining authority by Treasure Chest's Board of
26 Directors.

1 9.6 Defendants breaches of their duties damaged the charitable trust.

2 **X. PRAYER FOR RELIEF**

3 Wherefore, the State prays for the following relief:

4 10.1 That the Court adjudge and decree that the defendants have engaged in the conduct
5 complained of herein.

6 10.2 That the Court adjudge and degree that Bergeson is personally liable for the actions
7 of the corporate defendant Treasure Chest.

8 10.3 That the Court adjudge and decree that the conduct complained of constitutes
9 violations of the Charitable Solicitations Act, RCW 19.09, and *per se* violations of the Consumer
10 Protection Act, RCW 19.86.

11 10.4 That the Court adjudge and decree that the conduct complained of constitutes unfair
12 or deceptive acts and practices and an unfair method of competition and is unlawful in violation of
13 the Consumer Protection Act, RCW 19.86.020.

14 10.5 That the Court adjudge and decree that the conduct complained of constitutes
15 breaches of the trustee's duties under the Charitable Trust Act, RCW 11.110.

16 10.6 That the Court adjudge and degree that the conduct complaint of damaged the assets
17 of the charitable trust.

18 10.7 That the Court adjudge and decree that the director(s) and those in control of
19 Treasure Chest have acted, are acting, and will continue to act in a manner that is illegal, oppressive,
20 and/or fraudulent. RCW 24.03.250.

21 10.8 That the Court adjudge and decree that the assets of Treasure Chest are being
22 misapplied or wasted.

23 10.9 That the Court issue temporary, preliminary, and permanent injunctions enjoining
24 and restraining the defendants, and their representatives, successors, assigns, officers, agents,
25 servants, employees, and all other persons acting or claiming to act for, on behalf of, or in active
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1 concert or participation with the defendants, from continuing or engaging in the unlawful conduct
2 complained of herein; and other injunctive relief as deemed appropriate.

3 10.10 That the Court remove Bergeson from Treasure Chest's board and prohibit him
4 from serving in a fiduciary role for Treasure Chest in perpetuity.

5 10.11 That the Court issue temporary, preliminary, and permanent injunctions enjoining
6 and restraining Bergeson from registering, operating, or being a fiduciary of any nonprofit
7 corporation or charitable organization and from supervising, arranging, offering to engage or
8 engaging in charitable solicitation of any kind.

9 10.12 That the Court assess civil penalties, pursuant to RCW 19.86.140 and/or RCW
10 19.09.340, of up to two thousand dollars (\$2,000) per violation against the defendants for each and
11 every violation of RCW 19.86.020 complained of herein.

12 10.13 That the Court make such orders pursuant to RCW 19.86.080 as it deems
13 appropriate to provide for restitution to consumers, or *cy pres* to an organization with a similar
14 charitable purpose, of money or property acquired by the defendants as a result of the conduct
15 complained of herein.

16 10.14 That the Court make such orders pursuant to RCW 19.86.080 to provide that the
17 plaintiff, State of Washington, recover from the defendants the costs of this action, including
18 reasonable attorneys' fees.

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