

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota by its Attorney General,
Lori Swanson,

Judge Stephen C. Aldrich

Plaintiff,

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER**

vs.

Court File No. 27-CV-07-4102

American Family Prepaid Legal Corporation,
d/b/a American Family Legal Plan, Heritage
Marketing and Insurance Services, Inc.,
Stanley Norman, and Jeffrey Norman,

Defendants.

On March 7, 2007, the State of Minnesota (“the State”), by its Attorney General, Lori Swanson, commenced the above-entitled action against Defendants American Family Prepaid Legal Corporation, d/b/a American Family Legal Plan (“AFLP”) and Heritage Marketing and Insurance Services, Inc. (“Heritage”). On May 13, 2008, after obtaining leave of the Court, the State served and filed an Amended Complaint adding claims against Defendants Stanley and Jeffrey Norman in their individual capacities.

On November 12, 2007, AFLP filed a petition for Chapter 7 bankruptcy with the United States Bankruptcy Court, Central District of California, (Case No. 8:07-BK-13777-RK). No discharge has been granted by that court to date.

On November 12, 2007, Stanley Norman filed a petition for bankruptcy with the United States Bankruptcy Court, Central District of California, (Case No. 8:07-BK-13776-RK). No discharge has been granted by that court to date.

By Order dated April 16, 2008, this Court found that the automatic stay provisions of the bankruptcy code did not apply to the present action. By Order dated June 4, 2008, the United States Bankruptcy Court also found that the automatic stay provisions of the bankruptcy code did not apply to the present action and dismissed AFLP's adversary proceedings against the State.

The parties appeared before the Court on March 23 and April 15, 2009, on Plaintiff's motion for summary judgment. On May 14, 2009, the Court granted summary judgment as to Count X of the amended complaint, thereby imposing a potential supplemental civil penalty of \$10,000 per violation in the case that Defendants were found liable on the remaining counts. The Court, however, found that material factual issues existed with regard to the remaining counts and, therefore, denied summary judgment as to counts I-IX.

The matter subsequently came on for a bench trial before the Court commencing on June 15, 2009, and continuing periodically thereafter until the completion of testimony on September 28, 2009. The parties submitted Proposed Findings of Fact and Conclusions of Law on November 20, 2009, and the Court heard a full day of closing arguments on December 11, 2009.

During the course of the proceedings, the State was represented by Deputy Attorney General Karen Olson and Assistant Attorneys General Kai Richter, James Canaday, and Benjamin Feist. Defendants AFLP, Heritage, and Jeffrey Norman were represented by Roy B. Henline (until his disqualification on April 15, 2009), and later by Robert V. Espeset, and Martin A. Carlson. Defendant Stanley Norman did not appear personally for trial, but notified the Court via letter that he intended to proceed *pro se* and viewed his interests as being consistent with the other defendants in the case.

Based upon the evidence and testimony presented, the argument of counsel and all of the files, records, and proceedings herein, the Court makes the following:

FINDINGS OF FACT:

I. Introduction

1. By its amended complaint, the State alleges that Defendants operated a living trust mill under the guise of selling prepaid legal services for the primary purpose of ultimately selling long-term deferred annuity products to Minnesota senior citizens, in violation of Minnesota law.
2. The State brings ten claims against Defendants, alleging violations of Minnesota's consumer protection and insurance laws.
3. The State seeks a permanent injunction barring Defendants from operating the same or similar businesses in the State, restitution for those harmed by Defendants' actions, along with civil penalties, attorneys' fees, and reimbursement of costs.
4. At the outset, the Court commends the attorneys involved in this trial on their hard work and their efforts to organize and streamline the tremendously complex logistical issues involved in this case. This case, which involved over 1,200 Minnesota consumers and 25 bankers' boxes of documentary evidence comprising over 64,000 pages, threatened to become unwieldy if not managed properly. However, Plaintiff's attorneys adroitly and consistently distilled their claims to a digestible presentation. Defendants' attorneys, too, showed great skill in responding to the claims and voluminous submissions of the State and vigilantly represented their clients' interests at every step, especially in light of their late involvement in the case.

II. Defendants

5. Defendants AFLP and Heritage are both California corporations. The corporate functions of AFLP and Heritage were conducted out of shared office space in California. The

Minnesota sales and management functions of AFLP and Heritage were conducted out of shared office space in Bloomington, Minnesota.

6. Defendants Stanley Norman and Jeffrey Norman (“the Norman Defendants”), father and son, are both California residents. Stanley Norman was the president of AFLP and chief executive officer of Heritage. Jeffrey Norman was the chief executive officer of AFLP and the president of Heritage. The Norman Defendants are the sole corporate officers and shareholders of AFLP and Heritage, each owning 50% of the shares of the respective companies.

III. Overview of Defendants’ Business Operations in Minnesota

7. AFLP sold a prepaid legal plan, marketed specifically to consumers over the age of 65, with a focus on estate planning services, among other alleged benefits. The cost of the legal plan generally ranged between \$1,995 and \$2,295. The average age of AFLP’s 1277 plan members was approximately 75.
8. Heritage sold insurance products, almost always in the form of deferred annuities, to AFLP’s plan members. Heritage’s sales typically took place during a meeting at which a Heritage representative delivered an estate plan that had been prepared as a result of the plan member’s purchase of the AFLP legal plan. The average age of Heritage’s 328 consumers was also approximately 75.
9. Defendants’ Minnesota-based personnel consisted primarily of Marketing Director Michael Muto and various AFLP plan advisors, Heritage delivery agents, and plan attorneys. All plan attorneys were employed by or contracted with the law firm of Donahue & Ramadan, a Michigan-based firm hired by AFLP to provide legal services to its plan members in Minnesota and elsewhere.

a. Marketing Director Michael Muto

10. Michael Muto served as Marketing Director for the entire term of AFLP and Heritage's business operations in Minnesota.
11. Mr. Muto took direction from the Norman Defendants and attended a multi-day training seminar conducted by the Norman Defendants at the corporate office in California before operations began in Minnesota.
12. Mr. Muto was an employee of AFLP, with his pay reported on a Form W-2. He was an independent contractor of Heritage, with his pay reported on a Form 1099. With the exception of a three month period while the Minnesota business operations were getting under way, Mr. Muto was paid strictly on commission. He earned \$100 for every legal plan sold by an AFLP plan advisor. He also earned a 0.5% commission on premiums for every annuity sold by a Heritage delivery agent.
13. Mr. Muto hired, fired, supervised, and trained all of the Minnesota-based personnel of AFLP and Heritage. Mr. Muto's training of these personnel was based on information provided to him by the corporate offices of AFLP and Heritage, namely the Norman Defendants.

b. AFLP Plan Advisors

14. AFLP entered into independent contractor agreements with individuals to sell its prepaid legal plan to Minnesota consumers. These individuals were referred to as "plan advisors."
15. AFLP plan advisors met with consumers in their homes in order to attempt to sell them AFLP's prepaid legal plan.
16. AFLP plan advisors were paid solely on commission for the sale of prepaid legal plans. They earned no salary, expense reimbursement, or other compensation. They were paid a

commission of \$625 to \$750 for each legal plan sold, depending on the length of time they had worked for the company.

17. AFLP closely monitored the sales performance of its plan advisors, and Jeffrey Norman stated at trial that he terminated sales people “all the time” for lack of production.

c. AFLP Plan Attorneys

18. AFLP contracted with the law firm of Donahue & Ramadan, a Michigan-based firm, for the provision of legal services to AFLP plan members, including plan members in Minnesota.
19. During the course of Defendants’ operations in Minnesota, Donahue & Ramadan employed or contracted with several Minnesota-licensed attorneys to serve as plan attorneys for AFLP.
20. Anthony K. Berg served as plan attorney from the time AFLP’s operations began in Minnesota in February or March 2005 until approximately July of 2005. Jonathan M. Burris served as plan attorney from approximately August of 2005 until October of 2005. Sandra E. Stone served as plan attorney from early-November of 2005 until December 21, 2005. Roy B. Henline served as plan attorney for the majority of the time that AFLP operated in Minnesota, from January of 2006 until the end of operations in mid-2007. Both Ms. Stone and Mr. Henline testified at trial.
21. AFLP plan members paid \$2,000 or more for the legal plan. AFLP paid Donahue & Ramadan a flat-fee of \$275 to provide legal services to plan members. Donahue & Ramadan was paid this amount regardless of what services were provided or how much (or how little) time the plan attorney spent with the plan member.

d. Heritage Delivery Agents

22. Heritage entered into independent contractor agreements with licensed insurance agents to deliver completed estate planning documents to AFLP plan members. These individuals were referred to by Heritage as “delivery agents.”
23. Heritage delivery agents were responsible for delivering completed estate planning documents to plan members and notarizing such documents. It was Heritage delivery agents, rather than the AFLP plan attorneys, who were responsible for ensuring that the estate planning documents were properly executed by AFLP plan members.
24. Heritage delivery agents were not paid a salary and did not receive any compensation or expense reimbursement related to the delivery or notarization of estate planning documents. They were paid solely on commission, based on sales of insurance products to AFLP plan members.
25. The commissions that were paid to Heritage delivery agents varied depending on the specific product sold, but averaged between 1.5% and 3% of the premium collected for a particular product. Heritage earned commissions of 6% to 10% for each sale by a delivery agent.
26. Heritage expected its delivery agents to average \$30,000 in written annuity premiums per delivery and evaluated its agents based upon stated company expectations that they average a *minimum* of \$25,000 in written annuity applications per delivery. If they failed to meet this goal, they were told, they could be fired.

IV. Defendants' Sales Strategy

a. Act I: AFLP

i. Marketing

27. AFLP's sales strategy began with a direct mail marketing campaign. AFLP hired a third-party vendor to send direct mail solicitations to senior citizens in Minnesota with information regarding probate and estate taxes.
28. AFLP employed several different versions of its mailer in connection with its solicitations, each containing different information, claims, and images.¹ None of the mailers identified AFLP or Heritage by name and none mentioned the sale of prepaid legal plans or annuities.
29. AFLP sent 1,855,702 such solicitations to Minnesota consumers. The solicitations invited recipients to fill out and return a pre-printed reply postcard in order to request a free handbook containing information regarding probate and estate taxes.
30. Any returned reply postcards were forwarded to AFLP's corporate headquarters in California.
31. Upon receiving said postcards, AFLP's in-house telemarketing center would contact the identified consumers and offer to send a plan advisor to their home in order to "give [them] some important general information on how people may reduce or eliminate probate and estate settlement costs."

¹ At trial, the State made much of the inclusion, in different incarnations of AFLP's mailer, of references to an AARP study, an official-looking bald eagle seal, or the name "American Family". The State claimed that such references deceptively implied a relationship to AARP, the Federal government, or American Family Insurance Company. While these references may have been part of an overall attempt to give consumers unwarranted confidence in the solicitation, they did not appear to have been determinative and do not, by themselves, rise to the level of violations of consumer protection laws.

32. The free handbook previously promised by the mailer was not delivered unless specifically and repeatedly insisted upon by the consumer.

ii. In-Home Presentations

33. AFLP scheduled 10,181 in-home presentations with Minnesota consumers as a result of their direct mail solicitations.

34. AFLP's business records and training materials, along with the trial testimony of consumers, provide detailed information from which the Court can determine what routinely occurred at these in-home meetings.

35. During in-home meetings, AFLP plan advisors stressed and inflated the disadvantages of probate, usually providing or implying specific estimates of how much it would cost to probate their estate if they did not purchase AFLP's prepaid legal plan.

36. Plan advisors uniformly recommended AFLP's prepaid legal plan to consumers regardless of their individual circumstances and suggested that the services offered through the plan (including preparation of a "living trust") were necessary to avoid significant probate expenses.

37. AFLP plan advisors did not routinely inquire whether the consumers it solicited for membership in the legal plan already had an attorney or an estate plan in place.

38. AFLP plan advisors were not attorneys, were not otherwise trained on Minnesota probate law, and were not qualified to explain how Minnesota probate law might apply to a particular consumer.

39. Moreover, once an in-home sale was made, AFLP plan advisors routinely failed to orally notify consumers of their three-day right of cancellation and AFLP's "Notice of Cancellation" failed to even identify the product that was sold.

iii. Training Materials

40. Prior to conducting in-home meetings, AFLP's plan advisors were trained in the company's unique brand of subtle high-pressure sales tactics. These tactics are revealed in the company's Advisor Training & Compliance Manual "the Training Manual"). They are telling of the company's overall sales strategy.
41. The Training Manual, which was created by Jeffrey Norman, was used by Mr. Muto to train all AFLP plan advisors on AFLP's standardized sales methods and techniques, including explicit instructions on precisely what to say to consumers and how to respond to their inquiries.
42. Among other things, the Training Manual specifically instructed plan advisors to "assume the sale" and to "just start writing up the application and let them stop you if they want to."
43. AFLP plan advisors were told that they should "[n]ever ask an ultimate question like 'What do you think?' or 'Would you like to sign up for the plan?'" for the reason that such questions "never work."
44. Moreover, in the event that consumers raised objections to a potential sale, AFLP's plan advisors were instructed to attempt to overcome these objections not just once, but four or five times, on the grounds that "[o]vercoming objections helps the prospect make the right decision[.]" The "right decision" was invariably to purchase the legal plan and a living trust.

45. The Training Manual stated that “the most important task” of AFLP’s plan advisors was “making a sale” because “[n]obody usually benefits when a sale is not made. Not the prospective member, not yourself, and not the company.”
46. AFLP’s training materials demonstrate that their sales presentation was not only geared to lead consumers to make a pre-determined choice to purchase a prepaid legal plan regardless of their particular circumstances or needs, but also designed to impede consumers’ opportunities for reflection on that purchase.
47. AFLP specifically instructed its plan advisors to avoid what it called “those dreadful words being blurted out, ‘I want to think it over and I’ll get back to you.’” In this regard, the in-home sales tactics described in AFLP’s Training Manual are particularly unseemly:

When meeting a married couple, have you ever heard one spouse (for example “Mr. Smith”) ask his wife, “What do you think honey?” The most common reply from Mrs. Smith is usually “I don’t know, why don’t we think about it?” This type of discussion rarely results in a sale. Therefore, in an effort to avoid this situation and take the pressure off of Mrs. Smith, [one of AFLP’s most successful sales advisors] recommends barring her the opportunity to answer the question. This can be accomplished through politely interrupting her before she has a chance to respond by saying, “Of course she thinks it’s great, let’s get your application going.”

iv. Presentation Materials

48. In furtherance of its subtle high-pressure sales strategy, AFLP employed a variety of demonstrative materials and documents. The following were among those used by AFLP plan advisors at in-home meetings.

1. The Flip Chart

49. AFLP’s sales presentation began with a flip chart that was used to relay to consumers the alleged benefits of AFLP’s legal plan. The flip chart was prepared by AFLP. Mr. Muto

instructed AFLP plan advisors that the document was to be used at every sales meeting with a consumer.

50. In the flip chart, AFLP represented that “some states such as North Carolina and New Jersey have adopted simplified, quick, and inexpensive probate processes.” However, it failed to disclose Minnesota’s informal probate process, deceptively implying that Minnesota does not have an informal probate process.
51. Next, the flip chart’s presentation regarding “Who Must Go Through Probate?” deceptively made probate seem a certainty for all consumers, regardless of their prior estate planning or financial circumstances. In fact, the AFLP training manual instructed the plan advisor to answer the question by saying that “everybody” must go through probate, even though this assertion is patently false.
52. Moreover, the flip chart deceptively suggested that the only way to prevent probate was to buy AFLP’s legal plan.

2. The “Ben Franklin” Sheet

53. The “Ben Franklin” approach is a sales tool that is used to compare advantages and disadvantages associated with a buying decision by listing advantages and disadvantages of the potential purchase side-by-side.
54. AFLP skewed the use of the “Ben Franklin” method, however, by deceptively listing on its Ben Franklin sales form only the disadvantages of probate and only the advantages of its legal plan.
55. AFLP’s “Ben Franklin” sales sheets, bearing AFLP’s corporate logo, were created by Jeffrey Norman. They were an integral part of the aforementioned sales presentation and

AFLP instructed its plan advisors to use them at every meeting with Minnesota consumers.

56. On the left side of the “Ben Franklin” sheet, AFLP listed a dozen problems allegedly associated with “insufficient estate planning,” including probate fees, attorneys’ fees, and other costs.
57. On the same side of the form, AFLP also estimated that the consumer’s various probate costs would range from a minimum of \$8,200 to as much as \$28,800.
58. Furthermore, AFLP plan advisors often wrote in even higher amounts by hand. For example, one “Ben Franklin” sheet, offered at trial, showed a handwritten estimate of \$50,000 in probate costs.
59. Given how little they asked and knew of the consumer’s individual circumstances and the fact that they were not trained in Minnesota probate law, AFLP plan advisors had no reasonable basis for these estimates. The estimates were quite simply a scare tactic, intended to frighten the consumer into purchasing the legal plan.
60. AFLP also failed to disclose that the figures given to Minnesota consumers were not specific to Minnesota and were calculated based on estate sizes of \$250,000.
61. These estimates were wholly inapplicable to many consumers who were eventually sold the legal plan, some of whom had estates valued at less than \$50,000.
62. On the right side of the “Ben Franklin” sheet, AFLP touted the purported benefits of its legal plan, emphasizing that it offered “Quality Service from Prescreened Attorneys [...] Designed to Meet Your Needs” and “An Individualized and Documented Estate Plan.” AFLP also promised that their plan would ensure “no probate fees.”

63. AFLP's representations regarding the purported benefits of the legal plan were disingenuous, deceptive, and misleading.
64. For example, and as discussed further below, the "services" that AFLP arranged to provide plan members were not tailored to meet their specific needs and were in no way individualized. Instead, with *de minimus* exceptions, each plan member received a one-size-fits-all living trust regardless of their individual circumstances.
65. AFLP also had no basis for making representations regarding the quality of services provided to plan members by AFLP's plan attorneys.
66. Although AFLP claimed that "a careful monitoring system ensures that our plan attorneys deliver quality service to each and every member," there was, in fact, no such system in place.
67. AFLP kept no record of how much time lawyers spent with plan members or even whether they met with them at all. AFLP's quality control was systemically under-supervised at every level.
68. AFLP also did not monitor whether a plan member ever actually received an estate plan. Many plan members waited several months to receive their estate plan.
69. One plan member, in particular, did not receive her estate planning documents for execution until after her husband died. In that case, it was the husband's approaching death that prompted the couple to purchase the plan in the first place, a fact known to their plan advisor.
70. Even when confronted with complaints from plan members on this point, AFLP representatives admitted that they "never inquired about all that." AFLP and its corporate management considered this information "none of our business", even though they were

ostensibly in the business of contracting to provide an estate plan, including quality attorney's services, to plan members.

71. Finally, AFLP's representation that its legal plan would ensure "no probate fees" also was misleading and highly inappropriate. As discussed further below, because AFLP and its plan attorneys failed to properly consider all relevant factors before invariably providing revocable trusts to AFLP's Minnesota plan members, and because such trusts were not always properly funded with consumers' assets, probate of some of the estates of AFLP plan members and/or additional legal services have been and likely will continue to be necessary.

3. The Benefits Guide

72. AFLP also misrepresented the quality and nature of its legal plan in its Guide to Benefits, Privileges, and Plan Services ("Benefits Guide").
73. In the Benefits Guide, AFLP misrepresented the nature and benefits of its legal plan by, among other things, promising various "free" services, including: "financial planning advice", "preparation of a comprehensive estate plan", "personalized legal services", and "[d]ocument execution at the attorney's office".
74. Despite these promises, AFLP routinely failed to deliver the services and quality mentioned in the Benefits Guide.
75. As discussed further below, neither AFLP nor Heritage provided *bona fide* financial planning advice; instead, they pushed some 328 plan members into purchasing a single type of investment, deferred annuities, without suggesting (or even considering) alternative investment vehicles that might be more suitable for them.

76. AFLP also did not provide “comprehensive” or “personalized” legal representation in any sense. Instead, all plan members received a one-size-fits-all living trust.
77. AFLP also failed to provide for document execution at the attorney’s office. Instead, virtually all estate planning documents were delivered to plan members’ homes by Heritage delivery agents, regardless of the particular plan member’s preferences. Indeed, as discussed further below, this in-home delivery was a crucial element to Defendants’ overarching annuity sales strategy.
78. Moreover, while the Benefits Guide represented that plan members were entitled to free follow-up consultation regarding their estate plans in years to come, it failed to mention that AFLP only contracted with Donahue & Ramadan to provide one hour of attorney consultation per plan member, per year.
79. In addition to the above-referenced “free” services, AFLP also represented that its legal plan provided numerous other services and benefits at a “free or reduced rate,” including business law, landlord/tenant issues, traffic-related charges or cases, civil lawsuits, federal tax representation, financial planning, government benefits representation, consumer law, family law, bankruptcy, and elder law, among other areas.
80. AFLP made these representations despite the fact that their plan attorneys did not have the necessary knowledge or expertise to provide representation in the areas mentioned. Furthermore, neither AFLP nor Donahue & Ramadan had a system in place for providing plan benefits in an area of law for which a plan attorney was unqualified to represent a plan member.

81. The Benefits Guide also represented that plan members would receive 25% off the plan attorney's usual-and-customary rate for additional services not covered by the plan. This promise, however, was illusory.
82. Neither AFLP nor the plan attorneys specified the undiscounted rate, making it impossible to quantify whether such a discount was actually given to any particular plan member. Testimony elicited from Mr. Henline at trial indicated that he regularly charged plan members his standard hourly rate, rather than the promised reduced rate.
83. From the evidence of AFLP's failure to deliver on the promises contained in the Benefits Guide, it is clear that, contrary to Defendants' assertions, *de minimus* benefit, if any at all, was available under AFLP's legal plan beyond that conferred by the one-size-fits-all living trust.

v. The AFLP Estate Plan (Follow Through)

84. The systemic lack of follow through demonstrated by AFLP in regard to the estate planning of consumers who purchased the legal plan further underscores the nature of their operation.
85. To the extent that an AFLP plan advisor collected personal or financial information from a plan member, this information was forwarded to the Minnesota plan attorney. However, the plan attorney rarely met personally with the plan member at any time. Instead, if any contact between the plan attorney and plan member took place, it was typically limited to a telephone call.
86. The cursory nature of these telephone calls was described by the plan members who testified at trial, and was corroborated by Mr. Henline's thin files.

87. For those plan members who recall talking to a plan attorney, the telephone conversation typically lasted only five to ten minutes.
88. Mr. Henline's files clearly document that Mr. Henline's typical contact with plan members, if it occurred at all, was over the telephone and generally consisted of making check marks next to information originally recorded by the AFLP plan advisor as to assets, beneficiaries, and other information.
89. Several plan members did not recall even receiving a phone call from a plan attorney before their estate planning documents were prepared and delivered.
90. Such contact from a plan attorney is not sufficient to (a) compile all "pertinent data relating to a plan member's personal and family status, and financial situation"; (b) make appropriate inquiries regarding a plan member's "estate planning needs and intentions", or (c) meaningfully determine the consumer's "desired estate plan", all of which were promised by AFLP.
91. In addition, although AFLP represented that the plan attorney would be responsible for providing an "[e]xplanation of the tax, legal and practical ramifications" of the estate planning documents that were prepared, the plan attorney typically did not speak to plan members after completion of the estate plan. Rather, Heritage delivery agents, who were not lawyers, but actually insurance agents, delivered the documents to plan members.
92. Such non-lawyers, by definition, were not qualified to explain the legal or tax ramifications of the documents that were prepared, or answer questions regarding them.
93. Heritage's own Suitability and Acknowledgement Agreement admitted that "The agent is not licensed to offer or provide tax or legal advice."

94. Nevertheless, in most cases, it was the Heritage delivery agent who provided plan members with information regarding the documents that were delivered to them, to the extent that any information was provided at all.
95. Moreover, while plan members were led to believe that a Minnesota-licensed plan attorney would carefully consider and effectuate their estate planning wishes, the reality was that the plan attorney did not even draft the plan member's estate planning documents.
96. Instead, basic information regarding the plan member was forwarded to the Michigan office of Donahue & Ramadan. There, clerical staff, using generic templates, invariably drafted a living trust based on the basic information provided by the AFLP plan advisor and, in some cases, the Minnesota plan attorney.
97. Although the Minnesota plan attorneys were responsible for approving estate planning documents before they were delivered to plan members, the plan attorneys were not actually permitted to edit the documents.
98. The physical editing of documents, as in the case of their drafting, was performed in the Michigan office of Donahue & Ramadan. The Bloomington offices of AFLP, which housed the Minnesota-licensed plan attorneys, did not even have drafting or editing capability.
99. Finally, while the Fee and Engagment Agreement given to plan members by AFLP stated: "Be assured that in evaluating your needs, we will consider your profile and all available estate planning options," it is clear from the evidence received at trial that little attention was paid to a plan member's individual profile and that no estate planning options, save for living trusts, were considered.

100. In fact, when prompted by the Court, neither Defendants nor their plan attorneys could point to single example of another estate planning option being utilized.
101. In virtually every case, and despite representations that other estate planning options would be considered, AFLP plan members were uniformly provided with single or joint revocable trusts, based on the Michigan office's template for such documents.
102. Mr. Henline's so-called "Status Sheet" reflects this predetermined outcome:

Status Sheet

Application Received:
Welcome Letter Sent:
Client Contacted:
Copy of Deed Received:
Deed Sent For Recording:
Deed Recorded:
Deed to Client:
Trust Sent to AFLP:

The endpoint of Mr. Henline's involvement was invariably documenting that a *trust* was sent to AFLP. Contrary to what plan members were told, neither Mr. Henline nor any other AFLP plan attorney considered "all available estate planning options."

vi. Plan Attorney Sandra Stone

103. At trial, the Court also heard testimony from former AFLP plan attorney Sandra Stone. Ms. Stone's testimony was credible and reinforced what was otherwise demonstrated at trial regarding the nature of AFLP's business operation and the quality of their estate planning services. Her experience as a plan attorney at AFLP is illuminating.
104. Ms. Stone testified that she was hired by AFLP in November of 2005 after responding to an advertisement for a position with "a national law firm."

105. During her interview with Donahue & Ramadan, Ms. Stone was told the position was for an attorney to provide estate planning services to AFLP plan members in Minnesota. Particularly, Ms. Stone was told that she would be “drafting trusts.”
106. Ms. Stone was also told that she would have full office support, including clerical assistance. However, upon commencing her employment, she discovered that the entirety of Donahue & Ramadan’s “Minnesota office” consisted of a single room down the hall from AFLP and Heritage’s office in Bloomington.
107. Ms. Stone was the only employee hired to work in that office and did not have any clerical staff in Minnesota. The only clerical staff that provided any assistance were located in the Michigan office of Donahue & Ramadan.
108. Upon commencing her employment, Ms. Stone quickly realized that AFLP and Donahue & Ramadan placed a constant emphasis on quantity over quality.
109. Ms. Stone testified that she was expected to process at least 30 trust packages per week, using fill-in-the-blank forms provided to her by AFLP plan advisors.
110. Ms. Stone’s compensation was also structured so as to encourage quantity over quality. Ms. Stone was offered a \$200 bonus to complete 30 trusts in a week, as well as a \$200 bonus for each additional 5 trusts she completed beyond that number.
111. Ms. Stone testified that it would be difficult for any attorney to produce over 30 trusts per week and provide quality work.
112. As part of her initial training, Ali Ramadan, of Donahue & Ramadan went through several plan member files with Ms. Stone to demonstrate the work she was expected to do.

113. Mr. Ramadan told Ms. Stone that she should not meet with plan members because “all of the work [was] done in Michigan.”
114. Ms. Stone testified that when she expressed concern about not meeting with plan members in person prior to formulating their estate plans, she was told by Mr. Ramadan that doing so would be “a waste of time.”
115. Mr. Ramadan told her that all she needed to do was call the plan member and confirm the names of the beneficiaries and check to make sure the spellings of names were correct.
116. Ms. Stone testified that, contrary to her instructions, she called plan members to discuss their estate planning goals, finances, and other issues.
117. From speaking with plan members, Ms. Stone learned that AFLP plan advisors gave many consumers the impression that a living trust was required in order to avoid probate.
118. Ms. Stone further discovered that the forms sent by AFLP plan advisors often contained numerous errors.
119. Ms. Stone also observed that plan advisors were providing consumers with inflated estimates of the costs of probate that were not realistic.
120. Ms. Stone further testified that despite the fact that AFLP’s legal plan promised additional legal services to plan members, neither AFLP nor Donahue & Ramadan had arranged for anyone to provide such legal services.
121. Ms. Stone further discovered that numerous plan members had been sold a legal plan even though, given their particular financial circumstances, they were not likely to benefit from it.

122. In addition, Ms. Stone discovered during her conversations with plan members that people with few or no assets were being sold trusts. In some cases, AFLP sales representatives justified the sale by documenting assets that did not exist.
123. Moreover, consumers who already had effective estate plans in place and, therefore, did not need a trust were, nevertheless, being sold the legal plan.
124. In some cases, Ms. Stone recommended that plan members cancel their membership. Ms. Stone was criticized for this action. Ms. Stone testified that Mr. Muto told her that she was affecting the ability of his plan advisors to make money.
125. Ms. Stone found that she was expected to approve the same basic living trust for each AFLP plan member, regardless of their circumstances.
126. According to Ms. Stone, consideration of other estate planning options was simply not allowed, despite her suggestions to the company that other options would be more appropriate and consistent with Minnesota law and should be considered.
127. Ms. Stone testified that after trust documents were drafted in Michigan, they were shipped to the Minnesota office of AFLP and Heritage rather than directly to her.
128. Ms. Stone was asked to conduct her review of the prepared estate planning documents in the AFLP/Heritage office, rather than take the documents down the hallway to her office.
129. Ms. Stone later refused this directive. Mr. Ramadan and Mr. Muto suggested that she did not even need to review the documents before approving them.
130. After regularly finding drafting errors in the documents shipped to her, Ms. Stone asked the company to provide her with the office capability to edit documents on site. The Minnesota office previously had no such capability. Ms. Stone's request was denied.

131. After raising and failing to resolve her concerns with Donahue & Ramadan, Ms. Stone eventually took her concerns about AFLP's operation to Jeffrey Norman.
132. In a telephone conference with Jeffrey Norman, Ms. Stone explained her numerous concerns, in particular the company's refusal to offer alternative estate planning options and her belief that a one-size-fits-all living trust was not appropriate for all plan members.
133. Mr. Norman attempted to assuage Ms. Stone's concerns by explaining that he realized she "came from a hands-on, elite-style level of estate planning," but that AFLP's goal was to provide only very basic service.
134. According to Ms. Stone, Mr. Norman further responded to her concerns by indicating that she was not making enough money.
135. Shortly after this conversation, and after having worked for the company for only a few weeks, Ms. Stone received a \$30,000 raise.
136. On December 21, 2005, Ms. Stone took time off to attend her wedding. Ms. Stone testified that, before leaving, she sought to ensure that certain unapproved trusts in her office were not delivered to plan members without her knowledge.
137. She testified that to prevent any unauthorized deliveries under her name, she removed, from the front of each trust, a form letter stating that she had approved the document. The form letter contained her signature block and could not have been appropriately used by anyone else.
138. On December 22, 2005, Ms. Stone's employment with AFLP was terminated.
139. Due to her concerns regarding Defendants' business methods and practices, Ms. Stone met with the Office of Lawyer's Professional Responsibility following her termination.

140. At the recommendation of that Office, she sent a letter to every plan member with an unapproved trust in her office when she left, informing them that she was no longer serving as AFLP plan attorney, that she had not reviewed any of their documents delivered after December 22, 2005, and reminding them that it was critical that they have their documents reviewed by a Minnesota-licensed attorney.
141. AFLP continued to deliver trusts to plan members misrepresenting that Ms. Stone worked on or approved the trusts after Ms. Stone was no longer with the company.
142. From January 1, 2006, through August 10, 2006, Heritage delivery agents delivered over 167 documents bearing Ms. Stone's name to at least 80 different plan members.

b. Act II: Heritage

143. Once a plan member's trust documents were completed, the plan attorney forwarded them on to Heritage for delivery.
144. Mr. Muto would assign the task of delivering the completed trust documents to a Heritage delivery agent.
145. The delivery agent would typically call the plan member to schedule an appointment, ostensibly for purposes of delivering the trust documents.
146. The delivery agent would tell the plan member to have financial statements and other account documents available at the meeting, seemingly for purposes of funding the trust.
147. Prior to the delivery meeting, Heritage provided the delivery agent with financial information regarding the pertinent plan member. This information was gathered from consumers by AFLP plan advisors for the ostensible purpose of preparing an estate plan, but was provided to Heritage's delivery agents on a form entitled "Asset Guidelines."

148. It is apparent that this financial information was shared with the delivery agents in order to facilitate insurance sales.
149. Heritage delivery agents viewed the plan members to whom they were delivering trust documents as annuity sales leads. Heritage held the same view and paid delivery agents accordingly.
150. From one former delivery agent's perspective, the sole purpose of delivering the trust documents to plan members was to "get in the door" in order to make annuity sales and, unlike traditional insurance leads, it was easy to get in the plan members' homes because they already had paid an up-front fee for the legal plan.
151. Jeffrey Norman admitted that the delivery and notarization of trust documents was only a "miniscule" portion of a delivery agent's job. Delivery agents were primarily engaged in selling insurance products, and were only paid for selling insurance products.
152. Heritage's delivery agents were not qualified to explain, and generally did not explain, the purpose or effect of the trust documents to plan members.
153. Consumers were not told that the Heritage delivery agents were licensed insurance agents. Instead, the delivery agents provided information, typically in the form of a business card, to consumers indicating that they were "Asset Preservation Specialists."
154. Some consumers received business cards that failed to even properly list the company's name, deceptively referring to the company as only "Heritage Marketing," rather than "Heritage Marketing and Insurance Services, Inc." The purpose of such an omission was clearly intended to mask the true objective of the in-home visit, to sell insurance products.

155. The insurance aspect of the visit was not revealed until after the trust documents were delivered, accepted, and signed by the plan member.

i. Training Materials

156. After delivering and notarizing plan members' legal documents, Heritage delivery agents immediately proceeded to "Bridge to the Annuity Presentation," as outlined in the Heritage training manual.

157. Heritage delivery agents were trained, with a separate manual similar to the one used by AFLP, to use many of the same techniques that AFLP plan advisors were trained to use during their sales presentations.

158. Heritage delivery agents were trained to "assume the sale" and to "just start writing up the application and let them stop you if they want to."

159. Delivery agents were told to "try to overcome objections up to four or five times" because "overcoming objections helps the prospect make the right decision." In this context, the right decision was invariably to purchase an annuity.

160. The most damning evidence of Heritage's subtle high-pressure sales tactics, however, was found in the portion their training materials instructing delivery agents on how to handle consumers' efforts to get outside advice.

161. Heritage delivery agents were instructed to respond as follows if consumers indicated a desire to consult with their children before purchasing an annuity:

“I want to talk to my kids.”

Option 1: “I don’t understand. This is simple. Remember all we’re talking about here is basically like opening up a savings account. Taking your money and moving it from one safe place to another better safe place. It doesn’t cost you a dime to move it. I mean we’re not talking about investing your whole life savings in some oil rig in Texas. In that case you better talk to your kids about it. You already stated that Option #2 was the best choice, and you already know that Option #1 is your current situation. Mr. & Mrs. Smith, in my professional opinion, and I meet with folks just like yourselves every day, day in and day out, this is the absolute best decision you could ever make for yourself. So, let’s get this going. It will only take a few minutes to get this done here.” (Immediately begin completing the application paperwork.)

* * *

Option 3: (“You Know What They Will Say” close) (A company wide favorite!) It is okay to actually laugh out loud as you handle this objection, because it will make the client’s need to talk to their kid’s [sic] first sound incredibly ridiculous. So ridiculous that you and the client will probably both start laughing. “Mr. & Mrs. Smith, I admire you for wanting to talk to your children, If [sic] you would be so kind as to let me talk to you now as if you were my Mother and Father. If you come to me and tell me you had chosen Option #2 because you felt it was the best choice to secure your retirement in a safe and risk free manner, what do you think as your child that I would say? No Mom and Dad, stay over here in this risky Option #1 column, where you have to pay taxes every year and you may loose [sic] your money and have to borrow money from me to live one day? Let’s get this process started.” (Immediately begin completing the application paperwork.)

(emphasis in original).

162. These deceptive sales methods were purposefully designed to push consumers to make a decision based upon inadequate information and without opportunity for reflection.

ii. Heritage Presentation Materials

163. Like AFLP, Heritage employed a variety of demonstrative materials and documents as part of its high-pressure sales strategy.
164. Heritage delivery agents were trained to use a variation of the “Ben Franklin” approach, tailored to annuity sales.

165. Similar to the approach used by AFLP plan advisors, Heritage delivery agents would present prospective consumers with a pre-printed form, which was separated into two columns with a line through the middle. This form was known internally as the “Double T” form, and was routinely used by Heritage delivery agents as part of their sales presentation.
166. On the left-hand side of the form, under the heading “Option #1,” Heritage purported to list the benefits and drawbacks associated with the consumer’s existing investments. On the right hand side of the form, under the heading “Option #2,” Heritage listed the purported benefits of annuities (no drawbacks were ever listed).
167. By its nature, this form was designed to lead consumers to the conclusion, intended by Heritage, that they should purchase an annuity. As Heritage’s training manual explained:
- The client will almost always answer Option #2 [...] Thus the client has been properly directed into making the right decision, which will be to purchase the annuity!
168. Moreover, Heritage’s “Double T” form did not disclose what was being offered for sale. Heritage’s training manual described this as “the key element” to the success of the approach:
- The information in the Option #1 column, not known to the client at first, is the client’s own current financial situation. . . . The information in the Option #2 column, again not known to the client at first, is for annuity policies. *As a quick note, not disclosing to the client the type of investments in Option #1 and Option #2 is the key element to the success of this approach!* (Emphasis added).
169. Notably, the “Double T” form also failed to disclose a significant drawback associated with annuities: surrender penalties. Instead, the form deceptively suggested that annuities were no less “liquid” than other investments.

170. Heritage delivery agents were instructed to tell consumers that “[a]nnuities are very similar to a savings account with a bank, except that it is a savings account with an insurance company.”
171. No mention was made, on the “Double T” form or in the sales presentation section of the Training Manual, of the aforementioned restrictions imposed on accessing funds in connection with an annuity account, which is, after all, one of the critical distinctions between an annuity and a savings account.
172. Heritage’s agents did not inform consumers that “Option #2” was a euphemism for an annuity until Option #2 already had been selected based on the incomplete information provided by the “Double T” form.
173. Yet, when the true nature of this so-called “selection” was revealed, Heritage instructed its delivery agents not to let the prospective consumer change his or her mind, stating “a few minutes earlier they already told you that Option #2 [the annuity] was the best choice [...] Don’t give them another opportunity to change the choice they already made.”)

iii. Suitability

174. In their push to sell annuities to Minnesota consumers, Heritage routinely failed to adequately consider whether such products were suitable for those to whom they were sold.
175. Although Heritage developed a form that purported to gather information regarding the suitability of insurance products at the time of application and while this form arguably may have been sufficient for this purpose, there is no evidence that the form was ever reviewed for the purpose of actually evaluating the suitability of the sales that were made.

176. Instead, the evidence suggests that filling out the form was essentially a handwriting exercise, meant to provide the appearance (but not the substance) of an actual suitability review.
177. As an extreme example, Heritage's business records demonstrate that some suitability forms were filled out on the same date the policy was delivered, *i.e.*, after it already had been issued.
178. Mr. Muto admitted at trial that, as a matter of course, Heritage did not review the information on the suitability form or take responsibility for determining if the sale was suitable.
179. Moreover, Heritage had no criteria that would disqualify a sale on suitability grounds.
180. One Heritage delivery agent who testified at trial indicated that Heritage approved transactions initiated by him that constituted 90%, 95%, and even 100% of the client's total liquid assets.
181. Jeffrey Norman admitted at trial that Heritage *never* rejected a single annuity sale on suitability grounds. Instead Heritage relied entirely on the review of the insurance producers for whom they sold annuities, having no suitability review process of their own.
182. Furthermore, even if Heritage had bothered to review the information on the forms in order to assess suitability, a review of the information contained on these forms indicates that certain material information was either not requested or, as was more often the case, was left blank or entered incorrectly.
183. For example, Heritage's suitability form failed to request information regarding the consumer's health or medical conditions.

184. The suitability form also failed to request or disclose any specific information about surrender penalties or other fees imposed upon consumers in accessing the funds required to purchase the annuities sold by Heritage.
185. Finally, Heritage routinely approved the sale of annuities where the delivery agent failed to fill out important information that was requested on the form, including information regarding the consumer's age, tax status, income, fixed assets, liquid assets, total assets, and the transaction as a percentage of those assets.

V. Joint Business Plan

186. In addition to the deceptions perpetrated by AFLP and Heritage separately, as described above, the two companies were part of a broader and farther-reaching deception against Minnesota consumers via their joint business plan.
187. Defendants' operations in Minnesota were conducted pursuant to the AFLP and Heritage Strategic Business Plan ("Joint Business Plan").
188. The Joint Business Plan serves as a strikingly detailed admission of the true nature of Defendants' operation.
189. The Joint Business Plan viewed annuity sales as the primary purpose of both AFLP and Heritage.
190. As Defendants admitted in their Joint Business Plan, but not to consumers, the legal plan was nothing more than a "lead product offer," designed to facilitate annuity sales.
191. Defendants recognized the fact that AFLP's sale of legal plans "provides a significant pipeline for the sale and delivery of related and unrelated insurance products, which are sold principally through Heritage, the sister company."

192. This overall business model, which disguised the intent to make insurance sales by preceding it with a legal plan sale and estate plan preparation, was identified internally as one of the strengths of AFLP and Heritage.
193. Importantly, by disguising the annuity sales business with the “front” of the legal plan sales business, Defendants gained access to Minnesota consumers’ financial information long before the consumer could recognize they were being solicited for an insurance sale.
194. Minnesota consumers collectively paid millions of dollars for the purchase of legal plans, unaware that, in essence, what they were buying was the right to be solicited for deferred annuity products.
195. The Joint Business Plan acknowledged that AFLP and Heritage were “complementary companies,” with Heritage acting as “the sole provider” of “financial planning services” for AFLP’s clients.
196. This information, regarding the connection between AFLP and Heritage and the inherent conflict of interest created by that relationship, was never shared with consumers.
197. Defendants, by their own admission, intentionally acted to ensure that AFLP “retain[ed] the primary ‘corporate identity’ in the eyes of both employees and the customer base,” thus obscuring Heritage’s role in the transaction.
198. The Joint Business Plan called for this deception because it gave Minnesota consumers the impression that recommendations to purchase annuities were associated with their attorney, rather than with an insurance agent paid on commission.
199. Overall, the Joint Business Plan demonstrates that Defendants’ entire operation was developed primarily for the creation of annuity sales leads via a profit-generating legal plan business.

VI. The Role of the Norman Defendants

200. While this Court finds, from his testimony, that Jeffery Norman is a true believer in the products he sold, particularly the insurance products, the Norman Defendants are nevertheless responsible for the deceptive and misleading statements, acts, and omissions of their companies, AFLP and Heritage.²
201. The Norman Defendants were much more than disinterested shareholders of AFLP and Heritage. To the contrary, they were intimately involved in the operations of both companies at every level.
202. As the president of Heritage, Jeffrey Norman oversaw its entire operation, including overseeing the company's financials, management, sales, and compliance. As CEO of AFLP, Jeffrey Norman played a similar oversight role.
203. The extent of Jeffrey Norman's "hands on" participation in both companies is summarized in the companies' own Joint Business Plan as follows:
- Mr. Norman, above all, has contributed the most significant role in creating and shaping the entire operations for both companies. Since both companies' inception, he has performed at some point in time the duties of every single job position. These positions include, but are not limited to, field sales of all companies' products, telemarketing, lead generation, sales management and training, operations management, insurance processing, ethics and compliance, accounting, human resources, and product development. His "hands on" participation has proven to be an extremely valuable asset in managing and developing the structure of the companies.
204. Jeffrey Norman bears particular responsibility for the deceptive and misleading conduct described above in light of his compliance function.

² In addition to their other defenses, Defendants relied heavily on an opinion letter from attorney Charles Lundberg, whom Defendants retained in 2005 to evaluate certain aspects of their business. It is clear from the evidence presented on this issue that Mr. Lundberg was retained to evaluate the narrow question of whether AFLP's legal plan violated the Minnesota Rules of Professional Conduct and did not address other legal or regulatory issues or give blanket approval for Defendants' entire business model, as Defendants claim. Mr. Lundberg was not provided with copies of much of Defendants' materials, including the training manuals of either AFLP or Heritage. Had Mr. Lundberg been given access to the whole of Defendants' business model, his opinion likely would have been very different.

205. Jeffrey Norman oversaw compliance in all states in which AFLP and Heritage did business, including Minnesota. Thus, Jeffrey Norman had knowledge of the relevant facts and issues and demonstrated a total disregard for enforcing proper conduct by AFLP and Heritage.
206. Moreover, Jeffrey Norman created and approved the training materials that were used to train AFLP's plan advisors and Heritage's delivery agents on the companies' unique brand of subtle high-pressure sales tactics and the sales materials that were used in the field to coerce Minnesota consumers.
207. Stanley Norman played a similarly active role in both companies. Among other things, he approved advertising materials for use by AFLP, the training materials that were used to train AFLP's sales agents in Minnesota, and the training materials that Heritage's insurance agents relied upon in marketing annuities to Minnesota consumers.
208. By virtue of their extensive involvement in the operations of AFLP and Heritage, and their development and/or approval of the companies' marketing and sales materials and methods, the Norman Defendants clearly directed, participated in, and acquiesced in AFLP and Heritage's deceptive, misleading, and otherwise unlawful business activities.

CONCLUSIONS OF LAW:

I. Introduction

1. The Attorney General of the State of Minnesota is authorized under Minn. Stat. ch. 8, including Minn. Stat. §§ 8.01, 8.31, and 8.32, and Minn. Stat. §§ 325D.45, 325F.67, 325F.70, and 325G.08, and has common law authority, including *parens patriae* authority, to bring this action on behalf of the State of Minnesota and all its citizens to

enforce Minnesota's laws. *See State ex. rel. Young v. Robinson*, 112 N.W. 269, 272 (Minn. 1907).

2. The burden of proof for establishing violations of Minnesota's consumer protection statutes, including all of the claims in this case, is a "preponderance of the evidence." *See State by Humphrey v. Alpine Air Prods.*, 500 N.W.2d 788, 790-91 (Minn. 1993).
3. The experiences of the consumers who testified at trial were representative of the experiences of Defendants' consumers in Minnesota as a whole. The testimony, offered by Defendants, of a few satisfied consumers does not negate the overwhelming evidence of deception.
4. It was neither feasible nor necessary for the Court to consider testimony from each and every one of Defendants' Minnesota consumers. *See, e.g., Welfare of L.Z., C.R.P., and S.L.P.*, 396 N.W.2d 214 (Minn. 1986).
5. Defendants had a uniform training method, sales presentation, and mode of operation. Defendants kept records, which were admitted into evidence at trial, of their transactions with each consumer. From these materials and the trial testimony of consumer witnesses, the Court is able to determine the conduct of Defendants.
6. Based on all of the evidence presented at trial, including consumer and expert testimony, Defendants' consumer files, training manuals, sales presentation materials, and joint business plan, and other documentary evidence, Plaintiff satisfied its burden of proof as to all claims.

II. Violations of the UDTPA, CFA, AND FSAA (Counts I, IV, & V)

7. The consumer protection laws of Minnesota “are commonly read together so as to prohibit the use of deceptive and unlawful trade practices.” *Liabo v. Wayzata Nissan, LLC*, 707 N.W.2d 715, 724 (Minn. Ct. App. 2006).
8. Accordingly, based on their common factual basis and legal analysis, the Court analyzes the following claims jointly: Count I, related to the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43-.48 (“UDTPA”); Count IV, related to the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. §§ 325F.68-.70 (“CFA”); and Count V, related to the Minnesota False Statement in Advertising Act, Minn. Stat. § 325F.67 (“FSAA”).

9. The UDTPA provides, among other things, as follows:

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

(9) advertises goods or services with intent not to sell them as advertised; [or]

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

Minn. Stat. § 325D.44, subd. 1.

10. The CFA provides, among other things, as follows:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided herein.

Minn. Stat. § 325F.69, subd. 1.

11. The FSAA provides, among other things, as follows:

Any person, firm, corporation, or association who, with intent to sell or in anywise dispose of merchandise, securities, services, or anything offered by such person [...] makes, publishes, disseminates, circulates, or places before

the public [...] an advertisement of any sort [...] which advertisement contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading, shall, whether or not pecuniary or other specific damage to any person occurs as a direct result thereof, be guilty of a misdemeanor, and any such act is declared to be a public nuisance and may be enjoined as such.

Minn. Stat. § 325F.67.

12. The consumer protection laws of Minnesota are interpreted broadly by Minnesota courts in favor of consumers because of their remedial purpose. *See, e.g., State by Humphrey v. Phillip Morris, Inc.*, 551 N.W.2d 490, 496 (Minn. 1996).
13. This broad construction “reflect[s] a clear legislative policy encouraging aggressive prosecution of statutory violations.” *Id.* at 495.
14. Statutory fraud laws are broader than common law fraud and eliminate several elements of proof required under common law fraud.
15. This reduced burden of proof was designed to “make it easier to sue for consumer fraud than it had been to sue for fraud at common law.” *Alpine Air*, 500 N.W.2d at 790.
16. The “overall tenor” of Minnesota’s consumer protection laws is “to maximize the tools available to stop the prohibited conduct.” *Group Health Plan, Inc. v. Philip Morris Inc.*, 621 N.W.2d 2, 9 (Minn. 2001).
17. Unlike common law fraud, neither a defendant’s intent to deceive nor the consumer’s reliance on a defendant’s conduct are required to prove a violation of statutory fraud. Minn. Stat. §§ 325D.45; 325F.67; 325F.69, subd. 1; *see also LeSage*, 409 N.W.2d at 539.
18. The standard for finding unlawful deception pursuant to Minnesota’s consumer protection laws is the “tendency or capacity to deceive.” *State v. Directory Pub. Services, Inc.*, 1996 WL 12674, *4-*5 (Minn. Ct. App. Jan. 16, 1996) (citing *FTC v. Colgate-*

Palmolive Co. et al., 380 U.S. 374, 391 (1965); *Montgomery Ward & Co. v. FTC*, 379 F.2d 666, 670 (7th Cir. 1967).

19. It is clear from the evidence presented at trial that Defendants' entire operation, from start to finish, was geared toward pressuring consumers to make purchasing decisions based upon inadequate – and often inaccurate – information and without opportunity for reflection.
20. While the testimony of consumer witnesses regarding their experiences with Defendants was instructive, it was Defendants' own training and sales presentation materials that most vividly revealed the nature of their operation.
21. It is evident from these materials that Defendants routinely deceived consumers with a campaign of misleading and deceptive information.
22. AFLP's plan advisors, on the instructions of the company and the Norman Defendants, grossly exaggerated the pitfalls of probate and wildly inflated the benefits of the legal plan. Their representations were made without regard to a consumer's individual circumstances and often had no basis in their realities.
23. Heritage's delivery agents similarly engaged in deception in connection with their sales of annuities. From their arrival at consumers' homes under the false pretense of delivering trust documents, to their misleading and one-sided presentation on the benefits of annuities, the delivery agents, again on the instruction of the company and the Norman Defendants, were continually deceitful.
24. Moreover, Defendants carried out a bait and switch campaign from the moment they sent out their mailers advertising "free information" on how to avoid probate costs to the time

they arrived at consumers' doorsteps with estate planning documents and a concealed intent to sell annuities.

25. It is plainly obvious that behind all of Defendants' talk of estate planning and probate, their primary goal was always to sell annuities. The AFLP legal plan was a profitable feeder program for the generation of insurance sales leads.
26. Described by AFLP, itself, as a "lead product offer," the legal plan was clearly never seriously intended to live up to its promises. Little or no attention was paid to plan members' individual circumstances and no alternative estate planning options were considered. In short, little or no genuine estate planning was done.
27. Although plan attorneys were hired, they were, in most cases, little more than a rented license, needed in order to sign off on AFLP's boilerplate trusts.
28. Even the modest work they actually performed failed to live up to the bare minimum of standards.
29. With the exception of monitoring the sales performance of its agents, which Defendants did diligently, Defendants' entire operation was systemically undermanaged and lacking in quality control. It is quite clear that once a legal plan was sold, Defendants' focus shifted entirely to the sale of annuities.
30. The evidence presented at trial demonstrated that Defendants engaged in a pattern and practice of deceptive and misleading behavior that had a tendency or capacity to deceive and violated the UDTPA, CFA, and FSAA.

III. Violations of the Deceptive Trade Practices Act (Insurance) (Counts II & III)

31. As with Counts I, IV, and V above, based on their common factual basis and legal analysis, the Court also jointly analyzes Counts II and III, related to the Deceptive Trade Practices Act in the Business of Insurance, Minn. Stat. § 72A.17-32.
32. Minn. Stat. § 72A.19, subd. 1 prohibits any method of competition, act or practice in the business of insurance that is defined or determined to be unfair or deceptive under Minn. Stat. § 72A.17 to 72A.32.
33. Minn. Stat. § 72A.20, subd. 2 provides:

Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, or in any other way, an advertisement, announcement, or statement, containing any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading, shall constitute an unfair method of competition and an unfair and deceptive act or practice.
34. Minn. Stat. § 72A.20, subd. 18(b) provides:

[E]ngaging in fraudulent, coercive, or dishonest practices in connection with the insurance business, shall constitute an unfair method of competition and an unfair and deceptive act or practice.
35. While Heritage was clearly in the business of insurance, it is equally clear that, in fact, all of Defendants' conduct, including conduct ostensibly related to the sale or operation of the AFLP legal plan, was engaged in for the primary purpose of driving annuity sales as part of Defendants' joint business enterprise.
36. Therefore, all of the conduct described above in relation to Counts I, IV, and V regarding violations of the UDTPA, CFA, and FSAA, applies equally to Counts II and III and likewise constitutes violations of Minn. Stat. §§ 72A.19 & 72A.20, subds. 2 & 18(b).

IV. Violations of the Personal Solicitation of Insurance Sales Statute (Count VI)

37. Defendants, specifically Heritage, qualify as insurance producers for purposes of Minnesota Statutes chapter 60K, relating to the regulation of insurance sales. *See* Minn. Stat. §§ 60K.46 & 60K.31, subds. 6 & 13.
38. Minnesota Statutes section 60K.46 requires that, before a personal solicitation, the insurance “producer or person acting for a producer shall, at the time of initial personal contact with the potential buyer, *clearly and expressly disclose in writing*: (1) the name of the person making the contact; (2) the name of the producer, general agency, or insurer that the person represents; and (3) the fact that the producer, agency, or insurer is in the business of selling insurance.” Minn. Stat. § 60K.46, subd. 1 (emphasis added).
39. As outlined in the above Findings of Fact, Heritage routinely failed to make the disclosures mandated by this statute.
40. Far from disclosing their purpose to sell insurance products, Heritage delivery agents gained entry to consumers’ homes under the guise of delivering and notarizing estate planning documents.
41. Defendants further obscured the delivery agents’ purpose by deceptively referring to them as “Asset Preservation Specialists,” rather than the licensed insurance agents that they were.
42. It was only after Heritage delivery agents were invited into consumers’ homes and the trust documents were notarized, that the true purpose their visit was revealed.
43. Heritage’s failure to make the statutorily mandated disclosures violated the requirements of Minn. Stat. § 60K.46, subd. 1(3).

V. Breach of Fiduciary Duty (Count VII)

44. Defendants owed a fiduciary duty to their Minnesota consumers pursuant to both Minn. Stat. § 45.026 and common law.
45. Under Minn. Stat. § 45.026, subd. 1(b), a person who, on advertisements, cards, or in any other manner, indicates that the person is a “financial planner,” “counselor,” “consultant,” or “advisor” or any similar designation is considered to be representing that the person is engaged in the business of financial planning.
46. Further, under Minn. Stat. § 45.026, subd. 2, persons who represent that they are financial planners owe a fiduciary duty to persons for whom services are performed for compensation.
47. AFLP and, more specifically, Heritage held themselves out as financial planners.
48. The AFLP Benefits Guide explicitly promised that clients would receive “financial planning” services through the legal plan.
49. Moreover, Heritage represented that its delivery agents were “Asset Preservation Specialists,” a designation that falls within Minn. Stat. § 45.026, subd. 1(b).
50. Given these representations and statements, Defendants unquestionably owed a fiduciary duty to their consumers under Minn. Stat. § 45.026, subd. 2.
51. This fiduciary duty applies regardless of whether the financial planner’s compensation is paid directly by the policyholder or through commissions paid by an insurance company.
52. Minnesota law imposes upon a fiduciary the highest obligation of good faith, loyalty, fidelity, fair dealing, and full disclosure of material terms affecting the client’s interests. *Commercial Associates, Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 779 (Minn. Ct. App. 2006).

53. Defendants were in breach of their fiduciary duty to each of their Minnesota consumers by, among other things, failing to disclose their joint business relationship with its inherent conflicts of interest, employing deceptive sales and marketing tactics, failing to initially disclose their intent to sell insurance products upon delivery of trust documents, and engaging in other misrepresentations, deceptive practices, and omissions as reflected in the Court's Findings of Fact.

VI. Violations of the Suitability Requirement (Count VIII)

54. As noted above, Defendants are insurance producers for purposes of Minnesota Statutes chapter 60K. Minn. Stat. § 60K.46; *see also* Minn. Stat. § 60K.31, subds. 6 & 13.

55. Under Minn. Stat. § 60K.46, subd. 4, when recommending the purchase of any life insurance or annuity product, the producer:

must have reasonable grounds for believing that the recommendation is suitable for the customer and must make reasonable inquiries to determine suitability.

Minn. Stat. § 60K.46, subd. 4.

56. The suitability of a recommended purchase of insurance must:

be determined by reference to the totality of the particular customer's circumstances, including, but not limited to, the customer's income, the customer's need for insurance, and the values, benefits, and costs of the customer's existing insurance program, if any, when compared to the values, benefits, and costs of the recommended policy or policies.

Minn. Stat. § 60K.46, subd. 4.

57. By the language of the statute, this duty is imposed at the time of the sale. *See* Minn. Stat. § 60K.46, subd. 4 (stating that suitability determinations and inquiries must be made when "recommending the purchase of any [...] annuity").

58. Accordingly, contrary to Defendants' contentions in this case, recent market conditions do not now absolve Defendants of their duty to make a suitability determination at the time of sale.
59. The evidence presented at trial demonstrated that Heritage delivery agents exhibited a complete lack of diligence when it came to making inquiries regarding suitability. Heritage delivery agents routinely failed to obtain critical information regarding individual consumers' financial, personal, and health circumstances that would be necessary in order to determine the suitability of the annuity they offered.
60. Absent such critical information, Heritage had no basis on which to make an adequate suitability determination.
61. This lack of diligence on the part of Heritage delivery agents was reflected by, and was likely the result of, a systemic lack of supervision on the part of Heritage's management. Heritage, as a company, made no meaningful efforts to ensure that critical information regarding suitability was actually obtained by delivery agents and did not review whatever information was gathered. Heritage's only demand upon its delivery agents was that a suitability form be in the file.
62. Thus, even if Heritage delivery agents had been more diligent in collecting information regarding consumers' individual circumstances, it is clear that the company had no intention of actually reviewing such information, or making an adequate suitability determination.
63. As Jeffrey Norman admitted at trial, Defendants never rejected a single annuity sale to a Minnesota consumer based on the information that was provided on the suitability form.

64. Instead, Defendants determined an annuity was suitable for any prospect who could be persuaded to purchase one, regardless of their individual circumstances.
65. Defendants' failure to make reasonable inquiries and failure to have reasonable grounds for recommending annuity purchases is inexcusable.
66. By taking no meaningful steps to ensure that any of its annuity sales were suitable for the Minnesota consumers who purchased such products through Heritage, Defendants violated Minn. Stat. § 60K.46, subd. 4.

VII. Violations of the Home Solicitation Sales Act (Count IX)

67. Minnesota's Home Solicitation Sales Act ("Home Sales Act") provides that, "[i]n addition to any other rights the buyer may have, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the home solicitation sale occurs." Minn. Stat. § 325G.07.
68. The Home Sales Act also requires that the seller must provide the buyer the following specific disclosures at the time of sale: (1) oral notice of the right to cancel; (2) a receipt or contract related to the transaction which contains certain specified information, including written notice of the right to cancel; and (3) a written form captioned "NOTICE OF CANCELLATION" which contains certain specified information, including a written description of the "type of goods or services purchased." *See* Minn. Stat. § 325G.08.
69. Defendants failed to satisfy the disclosure requirements of the Home Sales Act.
70. Defendants admitted that AFLP's Notice of Cancellation form failed to disclose the type of goods or services purchased, in violation of Minn. Stat. § 325G.08, subd. 1(c).

71. More importantly, it is apparent from the evidence presented at trial that AFLP plan advisors routinely failed orally to inform consumers of their right to cancel, as required by Minn. Stat. § 325G.08, subd. 1(a).

VIII. Violation of the Prohibition on Deceptive Acts Perpetrated Against Senior Citizens

(Count X)

72. On May 15, 2009, the Court ordered that, “[b]ecause their operation was directed at senior citizens, Defendants will be subject to a supplemental civil penalty of up to \$10,000 per violation should they be found liable on Counts I, II, III, IV, or V.”
73. By operation of that order, in addition to the up to \$25,000 civil penalty and other relief for each violation prescribed by Minn. Stat. § 8.31, Defendants are liable for enhanced civil penalties pursuant to Minn. Stat. § 325F.71.

IX. Personal Liability of Jeffrey Norman and Stanley Norman

74. Minnesota law provides that a person is liable, in their individual capacity, for consumer protection violations if that person directed, participated in, or knowingly acquiesced in the violations in question. *See Alpine*, 490 N.W.2d at 897-98.
75. As discussed above, far from being mere disinterested shareholders or silent partners, Stanley and Jeffrey Norman designed the unlawful business model at issue and closely directed its execution in Minnesota.
76. As in *Alpine*, they were “intimately involved in all aspects” of the business, starting with the deceptive marketing scheme and continuing all the way through the insurance sale.
77. As the Norman Defendants directed, participated in, or otherwise knowingly acquiesced in the above-referenced violations of Minnesota law, they are individually and jointly liable for all such violations.

X. Remedies

78. Based on the above-described violations of Minnesota law, the State is entitled to certain equitable remedies including an injunction, restitution, civil penalties, and attorneys' fees and costs.

a. Permanent Injunction

79. Minnesota Statutes Section 8.31, subd. 3 specifically provides that the Attorney General may request, and that courts have the power to grant, injunctive relief to prevent and restrain violations of the laws of this state regarding unfair, discriminatory, and other unlawful practices in business, commerce, or trade.

80. The Attorney General's power to obtain injunctions under § 8.31 is broad. *Ly v. Nystrom*, 615 N.W.2d 302, 310 (Minn. 2000).

81. The Attorney General need only demonstrate that the injunction "would fulfill the legislative purposes behind the statute's enactment," instead of the more rigorous four-pronged test applicable in the private litigation context. *See Cross Country Bank*, 703 N.W.2d at 571-72.

82. Additionally, the CFA specifically provides that the Attorney General may request, and a court may grant, injunctive relief to enjoin the future commission of unlawful practices, and the UDTPA also specifically provides for certain injunctive relief. Minn. Stat. §§ 325F.70 & 325D.45.

83. A Consent Preliminary Injunction was previously agreed to by the parties and entered by the Court in this matter on July 16, 2007. To restrain Defendants from engaging in further violations of Minnesota law, it is appropriate to make this injunction permanent, and to make it applicable to AFLP, Heritage, and Stanley Norman and Jeffrey Norman

individually, and to all companies or other entities now existing or existing in the future that are owned or operated, in whole or in part, by Defendants.

84. This injunctive relief will prohibit Defendants from engaging in the type of consumer fraud that Minn. Stat. § 8.31 and Minnesota’s consumer protection laws were designed to prevent and deter.

b. Restitution

85. Restitution is an appropriate remedy in an action by the Attorney General under Minnesota’s consumer protection laws. *Alpine*, 490 N.W.2d 888, 896 n.4 (Minn. Ct. App. 1992).
86. The Attorney General’s inherent *parens patriae* authority to act on behalf of Minnesota’s citizens includes the power to seek restitution for all Minnesota consumers injured by Defendants’ unlawful conduct. *Id.*; *State by Humphrey v. Ri-Mel, Inc.*, 417 N.W. 2d 102, 112 (Minn. Ct. App. 1987).
87. In addition, certain procedures for awarding restitution for the “benefit of victims” are expressly provided for in Minn. Stat. § 8.31, subs. 2c & 3c.
88. Restitution is an equitable remedy that lies within the discretion of the trial court. *Alpine*, 490 N.W. 2d at 896.
89. Because restitution is an equitable remedy, courts have fashioned remedies appropriate to the facts of each case. *See e.g., FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 1031, 1119-20 (N.D. Ind. 2000) (explaining that for restitution, where necessary information is lacking to calculate damages with certainty, the risk of uncertainty should fall on the wrongdoer whose illegal conduct created the uncertainty).
90. The decision to award restitution, and the scope and form of restitution, is to be guided by the broad remedial purpose of the consumer protection statutes. The remedy of restitution

serves two purposes in a consumer protection enforcement action: (1) to ensure that consumers are restored money obtained from them by deception, and (2) to prevent and deter future conduct by elimination of monetary incentives for such gain. *People v. Toomey*, 203 Cal. Rp642, 658-59 (Cal. App. 1 Dis. 1984).

91. Just as the consumer protection statutes' elimination of common law fraud elements substantially lessens the proof required to establish liability in a consumer protection action, their language and broad, remedial purpose further establish that the Attorney General is not required to prove that each consumer relied upon a defendant's representations or was damaged by those representations in order for consumers to be awarded restitution. *See Alpine*, 490 N.W.2d 888.
92. Here, the record allows for a reasonable determination of the appropriate amount of restitution to be awarded for the benefit of Minnesota consumers.
93. AFLP deceptively sold approximately 1,277 legal plans to Minnesota consumers. The cost of the legal plan ranged from between \$1,995 to \$2,295, and the total amount paid to AFLP from Minnesota consumers was \$2,664,415. It is appropriate to order restitution in the amount of \$2,664,415.
94. As to Heritage's sales of insurance products, the record reflects that at least 328 annuities were sold to Minnesota consumers, generating at least \$12,481,636 in premiums. The record further reflects that Heritage earned commissions of at least \$744,110.86 on premiums generated in Minnesota. It is appropriate to order further restitution in the amount of \$744,110.86.

c. Civil Penalties

95. Pursuant to Minn. Stat. § 8.31, subd. 3, the State is entitled to a civil penalty of up to \$25,000 for each violation of Minnesota's consumer protection laws.

96. In addition, as noted above, the State is entitled to a supplemental civil penalty of an additional \$10,000 per violation pursuant to Minn. Stat. § 325F.71.
97. “When a penalty or forfeiture is provided for the violation of a law, such penalty or forfeiture shall be construed to be for each such violation.” Minn. Stat. § 645.24 (2008).
98. As noted above, Defendants’ conduct in relation to Minnesota consumers often involved the commission of several violations per sales contact. Even if the Court were to treat each of Defendants’ sales as a single violation based upon the totality of their conduct, the maximum civil penalties would still exceed \$50,000,000.³
99. In *Alpine*, the Court of Appeals established four factors to consider in making a determination of civil penalties: “(1) the good or bad faith of the defendant; (2) the injury to the public; (3) the defendant's ability to pay; and (4) the desire to eliminate the benefits derived by the violation.” *Alpine*, 490 N.W. 2d at 896-97.
100. The State has requested a civil penalty in the amount of \$6,872,271. The bad faith of Defendants, the substantial injury to the public as a result of Defendants’ conduct, and the need to eliminate the benefits derived by Defendants’ violations, weigh in favor of a significant civil penalty. The Court, however, must make further inquiry in to Defendants’ ability to pay such civil penalties and, thus, reserves ruling on this issue.

d. Attorneys’ Fees and Costs

101. Minn. Stat. § 8.31 grants the Attorney General the right to recover costs of investigation and reasonable attorneys’ fees. Minn. Stat. § 8.31, subd. 3a.
102. In awarding fees, the Court must consider: (1) the time and labor involved; (2) the nature and difficulty of the responsibility assumed; (3) the amount involved and the result

³ (1,277 legal plan sales + 328 annuity sales) x (\$25,000 + \$10,000) = \$56,175,100

obtained; (4) fees customarily charged for similar legal services; and (5) the experience and reputation of counsel. *See Alpine*, 490 N.W.2d at 896.

103. An evaluation of these five factors supports a substantial award of costs and attorneys' fees against Defendants and in favor of the State.
104. The case has been an arduous one because of the complexity of the facts, the size of the record, and Defendants' litigation tactics (including Defendants' repeated failure to respond to discovery, reflected amply in the Court's file).
105. Moreover, the skillfulness in which the manner was prosecuted and the result obtained further support a substantial award of costs and fees.
106. It is appropriate to consider market rates equal to the rates for attorneys and other personnel of similar experience and expertise in private practice as a basis for the State's request for fees.
107. The State shall be entitled to reimbursement of its reasonable attorneys' fees and costs, as determined by the Court following the subsequent hearing described below.
108. In addition to these costs and fees, the State is also entitled to the remaining \$55,000 of sanctions that the Court held in abeyance, pending completion of trial, in its May 26, 2009 Order Granting Plaintiff's Motion for Sanctions.

Order:

1. The Court finds Defendants AFLP, Heritage, Jeffrey Norman, and Stanley Norman liable on all counts of the State's Amended Complaint.
2. The Consent Preliminary Injunction previously entered by the Court in this matter on July 16, 2007, is hereby made permanent and expanded to include all of the persons, entities and conduct set forth herein.

3. For purposes of this Injunction, the term “Defendants” includes Defendants AFLP, Heritage, Jeffrey Norman, and Stanley Norman, individually and collectively, and their owners, officers, directors, agents, representatives, servants, independent contractors, employees, assigns, subsidiaries, and successors, specifically including National Association of Family Benefits, Inc. and Quest Financial & Insurance Services, Inc.

Pursuant to this Injunction:

- a. Defendants shall not market, offer or sell prepaid legal plan memberships, estate planning documents, annuities, or other legal or insurance products or services in Minnesota;
 - b. Defendants shall not (directly or indirectly through any relative or other person or entity) own, operate, or conduct any business in Minnesota that markets, offers, sells or benefits from the sale of prepaid legal plan memberships, estate planning documents, annuities or other legal or insurance products or services in Minnesota;
 - c. Defendants shall not solicit any Minnesota consumer who purchased a prepaid legal plan membership, estate planning document, annuity, or any other legal or insurance product or service from Defendants (“Minnesota Consumer”);
 - d. Defendants shall not steer or direct any Minnesota Consumer or Minnesota resident to purchase any legal products or services, insurance products or services, and/or annuities; and
 - e. Defendants shall not use, sell, lease, give, or in any way allow any other person or entity to use any Minnesota Consumer list or any document or data that contains the name, address, telephone number, or any other personal identifying information relating to any Minnesota Consumer.
4. Defendants AFLP, Heritage, Jeffrey Norman, and Stanley Norman shall pay restitution to the State in the amount of \$3,408,525.86, for distribution to Defendants’ Minnesota consumers.
 5. Upon payment of all or any part of this amount, the State shall file a distribution plan with the Court, *ex parte*, and obtain the Court’s approval prior to distributing any

proceeds. The proposed plan shall be widely published and shall include time to permit objection, if any, to be raised by consumers.

6. Defendants AFLP, Heritage, Jeffrey Norman, and Stanley Norman forthwith shall pay a supplemental sanction to the State in the amount of \$55,000 for violation of their discovery obligations, as previously addressed in the Court's May 26, 2009 Order Granting Plaintiff's Motion for Sanctions.
7. Defendants AFLP, Heritage, Jeffrey Norman, and Stanley Norman are jointly and severally liable for any payments required by this Order.
8. In the event that partial payments are received or collected from Defendants, such payments shall go first towards satisfying Defendants' restitution obligations.
9. The parties shall reconvene on **May 14, 2010 at 1:30 p.m.** in courtroom 617 of the Family Justice Center, 110 South Fourth Street, Minneapolis, MN 55402, for a hearing on the issues of Defendants' ability to pay civil penalties and the State's reasonable attorney's fees.
10. No later than May 3, 2010, Defendants shall submit any financial information they wish the Court to consider relating to their ability to pay civil penalties.
11. No later than May 3, 2010, the State shall submit a petition for attorney's fees and costs, supported by an affidavit of counsel.
12. The parties may submit supplemental memoranda regarding the issues of civil penalties and attorney's fees no later than May 7, 2010.

BY THE COURT:

Dated: April 8, 2010

/S/

Stephen C. Aldrich
Judge of District Court