

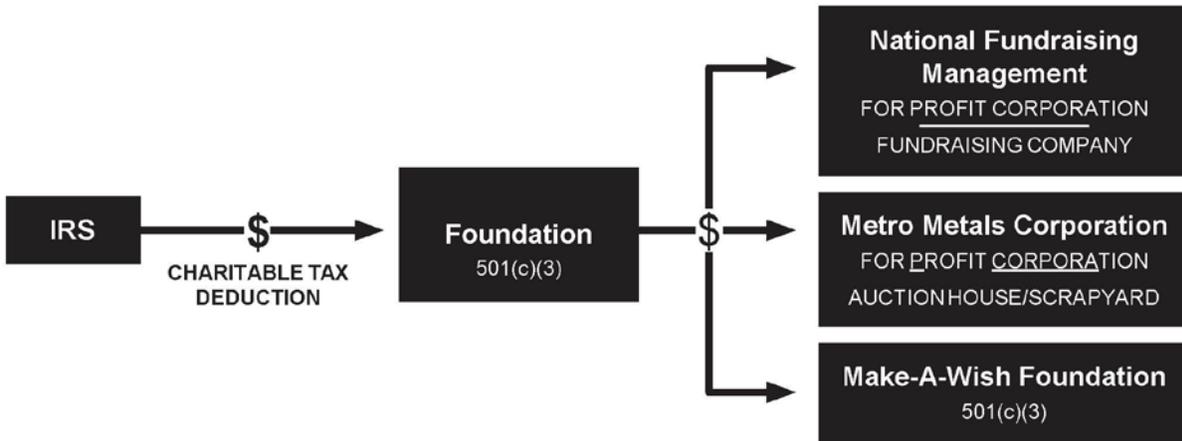
I. EXECUTIVE SUMMARY.

Car Donation Foundation (“CDF”) is a Minnesota 501(c)(3) charitable organization formed and run by William Bigley and Randy Heiligman. It solicits donors in Minnesota and throughout the United States to donate vehicles to benefit local chapters of the charity Make-A-Wish. CDF then sells or scraps these vehicles and pays a percentage of the proceeds to local Make-A-Wish chapters.

Between 2011 and 2014, CDF spent 78-82 percent of the gross proceeds from the sale and scrapping of donated vehicles on fundraising, advertising, and overhead (hereinafter collectively “fundraising costs”), with only 18 to 22 percent of the proceeds benefitting a charitable purpose. CDF was placed on the “Scrooge List” of the South Carolina Secretary of State, (Ex. 1), and the “Worst Charity List” of the Oregon Attorney General, (Ex. 2), in 2014 for its high fundraising costs.

CDF uses National Fundraising Management, Inc. (“NFM”)—a for-profit company—as a professional fundraising company to solicit donations of motor vehicles from the public and to manage its vehicle donation program. Mr. Bigley and Mr. Heiligman, CDF’s founders, own 100 percent of NFM. In the Twin Cities, CDF uses Metro Metals Corporation (“Metro Metals”)—another for-profit company—to auction and scrap vehicles donated to CDF. Mr. Bigley and Mr. Heiligman also own 100 percent of Metro Metals. Between 2011 and 2014, CDF paid NFM and Metro Metals approximately \$36 million.

The relationship between CDF, NFM, Metro Metals, and Make-A-Wish-Minnesota is depicted in the following chart:



In 2013, the Internal Revenue Service (“IRS”) raised concerns about Mr. Bigley’s and Mr. Heiligman’s simultaneous governance of the charity (CDF) and ownership of the for-profit fundraising company (NFM) and the for-profit auction/scrap dealer (Metro Metals). Mr. Bigley and Mr. Heiligman thereafter resigned from CDF’s board of directors. Since their resignations from the board of CDF, however, Mr. Bigley and Mr. Heiligman have continued to manage the day-to-day operations of the charity and provide the management services typically provided by officers of a charity. As of June, 2015, CDF had no employees and no permanent office.

II. HISTORY OF VEHICLE DONATION PROGRAMS.

A. Background of 2005 Tax Law Changes.

Charitable vehicle donation programs provide a mechanism for individuals who file itemized tax returns to claim a tax deduction and dispose of a used vehicle, ostensibly while benefiting a charitable purpose. A charitable vehicle donation program may be operated directly by a charity, or by a for-profit fundraising company on the charity’s behalf. When a vehicle is donated to a charitable program managed by a for-profit company, taxpayers subsidize a vehicle donation for which the charity may receive only a fraction of the sales price.

The United States Government Accountability Office (“GAO”) has identified four steps in a typical vehicle donation program run by a for-profit fundraising company that sells the donated vehicles: (1) advertising and fielding donor telephone calls regarding donating their vehicles; (2) taking possession of the vehicles, usually by tow truck; (3) disposing of the vehicles, most often through auto auctions; and (4) distributing the proceeds from the vehicle sales between charities and the for-profit corporations involved in the process. (Ex. 3, p. 4.)

In 2003, the GAO issued a report that was highly critical of many vehicle donation programs marketed to benefit charities. (Ex. 3.) The report stated that 733,000 tax returns in tax year 2000 claimed charitable vehicle deductions that lowered taxpayers’ income tax liability by an estimated \$654 million. (*Id.* at p. 2.) At the time of the report, taxpayers could lawfully deduct from their itemized income tax returns the fair market value of vehicle donations, with no cap based on the actual sales price of the vehicle by the charity. (*Id.* at p. 4.) The report found that taxpayers often claimed income tax deductions that exceeded the proceeds received by the charities, in part because of vehicle processing and fundraising costs and in part because many donors claimed tax write-offs in excess of the price for which charities sold their donated vehicles. (*Id.* at p. 2.)

The United States Congress subsequently revised these tax laws, effective in 2005. The law now provides that deductions for vehicles donated to and then re-sold by charities are generally limited to no more than the sales price of the vehicle received by the charity. (Ex. 4, p. 1.) More specifically, the 2005 federal tax law revisions provide the following:

For vehicles with a claimed value of \$500 or less, a taxpayer may deduct on his or her tax return only the *lesser of* \$500 or the vehicle’s fair market value. (Ex. 4, pp. 6-7.) For example, if

a vehicle has a fair market value of \$350, the donor's charitable contribution deduction may not exceed \$350.

For vehicles with a claimed value of \$500 or more, a taxpayer may only deduct on his or her tax return the *lesser of* the vehicle's fair market value or the gross proceeds the charity receives from the sale of the vehicle. (Ex. 4, pp. 6-7) For example, if a donated vehicle has a fair market value of \$900 but the charity receives \$750 in gross proceeds from its sale, the donor's charitable contribution deduction may not exceed \$750.

If the charity's intended use of the donated vehicle meets one of the following exceptions, however, a taxpayer may be eligible to deduct the fair market value of the vehicle, regardless of any re-sale value:

1. The charity makes significant use of the vehicle in its charitable programs;
2. The charity makes material improvements to the vehicle; or
3. The charity gives or sells the vehicle to a needy individual at a price significantly below fair market value, in furtherance of the charity's charitable mission.

(*Id.* at pp. 4-5.)

In 2010, Americans claimed deductions of \$389.3 million on their federal tax returns for 193,532 vehicles donated to charities. (Ex. 5.)

B. Types of Vehicle Donation Programs.

If a charity operates a vehicle donation program in a manner that confers improper benefits on private parties, the IRS may take adverse action against the charity's tax exempt status. (Ex. 6, p. 3.) The IRS has emphasized that a charity cannot license to others its right to receive tax-deductible contributions. (*Id.* at p. 4.)

The IRS has identified four main types of vehicle donation programs:

1. Charity Uses or Distributes Vehicles. In this type of program, the charity uses donated vehicles in its charitable programs or distributes the vehicles to needy individuals.
2. Charity Sells Donated Vehicles. In this type of program, the charity sells the donated vehicles and uses the proceeds to fund its charitable programs.
3. Charity Hires Agent to Operate Vehicle Donation Program. In this type of program, the charity hires a for-profit company as its agent to operate its vehicle donation program. The for-profit company acts on the charity's behalf, and its activities are subject to the charity's oversight. The IRS has stated that, in this model, the charity must actively monitor the program's operations and have the right to review all contracts, establish rules of conduct, choose or change program operators, approve of or change all advertising, and examine the program's books and records, or the charity may negatively impact its tax-exempt status.
4. For-Profit Company Receives and Sells Vehicles Using Charity's Name. In this type of program, the charity grants a for-profit company the right to use the charity's name to solicit vehicle donations. The charity receives a flat fee or a percentage of the proceeds from the sale of the vehicles. The charity does not control the for-profit company's activities. As a result, donors' contributions are deemed made to the for-profit entity and not the charity, and are not tax-deductible. The IRS has stated that, in this model, the charity has not established an agency relationship with the for-profit company, and the program is not the charity's program. (Ex. 6, pp. 3-4.)

III. HISTORY OF DEALINGS BETWEEN METRO METALS, CAR DONATION FOUNDATION, AND NATIONAL FUNDRAISING MANAGEMENT RELATING TO MAKE-A-WISH.

A. Metro Metals—A For-Profit Company—Initially Managed Make-A-Wish’s Vehicle Donation Program.

Metro Metals is located at 2576 Doswell Avenue in St. Paul, Minnesota. (Ex. 7.) It was formed as a for-profit Minnesota corporation by Mr. Bigley and Mr. Heiligman in 2003. (*Id.*) Mr. Bigley and Mr. Heiligman own 100 percent of the company. (Ex. 8, p. 4.) Mr. Heiligman is Metro Metal’s chief executive officer, president, and director. (Ex. 9.) Mr. Bigley is an officer and director. (Ex. 10.) Mr. Heiligman’s wife, Roberta Heiligman, is the company’s executive vice president. (Ex. 11.)

In 2003, Make-A-Wish Foundation of Minnesota (“Make-A-Wish-MN”) retained Metro Metals to administer its vehicle donation program. (Ex. 12, Interrogatory 2 response.) The relationship was memorialized in an agreement dated February 19, 2008. (Ex. 13.) Under the agreement, Metro Metals and Make-A-Wish-MN would essentially split the proceeds from the auctioning of vehicles donated to Make-A-Wish-MN’s charitable donation program. (*Id.*) Metro Metals and Make-A-Wish-MN would each receive █████ percent of the █████ (*Id.*) From Make-A-Wish-MN’s █████ percent share, it would pay Metro Metals \$████ per vehicle for towing and reimburse █████ percent of Metro Metals’ advertising and call center expenses. (*Id.*) For scrapped vehicles, Metro Metals would pay Make-A-Wish-MN \$████ for each donated vehicle. (*Id.*)

This relationship between the two organizations lasted until December, 2010. (Ex. 12, Interrogatory 2 response.)

B. Mr. Bigley and Mr. Heiligman Form CDF To Run “Wheels for Wishes.”

In 2007, Mr. Bigley and Mr. Heiligman formed Car Donation Foundation (“CDF”) as a Minnesota non-profit organization. (Ex. 14.) CDF was granted 501(c)(3) tax-exempt status by

the IRS in 2009. (Ex. 15.) In October, 2010 CDF registered with the Minnesota Attorney General's Office ("Minnesota AGO") as a charitable organization under chapter 309 of the Minnesota Statutes. (Ex. 16.) CDF's initial board of directors was comprised of Mr. Bigley, Mr. Heiligman, and Mr. Heiligman's wife. (Ex. 17, p. 2.)

The organization appears to have been largely dormant until 2010. In 2010, CDF approached Make-A-Wish-MN and suggested that its vehicle donation program be managed by CDF, instead of Metro Metals. (Ex. 12, Interrogatory 2 response.) Craig Greenberg—whose law firm has acted as an attorney for Metro Metals, CDF, and NFM, and who is a former CDF board member—has acknowledged that such a structure was designed to make the fundraising and overhead costs of running a vehicle donation program for the recipient charity (here, Make-A-Wish-MN) appear lower to the donating public because the recipient charity did not need to report the fundraising expenses in its public filings. (Ex. 18, p. 2.)

On December 31, 2010, Make-A-Wish-MN and CDF entered into a Charitable Promotion and Licensing Agreement. (Ex. 19.) Make-A-Wish-MN granted CDF the right to use its name and logo to advertise CDF's vehicle donation program. (*Id.*) In exchange, CDF agreed to pay Make-A-Wish-MN the amount remaining after CDF paid its expenses, including CDF's payments to NFM and Metro Metals for services they performed for it and for advertising costs. (*Id.* at ¶ 6.) CDF has entered into similar relationships with numerous other local Make-A-Wish chapters around the country. (Ex. 34.)

CDF calls its vehicle solicitation program "Wheels for Wishes." (Ex. 20.) CDF organizes and manages a newspaper, Internet, and radio advertising program to solicit vehicle donations whose proceeds will benefit the various local Make-A-Wish chapters. (Ex. 8, p. 9.)

From January 1, 2010 to May 30, 2011, CDF retained Metro Metals to take calls from prospective donors who responded to these ads. (Ex. 8, p. 5.) As set forth below, Minnesota law requires a company that acts as a professional fundraising company for a charity to register with the Minnesota AGO. Minn. Stat. § 309.531. A professional fundraiser includes any person who for financial compensation or profit performs any service in connection with which charitable contributions (including property, such as cars) are solicited, or who plans, manages, advises, consults, or prepares materials with respect to the solicitation of contributions. Minn. Stat. § 309.50, subd. 6. Metro Metals was not registered with the Minnesota AGO as a professional fundraiser for CDF.

With minor exception,¹ CDF has only solicited vehicles that were advertised to benefit Make-A-Wish.

C. Mr. Bigley And Mr. Heiligman Form National Fundraising Management To Act as A For-Profit Professional Fundraiser for CDF.

In May, 2011, Mr. Bigley and Mr. Heiligman formed National Fundraising Management, Inc. (“NFM”) as a for-profit Minnesota corporation. (Ex. 24.) NFM lists its executive office address with the Minnesota Secretary of State as 2576 Doswell Avenue in St. Paul—which is the address for Metro Metals. (Ex. 25.) NFM registered with the Minnesota AGO as a professional fundraiser in February 2012. (Ex. 26.)

¹ The vast majority of vehicles solicited by CDF are advertised as benefiting Make-A-Wish. Between about 2013 and 2015, CDF had a relationship with Breast Cancer Research Foundation (“BCRF”) in which, according to its 990, it paid BCRF approximately \$110,000. (Ex. 21.) This is believed to have included less than 100 vehicles received from Minnesota donors. CDF calls its vehicle solicitation program on behalf of BCRF “Cars to Cure Breast Cancer.” (Ex. 22.) NFM provided communications between Messrs. Bigley and Heiligman which emphasized the profit to be made by the for-profit companies. For example, in an October 11, 2013 email to Mr. Heiligman, Mr. Bigley states: “I would be happy if we can get [REDACTED] cars a year for them which is about [REDACTED] a day. That would make us about \$[REDACTED] year.” (Ex. 23.) In addition, in about July, 2015, CDF began to solicit vehicles with the stated purpose of benefitting disabled veterans. (See *infra* Section X, p. 40.)

Mr. Bigley and Mr. Heiligman own all of the stock of NFM. (Ex. 27.) Mr. Heiligman is its president, chief executive officer and director, and Mr. Bigley is its vice president and director. (Ex. 28.) NFM's only client is CDF. (*Id.*) Minnesota law requires both a charity and its fundraiser to file a "solicitation notice" with the Minnesota AGO before they may solicit donations in Minnesota. Minn. Stat. § 309.531, subd. 2(b). In 2012, Mr. Bigley signed the solicitation notice for *both* NFM and CDF. (Ex. 29.)

On June 1, 2011, less than one month after NFM was formed, CDF retained NFM to manage its "Wheels for Wishes" fundraising program. (Ex. 30.) The contract between CDF and NFM was signed by Mr. Bigley for CDF and Mr. Heiligman for NFM. (*Id.* at p. 7.) Under the contract, CDF paid NFM a commission of 50 percent of the "net proceeds" of each donated vehicle. (*Id.* at ¶ 5.1.) "Net proceeds" is defined in the contract to mean the gross sales price of a vehicle less NFM's out-of-pocket expenses, auction fees, advertising, and call center expenses. (*Id.*) The net effect of this contract essentially was that NFM, a for-profit corporation, and Make-A-Wish, a charity, split the proceeds (after all expenses were paid) of the sale of vehicles intended for charity.

In January, 2015—after the Minnesota AGO began to investigate CDF—CDF and NFM changed their contract to require CDF to pay NFM a fee equal to 30 percent of the gross sales price of donated vehicles. (Ex. 31, ¶ 1.) While the change from 50 percent of net proceeds to 30 percent of gross sales may sound more equitable, it does not appear to have made a substantial reduction to the profit of the for-profit corporations. In an email from December 4, 2014, Mr. Bigley told Mr. Heiligman that NFM was already charging the Make-A-Wish chapters a nationwide average of ■ percent of the gross sales price of donated vehicles. (Ex. 32.) One change that is potentially significant under the new agreement is that NFM has less of an

incentive to keep costs, such as advertising expenses, low, because the amount of expenses NFM incurs on behalf of CDF no longer affects NFM's bottom line.

In exchange for this compensation, NFM manages the operations of CDF. NFM solicits vehicle donations for CDF from prospective donors who call in response to advertisements. NFM prepares all advertisements and solicitation materials—the key ingredient in getting prospective donors to call. NFM develops the content of advertising, handles social media advertising, speaks with potential donors, and issues tax receipts to donors. (Ex. 33.)

CDF has also signed contracts with more than 30 local Make-A-Wish chapters in other states besides Minnesota. (Ex. 34.) NFM is registered to act as a professional fundraiser for CDF in about 40 states. (Ex. 28.)

It appears that the CEO of Make-A-Wish-MN was a key promoter for CDF in landing these contracts with other Make-A-Wish chapters. While serving as CEO of Make-A-Wish-MN, he was paid more than \$70,000 from NFM and Metro Metals. (Ex. 35, 36, 37.) Make-A-Wish-MN states he received \$5000 from the for-profit companies for each local chapter of Make-A-Wish that signed up with CDF. (Ex. 35). On June 16, 2015, the board of directors of Make-A-Wish-MN scheduled a special board meeting to investigate the payments NFM and Metro Metals made to the CEO. (*Id.*) On June 15, 2015, the CEO of Make-A-Wish-MN resigned from his position. (*Id.* at p. 2.)

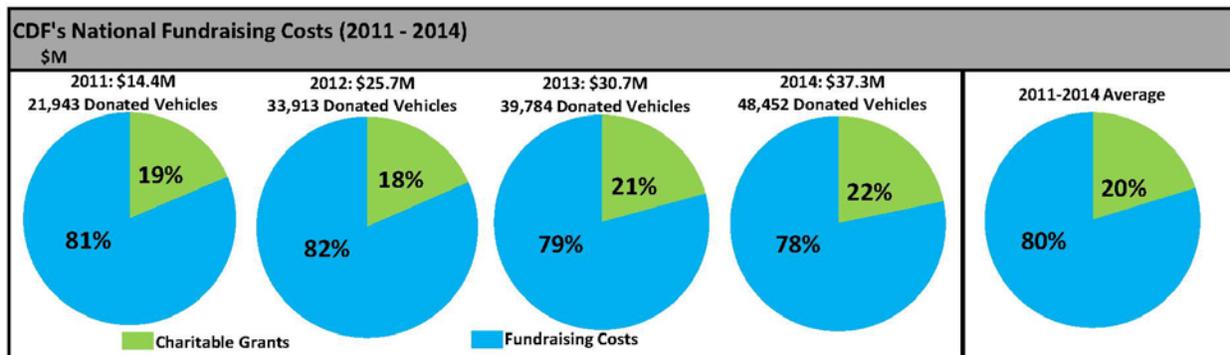
IV. CDF'S VEHICLE DONATION PROCEEDS ARE CONSUMED BY FUNDRAISING COSTS.

As noted above, in 2014, CDF was listed on the South Carolina Secretary of State's "Scrooge List," (Ex. 1), and the Oregon Attorney General's "20 Worst Charities" list. (Ex. 2.)

A. On Average Over the Last Four Years, About 80 Percent of CDF’s National Revenue Was Spent On Fundraising Costs.

CDF’s revenue from vehicle donations doubled from 2011 to 2014. In total, it received approximately \$108 million in gross revenue in these years. It received gross revenue of \$14.4 million from the sale/scraping of 21,943 vehicles in 2011 (Ex. 38), \$25.7 million from the sale/scraping of 33,913 vehicles in 2012 (Ex. 39), \$30.7 million from the sale/scraping of 39,784 vehicles in 2013 (Ex. 40), and \$37.3 million from the sale/scraping of 48,452 vehicles in 2014. (Ex. 41.) CDF spent approximately 81 percent of its revenue on fundraising costs in 2011 (Ex. 38), 82 percent in 2012 (Ex. 39), 79 percent in 2013 (Ex. 40), and 78 percent in 2014. (Ex. 41.) In other words, CDF’s charitable grants were only 19 percent of gross vehicle sales revenue in 2011, 18 percent in 2012, 21 percent in 2013, and 22 percent in 2014.

This is depicted in the following chart:



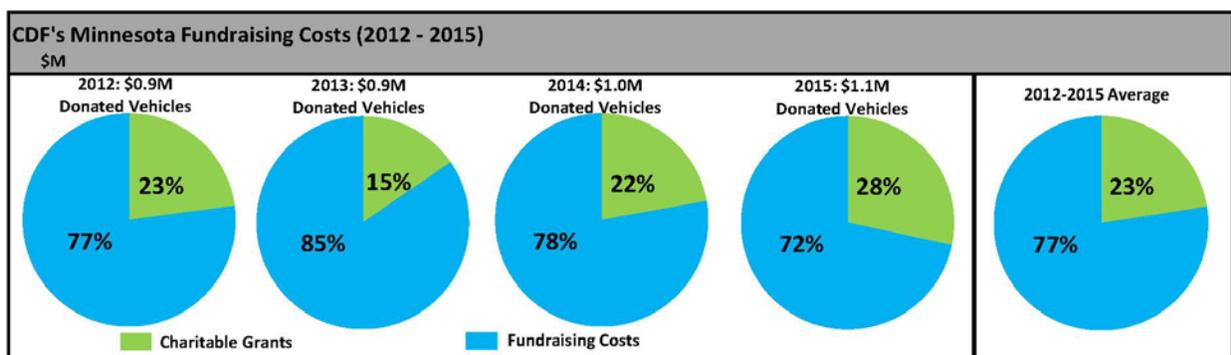
Notes
2011 - 2014 based on Car Donation Foundation's annual IRS 990 forms

B. CDF’s Fundraising Costs in Minnesota.

Between 2011 and 2014, CDF received an average of about 1,400 vehicles donated each year by Minnesota residents. (Ex. 42.) In Minnesota, CDF received gross revenue of \$906,463 from the sale/scraping of vehicles between June 2011 and May 2012 (Ex. 43), \$913,313 between May 2012 and April 2013 (Ex. 44), \$963,569 between May 2013 and April 2014 (Ex. 45), and \$1,123,531 between May 2014 and April 2015, for a total of approximately \$3.9 million

during these periods. (Ex. 46.) It spent about 77 percent of this Minnesota revenue on fundraising costs during the 2011-2012 reporting period, (Ex. 43), 84.6 percent on fundraising costs in 2012-2013, (Ex. 44), 78 percent on fundraising costs in 2013-2014, (Ex. 45), and 72 percent on fundraising costs in 2014-2015. (Ex. 46.) In other words, in Minnesota, about 23 percent of CDF’s gross vehicle sales revenue went to charity in 2011-12, 15.4 percent in 2012-13, 22 percent in 2013-14, and 28 percent in 2014-2015.

This is depicted in the following chart:



Notes
 2012 - 2015 based on NFM's campaign reports for CDF
 Campaign year reflects year in which campaign ended (e.g. 2015 campaign year 5/1/14 to 4/30/15)

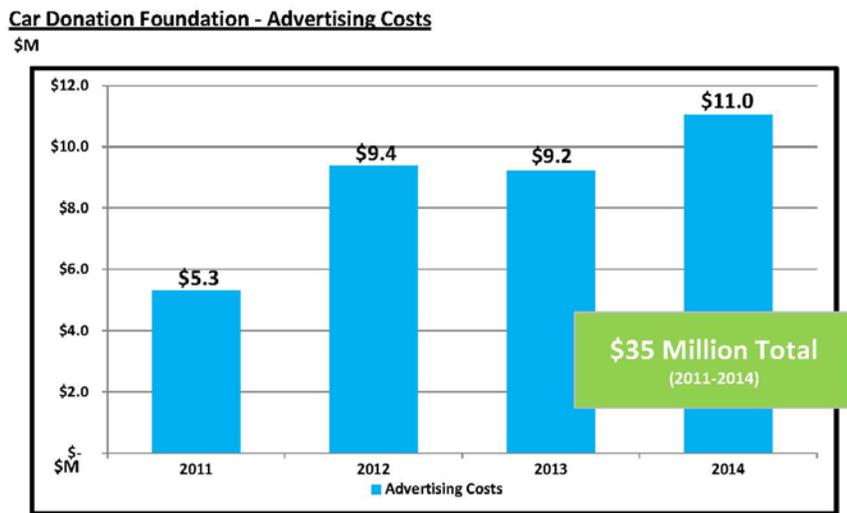
C. More Than 30 Percent of CDF’s Gross Vehicle Sales Revenue Is Spent on Advertising.

CDF is extremely competitive, and advertising costs are a major expense for CDF. Emails between Mr. Bigley and Mr. Heiligman underscore the importance of advertising. In one email, Mr. Heiligman, using his Metro Metals account, tells Mr. Bigley and the NFM marketing staff: “This is pure and simply a marketing business we are in. The best marketer will win!!” (Ex. 47.) In another email, Mr. Bigley tells a local charity chapter: “This is a competitive business and we need to take volume from our competitors.” (Ex. 48.)

CDF is a prolific advertiser in the newspaper and on the Internet. CDF paid a total of \$34.9 million for advertising between 2011 and 2014. (Exs. 49-52.) CDF paid \$5.3 million (37

percent of gross vehicle sales revenue) in advertising in 2011, \$9.4 million (37 percent of gross vehicle sales revenue) in 2012, \$9.2 million (30 percent of gross vehicle sales revenue) in 2013, and \$11 million (30 percent of gross vehicle sales revenue) in 2014. (*Id.*)

CDF's advertising expenses are illustrated in the following chart:



Notes
2011 - 2014 based on Car Donation Foundation's annual IRS 990 forms

V. MR. BIGLEY AND MR. HEILIGMAN PROFIT HANDSOMELY FROM CDF'S PAYMENTS TO THEIR PRIVATE BUSINESSES.

A. The Law of Private Benefit and Charitable Institutions.

To be tax-exempt, charitable organizations must be organized and operated exclusively for exempt purposes. 26 C.F.R. § 1.501(c)-(d) (2014); *see also* I.R.S. Gen. Couns. Mem. 39,862 at *11. (November 22, 1991). Exempt purposes, also frequently referred to as "charitable purposes," include religious, charitable, scientific, literary, and educational purposes. 26 C.F.R. § 1.501(d)(1)(i).

Organizations whose activities or operations serve primarily non-charitable interests are not entitled to tax exemption, which is a form of a governmental subsidy conferred on charitable organizations. *See Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 544

(1983). Such a subsidy is conditioned on the organization providing a public benefit. *Id.* This concept—i.e., that a tax-exempt charitable organization must serve public and not private interests—is commonly referred to as the “private benefit doctrine.”

Under the private benefit doctrine, a private benefit that is more than “incidental” or “insubstantial” should not receive a tax subsidy. “The presence of a single noncharitable purpose, if substantial in nature, will destroy exemption regardless of the number or importance of the charitable purposes.” *Am. Campaign Academy v. CLR*, 92 T.C. 1053, 1065 (1989). Prohibited private interests under the doctrine include any “advantage, profit, fruit, privilege, gain [or] interest” flowing to a private party, as opposed to the public generally. *Id.* (quotation omitted).

The IRS reviews private benefit issues both qualitatively and quantitatively. 26 C.F.R. § 1.501(c)(3)-1(c)(1). A private benefit is qualitatively incidental if “the benefit to the public cannot be achieved without necessarily benefitting private individuals.” I.R.S. Gen. Couns. Mem. 39,862 at *12. In other words, a qualitatively incidental private benefit is one that can be fairly characterized as “unintentional.” *See id.*

The tax regulations use as an example a tax-exempt educational organization (“O”) which trains individuals in a program developed by O’s president (“P”). 26 C.F.R. § 1.501 (c)(3)-1(d)(iii), Example 3. The rights to the program are owned by a for-profit business (“K”) owned by P. *Id.* Before O was formed, the program was taught by K. *Id.* K licenses to O the right to use the program and O pays royalty payments to K for that right. *Id.* K provides the trainers and course materials to O, and sets the tuition for the program. *Id.* O, effectively a shell organization, is organized and operated to create a market for K’s and P’s services. This

arrangement, regardless of its reasonableness, provides more than a qualitatively incidental benefit to K and P, making O ineligible to be a tax-exempt organization. *Id.*

A private benefit is quantitatively incidental only when it is “insubstantial when viewed in relation to the public benefit conferred by the activity.” I.R.S. Gen. Couns. Mem. 39,862 at *12. Reviews of whether a tax-exempt organization is providing a quantitatively greater private versus public benefit are based on the particular facts and circumstances of each case. *See Church in Boston v. Comm'r of Internal Revenue*, 71 T.C. 102, 108 (1978). As part of this review, “the substantiality of the private benefit is measured in the context of the overall public benefit conferred” by the organization’s activities. I.R.S. Gen. Couns. Mem. 37,789 at *4 (December 18, 1978).

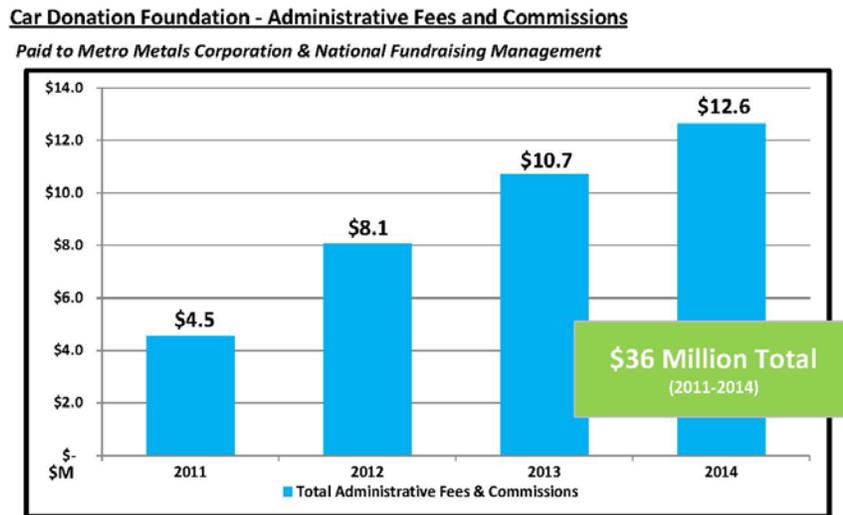
Although there is no set formula, the tax regulations describe an illustrative art museum which exhibits and offers tours of art created by local artists. 26 C.F.R. § 1.501(c)(3)-1(d)(iii) Example 2. All displayed art is for sale. *Id.* For every piece sold, the museum receives 10 percent of the selling price and the local artist gets 90 percent of the sales price. *Id.* Because the artists receive 90 percent of the proceeds from the sale of the art, an amount that is not quantitatively incidental, the museum is not entitled to tax exempt status because it is operated primarily for the private interests of the artists.

Accordingly, any private benefit arising from a charitable organization’s activities is supposed to be both qualitatively (i.e., unintentional) and quantitatively (i.e., insubstantial) incidental relative to its overall public benefit for an organization to be entitled to tax-exempt status. I.R.S. Gen. Couns. Mem. 39, 862 at *12. This includes private benefits conferred not only on the charitable organization’s insiders, but also private individuals unrelated to the organization. *See Am. Campaign Academy*, 92 T.C. at 1068-69.

B. CDF has Paid Approximately \$36 Million to NFM and Metro Metals In Four Years.

As noted above, Mr. Bigley and Mr. Heiligman co-manage CDF—which is NFM’s only client—and also own NFM and Metro Metals. CDF pays a substantial portion of the revenue received from the sale of donors’ vehicles to NFM and Metro Metals. Since 2011, CDF has paid NFM and Metro Metals \$35.9 million in administrative fees and commissions. (Exs. 53-56.) CDF paid NFM and Metro Metals \$4.6 million in administrative fees and commissions in 2011, \$8 million in 2012, \$10.7 million in 2013, and \$12.6 million in 2014. (*Id.*)

This is illustrated in the following chart:



Notes
2011 - 2014 based on Car Donation Foundation's annual IRS 990 forms

According to CDF’s 2012 Form 990, NFM and Metro Metals were organized as subchapter-S corporations. (Ex. 57.) Subchapter-S corporations pass corporate income through to their shareholders on their personal tax returns at individual income tax rates for federal tax purposes. (Ex. 58.) NFM appears to be highly profitable for Mr. Bigley and Mr. Heiligman. As of September, 2014, Mr. Bigley told Mr. Heiligman that NFM was on pace to make a profit of about \$ [REDACTED] for the year, with a profit margin of [REDACTED] percent for the month of August, 2014.

(Ex. 59.) A [REDACTED] percent profit margin for NFM is consistent with other information NFM provided to the Minnesota AGO.

It is not known if a similar profit level existed in other years. If it did, since 2011, Mr. Bigley and Mr. Heiligman would have earned profit of \$ [REDACTED] or \$ [REDACTED] million each— as a result of their 100 percent ownership of the for-profit fundraising company, NFM.

At least four of Mr. Bigley and Mr. Heiligman’s immediate family members are also employed by their for-profit corporations. As noted above, Mr. Heiligman’s wife, Roberta, is executive vice-president of Metro Metals. (Ex. 11, Ex. 60.) Mr. Heiligman’s son, Jamie Heiligman, works for NFM as operations director. (Ex. 61.) Mr. Heiligman’s daughter, Aliza Heiligman, works for NFM as media marketing director. (*Id.*) Mr. Bigley’s son, Jackson Bigley, works for NFM as a donation specialist. (*Id.*)

C. Mr. Bigley and Mr. Heiligman Resign From the CDF Board of Directors But Continue to Run the Organization As Co-Executive Directors.

Until 2013, CDF’s board of directors included Mr. Bigley, Mr. Heiligman, Mrs. Heiligman, and Craig Greenberg, whose law firm is also an attorney for Metro Metals and NFM. (Ex. 8, p. 2.)

In 2013, the IRS examined the ties between CDF, NFM, and Metro Metals. (*Id.* at p. 6.) The IRS noted that a charitable organization should not serve as a “lead generator to get business for the founders’ for-profit companies.” (Ex. 62.) The agency questioned whether CDF should retain its 501(c)(3) tax-exempt status in light of the significant benefit conferred on the two for-profit corporations by Mr. Bigley and Mr. Heiligman through their control of CDF. (Exs. 8, 62.)

Mr. Bigley, Mr. Heiligman and his wife, and Mr. Greenberg thereafter resigned *en masse* from CDF’s board of directors in June, 2013. (Ex. 63.) It appears that the IRS was satisfied that

these mass resignations would create an arm's length relationship between CDF and the for-profit corporations.

The CDF board of directors thereafter immediately delegated day-to-day management responsibility for running CDF to Mr. Bigley and Mr. Heiligman. (Ex. 64.)

The resignations of Mr. Bigley and Mr. Heiligman may in fact have been more of a cosmetic change. CDF states that it has no employees. (Ex. 8, p. 4.) It has no permanent office of its own but instead rents space to receive mail in a shared office suite that many other businesses list as their address. (Exs. 18, 65.) In his emails, Mr. Bigley identifies himself as “co-executive director” of “Wheels for Wishes”, an assumed name of CDF. (Exs. 23, 48, 59, 77.) The board of directors of CDF has authorized Mr. Bigley and Mr. Heiligman to “provide the management services typically provided by officers of CDF.” (Ex. 64) Mr. Bigley attends quarterly board meetings of CDF, and Mr. Bigley and Mr. Heiligman provide general management and oversight of the car donation program. (Exs. 21, pp. 4, 6; 64.) CDF concedes in its financial statements that management of the organization is outsourced to NFM—Mr. Bigley’s and Mr. Heiligman’s for-profit company. (Ex. 66.)

Despite this, in its 2013 and 2014 Form 990s, CDF checked “no” to the question: “Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors, or trustees, or key employees to a management company or other person?” (Ex. 67, p. 6(A)(3).) Additionally, CDF, in its 2014 Form 990, checked “no” to the question: “Was the organization a party to a business transaction with...[a]n entity of which a current or former officer, director, or key employee (or family member thereof) was an officer, director, trustee, or direct or indirect owner?” (Ex. 68.) As a result, CDF does not

disclose in its Form 990 that Mr. Bigley and Mr. Heiligman, who co-manage CDF, also own CDF's major for-profit vendors, NFM and Metro Metals. (Ex. 69.)

CDF's attorneys have acted for NFM and Metro Metals as well. After Mr. Greenberg—the attorney for NFM and Metro Metals—resigned from CDF's board in June, 2013, CDF authorized him to “provide services typically provided by treasurer and secretary of CDF,” including to authorize payments and sign checks. (Ex. 64.) Mr. Greenberg's firm represents CDF in connection with the Minnesota AGO's investigation. Mr. Greenberg's firm simultaneously represents Metro Metals and NFM on a variety of other matters. For example, it represents NFM on its regulatory filings as a fundraising company throughout the nation. (Ex. 70.) One of the firm's attorneys is Mr. James Smith, whose wife, through her business Legal Compliance Services, LLC, also represents NFM on regulatory matters. (Ex. 71.) In May, 2015, Mr. Smith represented Metro Metals in a trial in Ramsey County District Court in which a jury convicted the company of auctioning stolen cars and paying the proceeds to the thieves. (Ex. 72.)

VI. THE RELATIONSHIP BETWEEN CDF AND THE FOR-PROFIT CORPORATIONS MR. BIGLEY AND MR. HEILIGMAN CO-OWN RAISES QUESTIONS ABOUT THE STEWARDSHIP OF THE CHARITY.

A. Officers Owe a Duty of Loyalty and Care to the Charity.

Among other things, the Minnesota Nonprofit Corporation Act provides that directors and officers of a nonprofit corporation are fiduciaries of that organization. Minn. Stat. §§ 317A.251, .361 (2014). A fiduciary is an individual who is required to act for the benefit of the nonprofit corporation. *Black's Law Dictionary* (10th. ed. 2014). In particular, “[a]n officer of a nonprofit corporation owes a fiduciary duty to that corporation to act in good faith, with honesty in fact, with loyalty, in the best interests of the corporation, and with the care of an ordinary,

prudent person under similar circumstances.” *Shepherd of the Valley Lutheran Church of Hastings v. Hope Lutheran Church of Hastings*, 626 N.W.2d 436, 442 (Minn. Ct. App. 2001) (citing Minn. Stat. § 317A.361). These fiduciary duties have been described to include a director’s and officer’s duty of loyalty and duty of care. *Markewich ex rel. Medtronic, Inc. v. Collins*, 622 F. Supp. 802, 809 (D. Minn. 2009); *Miller v. Miller*, 222 N.W.2d 71, 78 (Minn. 1974).

“A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated...is considered an officer,” and thus a fiduciary, of the nonprofit organization. Minn. Stat. § 317A.361 (2014); *see also Christopher v. Hanson*, 2010 WL 3002889, at *7 n. 5 (D. Minn. May 24, 2010) (stating that delegation of duties by officers “deem[s] a person to whom the officer’s duties are delegated an officer for purposes of determining the standard of conduct that must be exercised in the discharge of the delegated official duties.”).

Regarding the duty of loyalty, directors and officers owe an active duty of honesty and good faith while transacting the business of the corporation and any dealings with it. *Keough v. St. Paul Milk Co.*, 285 N.W. 809, 823 (Minn. 1939). This means that a board member, director or officer must put the interests of the nonprofit corporation first and foremost in his or her dealings with others. One manner by which this duty of loyalty is implicated is when directors or officers engage in transactions which involve a conflict of interest. Conflicts of interest often arise when a director or officer engages in personal financial dealings or transactions with the nonprofit corporation for which he or she serves, or engages in transactions between the nonprofit corporation and other entities in which the director or officer has a personal interest. *Mid-List Press v. Nora*, 275 F.Supp.2d 997, 1003-04 (D. Minn. 2003).

Separately, the director's or officer's duty of care requires that he or she act in a reasonable and informed manner when making decisions regarding the management and operations of the nonprofit. *See Potter v. Pohlada*, 560 N.W.2d 389, 392 (Minn. Ct. App. 1997). This means that a director or officer must ensure they remain informed about the business of the corporation, and actively participate in its management and operations in order to make reasonable and informed decisions on the nonprofit's behalf.

In short, these fiduciary duties subject board members, directors, and officers of nonprofit corporations to the "highest standard of integrity." *Hope Lutheran Church*, 626 N.W.2d at 442.

B. The For-Profit Ties of Mr. Heiligman and Mr. Bigley Raise Questions About Governance of CDF.

Mr. Bigley and Mr. Heiligman's simultaneous co-management of the charity, CDF, and ownership and management of the two for-profit corporations, NFM and Metro Metals, raise concerns about the extent to which their actions benefit the charity versus their for-profit corporations. As noted above, their two for-profit corporations have received approximately \$36 million in fees and commissions from CDF since 2011. These concerns include:

(1) Auditors Raise Concerns about Messrs. Bigley's and Heiligman's Management and Oversight of CDF.

CDF's auditors have identified problems arising out of the overlapping management of NFM, Metro Metals, and CDF. For example, prior to 2015, CDF was contractually required to reimburse NFM for actual expenses. (Ex. 30.) In practice, NFM simply charged CDF 15 percent of the net sales price of vehicles (e.g., the gross sales price minus the auction house fees) as a substitute for actual expenses. (Ex. 73.) CDF paid these expenses. In April, 2014, CDF's auditing firm noted that NFM did not provide CDF with invoices to document its expenses so the firm could not determine if the expenses incurred by NFM were comparable to the 15 percent

that NFM took for expenses. (Ex. 74.) CDF does not appear to have changed this practice, however, until 2015, when it changed its payment structure with NFM.

Make-A-Wish's auditors have also raised concerns. Make-A-Wish has the right to inspect CDF's books and records under its contract with CDF. (Ex. 19 ¶ 4.9.) No documentation was provided to indicate that Make-A-Wish had done so prior to this year. In May, 2015—after the Minnesota AGO served a Civil Investigative Demand on the local chapter asking for information about CDF—Make-A-Wish Foundation of America (“Make-A-Wish National”) conducted a on-site review of CDF. This review was “due to numerous potential red flags around the operations of the [Wheels for Wishes] program, including a low (i.e., less than 25 percent) program ratio as well as concerns regarding the close relationship between CDF and its for-profit affiliates.” (Ex. 75, p. 1.) The audit was conducted by a senior consultant from Deloitte & Touche and a senior manager from Make-A-Wish National. (*Id.*)

The audit report made a number of findings:

First, the report questioned the lack of competitive bidding for the auction services of Metro Metals, “one of the main auction houses used to auction off cars [and which is] owned by parties related to CDF.” (*Id.*)

Second, the report questioned CDF's payment of NFM's expenses. The audit noted that the invoices NFM submitted to CDF lacked detail, explaining that “if CDF were an independent organization, the amount of detail would be insufficient to understand or verify exactly what services were rendered, or why the amount being charged is appropriate.” (*Id.*) The audit indicated that while NFM charges CDF advertising fees of around \$1 million per month, NFM did not provide CDF with the actual invoices. (*Id.*) The audit further noted that for 2014 and the first quarter of 2015, CDF paid NFM \$29 million without sufficient documentation or

substantiation. The report stated that this payment gave the appearance that NFM was taking a cut of the donations made to CDF:

“[T]o an outsider examining only the invoicing in its current form, such a significant amount being removed from a charity by a related, for-profit organization appears more like a ‘cut’ of the proceeds than it does a legitimate management fee.”

(*Id.* at 3.)

The audit concluded by expressing concerns about CDF’s independence:

“These control gaps call into question whether the organization is being operated at arm’s length from the related for-profit entities. [These] are control issues that would not be acceptable at any charity that was operating independently and in the best interest of its donors and beneficiaries. For the sake of its donors and intended beneficiaries, CDF should be operated completely at arm’s length from all related organizations, should be given full operational control of and visibility into all parts of its business cycle, and should demand invoicing from its vendors, related and otherwise, that is sufficient to document exactly what they are paying for.”

(Ex. 75, p. 3.)

In July, 2015, Make-A-Wish National performed a site visit of NFM. (*Id.*) In its report to Make-A-Wish-MN about the visit, Make-A-Wish-National continued to question CDF’s independence from NFM. (*Id.*) Among other things, Make-A-Wish-National noted that in order to ensure that CDF is distinct from NFM in substance and in form “[i]ndependent CDF representatives should be reviewing and approving NFM’s donation reconciliations on a regular basis,” and “CDF should be receiving third-party invoices and detailed computations in support of what they pay NFM each month . . . and [have those] approved by independent CDF representatives.” (*Id.*)

(2) Mr. Bigley and Mr. Heiligman Blur the Identities of CDF, Metro Metals, and NFM.

Mr. Bigley and Mr. Heiligman sometime blur the identities of CDF, NFM, and Metro Metals. For example, Mr. Bigley frequently corresponds with Mr. Heiligman about CDF at his

Metro Metals email account. (*See, e.g., Ex. 77.*) According to CDF’s outside auditing firm, NFM’s accounting personnel were located at Metro Metals as of 2013. (*Ex. 74, p. 2.*)

It is important that CDF exercise oversight of NFM and Metro Metals for a number of reasons. For example, as noted above, in 2014 a lawsuit was filed by seven individuals against Metro Metals. (*Ex. 72.*) The lawsuit alleged that Metro Metals accepted stolen vehicles from thieves, at a time when they should have known they were stolen, paid cash to the thieves, and then disposed of the cars. (*Ex. 72*) In May, 2015 the jury returned a verdict against Metro Metals for each victim. (*Id.*) This raises questions about the practices of Metro Metals, which CDF (the charity) should monitor.

[REDACTED] provides auto auction and vehicle donation processing services to charities and has an [REDACTED]

[REDACTED] (*Ex. 76.*) [REDACTED] is a competitor to both Metro Metals and NFM. (*Id.*) At one point, Mr. Bigley and Mr. Heiligman discussed whether to [REDACTED]

[REDACTED] (*Ex. 32.*) Mr. Bigley (using an email address of “Wheels for Wishes” (e.g., CDF)) told Mr. Heiligman (at his email at Metro Metals) that a

[REDACTED] not necessary because: [REDACTED]

[REDACTED] and that if they were to serve as an auction house for cars donated through Wheels for Wishes, [REDACTED]

[REDACTED] (*Id.*) This raises the question of whether Mr. Bigley and Mr. Heiligman are protecting NFM and Metro Metals against

[REDACTED]

Another example occurred in CDF’s negotiations with [REDACTED] [REDACTED] Mr. Heiligman’s son, Jamie, represented “Wheels for Wishes” (an assumed name of CDF) in its

negotiations with ██████ Metro Metals and ██████ are business competitors in that they both ██████. At one point in December, 2014, ██████ proposed a deal with Jamie Heiligman through which no ██████ would be charged for Metro Metals and proposed a ██████

(Ex. 77.) ██████

████████████████████ (Ex. 77.) It is not known whether this proposal was consummated. Mr. Bigley (using an email account for Wheels for Wishes) forwarded the email to Mr. Heiligman (at his Metro Metals email account). (*Id.*) These discussions raise the question of whether Mr. Bigley and Mr. Heiligman, acting on behalf of NFM, were attempting to leverage CDF’s relationship with ██████ to benefit their for-profit companies at the expense of CDF.

(3) Mr. Bigley Downplays Attempted Oversight by CDF’s Charity Partners.

When charities have raised concerns with Mr. Bigley, they were sometimes minimized. For example, when a local Make-A-Wish chapter raised concerns about wanting to receive a larger percentage of the gross revenue from CDF, Mr. Bigley wrote to Mr. Heiligman (at his Metro Metals email account) about “the two problem people [at Make-A-Wish].” (Ex. 78.) When an Executive Director of a different CDF charitable partner began asking questions about the arrangement, Mr. Bigley chalked it up to her being “an Italian from Brooklyn.” (Ex. 79.) On another occasion, Mr. Bigley—using his title as co-executive director of Wheels for Wishes (i.e., CDF)—communicated with Mr. Heiligman (at his Metro Metals email account) about Disabled American Veterans, Department of Minnesota, Inc. (“DAV-MN”) (*Id.*; *see also infra* Section IX.) When the DAV-MN board asked Mr. Bigley questions about prospective charges to DAV-MN under various Metro Metals pricing options, Mr. Bigley told Mr. Heiligman: “let’s hope the

new board stops looking for something to do to make them look like they are smart ‘business’ guys.” (*Id.*)

VII. “WHEELS FOR WISHES” BLENDS ITS IDENTITY WITH MAKE-A-WISH.

A. Charitable Solicitations Should Be Truthful and Not Misleading.

Minnesota law provides that: “No charitable organization soliciting contributions shall use a name, symbol or statement so closely related or similar to that used by another charitable organization...that the use thereof would tend to confuse or mislead the public.” Minn. Stat. § 309.55, subd. 2. Minnesota law further provides that, “No charitable organization...shall use or employ any fraud...or deceptive practice...in connection with any charitable solicitation, including any such actions or omissions designed to confuse or mislead a person to believe that such organization is another organization having the same or like purposes.” Minn. Stat. § 309.55, subd. 5.

Minnesota law also requires charitable organizations and their professional fundraisers to make certain disclosures to prospective donors when soliciting donations of any type, including property. For example, prior to orally requesting a contribution or contemporaneously with a written request, the following information must be clearly disclosed:

- (a) the name and location by city and state of each charitable organization on behalf of which the solicitation is made;
- (b) the tax deductibility of the contribution; and
- (c) a description of the charitable program for which the solicitation campaign is being carried out.

Minn. Stat. § 309.556, subd. 1. A professional fundraiser must also disclose its name as on file with the Minnesota AGO and that the solicitation is being conducted by a professional fundraiser. Minn. Stat. § 309.556, subd. 2. The purpose of these disclosures is to provide

transparency to donors and the public. As set forth below, CDF did not make the disclosures required by section 309.556.

B. CDF Conflates Itself With Make-A-Wish.

CDF gets prospective donors of vehicles to call its solicitation center (staffed by NFM, the professional fundraiser) through two main types of advertising: (1) Internet advertising, and (2) newspaper advertising. For years, these ads prominently mentioned Make-A-Wish, prominently featured the Make-A-Wish logo, and did not mention Car Donation Foundation or notify donors that they were not donating directly to Make-A-Wish.

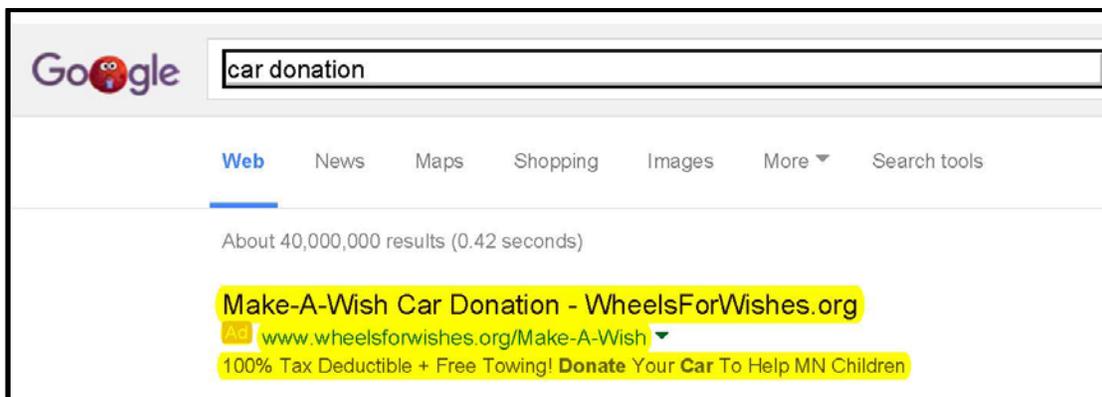
Internet advertising accounts for more than [REDACTED] percent of CDF's advertising budget. In 2013, for example, CDF paid about \$ [REDACTED] of \$9.2 million spent on advertising expenses—for Internet advertising. (Ex. 80; Ex. 51)

Among other things, CDF pays Internet search engines like Google and Bing to have its website, *www.wheelsforwishes.org*, appear as an ad when pr [REDACTED] donors search the Internet using search terms like “cars charity” or “car donation.” (Ex. 80.) In December, 2013, one local Make-A-Wish chapter asked CDF not to use the phrase “Make-A-Wish Car Donation” in advertising because they said “it was misleading as donors were not donating directly to Make A Wish.” (Ex. 81.) An NFM employee subsequently lamented the change to Mr. Bigley and Mr. Heiligman: [REDACTED]

[REDACTED] (*Id.*)

CDF continues to use the title “Make-A-Wish Car Donation” in paid Internet ads in Minnesota and around the United States. Attached as Exhibit 82 is an Internet ad by CDF that appears when a Minnesota computer user searches Google for “car donation.” The ad—a link to

the *wheelsforwishes.org* website—starts with the heading: “Make-A-Wish Car Donation.” The ad appears as follows:



Attached as Exhibit 83 is an Internet ad that appears when a Minnesota computer user searches Google for “donate car charity.” Nationwide searches on Google and Bing yield similar results. (Ex. 84.) Attached as Exhibit 85 is a similar newspaper banner ad that also references “Make-A-Wish Car Donation.” The banner ad appeared as follows:



CDF runs frequent newspaper advertisements to solicit vehicle donations. Attached as Exhibit 86 is an example of an ad that has run in newspapers in Minnesota. The ad features a little girl holding a puppy and prominently states “DONATE YOUR CAR” followed by “*Wheels for Wishes* benefiting Make-A-Wish Minnesota.” (Ex. 86). The ad prominently includes the Make-A-Wish logo. (*Id.*) The ad does not mention CDF or NFM. (*Id.*) The ad directs callers to

call (651) 645-WISH or visit the website *wheelsforwishes.org*. (*Id.*) This phone number is registered to Metro Metals. (Ex. 87.)

A similar ad from May, 2015 from a Minnesota newspaper soliciting donors to “Share the Power of a Wish” is attached as Exhibit 88. This ad does not mention CDF or NFM. (Ex. 88). Indeed, prior to June, 2015,² the organization’s ads did not provide the name and location by city and state of CDF (as required by Minnesota Statutes section 309.556), did not mention CDF, and prominently displayed the logo for Make-A-Wish. One such ad appeared as follows:



Make-A-Wish-MN and Make-A-Wish-National have raised concerns with CDF and Mr. Bigley about “the fact that [Wheels for Wishes] sometimes looked as if it were a program of Make-A-Wish rather than an independent charity.” (Ex. 89.) These concerns include the use of Make-A-Wish’s logo, the use of stories in an inaccurate manner or without permission, and that the “voice” (e.g., “call us today,” “we help children,” etc.) used on the website made it seem like it was coming from Make-A-Wish, not an independent charity. (*Id.*)

² CDF altered some of its newspaper ads in June, 2015 in the midst of the MN AGO investigation to include a small footnote reference to CDF. As of October 13, 2015, however, CDF was still running newspaper ads in a Minnesota newspaper that did not contain even this small footnote.

Attached as Exhibit 90 are excerpts from the Wheels for Wishes website, www.wheelsforwishes.org, as downloaded on September 20, 2013.³ The website prominently stated that “Your Tax Deductible Car Donation Helps Make Children’s Wishes Come True!” (Ex. 90.) It stated that when a person donates a vehicle, “*we turn your burden into wishes.*” (*Id.* (italics added).) On the front page, it stated that, “Proceeds from the sale of your vehicle donation benefit your local Make-A-Wish and help grant wishes of children diagnosed with life-threatening medical condition.” (*Id.*) A drop-down for “About Wheels for Wishes” extensively described Make-A-Wish and asks donors to “call *us* today” (*Id.*(italics added).)

Similarly, the heading of the Wheels for Wishes Twitter feed (saved on September 23, 2015) predominately features the Make-A-Wish logo alongside a photo of a child.⁴ (Ex. 91.) The Twitter feed header appears as follows:



³ The website has since been changed after the Minnesota AGO commenced its investigation.

⁴ The Make-A-Wish-MN website has compounded the confusion. Under the heading “donate a vehicle,” Make-A-Wish-MN says: “Donate your car, truck, motorcycle, SUV, RV or boat today to *our* charity car donation program called ‘Wheels for Wishes.’” (Ex. 92 (italics added).)

C. CDF's Solicitations Have Confused Minnesota Donors.

Numerous Minnesota donors who donated vehicles to CDF told the Minnesota AGO that they believed they were donating directly to Make-A-Wish and were not familiar with CDF. (*See, e.g.*, Ex. 93 (affidavits of Minnesota donors).) For example, M.C., who had a friend whose daughter had cancer and was granted a wish by Make-A-Wish, searched for car donation programs online and found what she thought was Make-A-Wish's website. (*Id.*) It was her belief that she was donating directly to Make-A-Wish and it would receive the value of the car. (*Id.*) In reality, she was on the "Wheels for Wishes" website and was donating to CDF.

J.W. wanted to donate her vehicle to help families in Minnesota that have sick kids. (*Id.*) J.W. wanted to and it was her understanding that she was donating her vehicle directly to Make-A-Wish. (*Id.*) In fact, J.W. unknowingly donated her vehicle to CDF, with the result that 50 percent of the net proceeds from the sale of her vehicle was paid to a for-profit company owned by Messrs. Bigley and Heiligman. (*Id.*)

T.N. wanted to donate her vehicle to help children with cancer through what she thought was Make-A-Wish's Wheels for Wishes website. (*Id.*) She discovered the Wheels for Wishes website by searching for car donation organizations on the Internet. (*Id.*) T.N. noted that the Wheels for Wishes website referenced Make-A-Wish throughout and had multiple links to the official Make-A-Wish website. (*Id.*) T.N., however, was on CDF's website.

R.W. saw what looked like a Make-A-Wish advertisement in the newspaper and called what he believed to be Make-A-Wish's phone number in the advertisement. (*Id.*) It was his intention to donate his vehicle directly to Make-A-Wish to support its mission of helping sick children. (*Id.*) These confusing advertisements led R.W. to actually donate his car to CDF.

D.R. wanted to donate his car to Make-a-Wish to help it provide trips to Disney World for sick kids. (Ex. 93) D.R. generally researches charities before donating, found what he believed was Make-a-Wish's car donation website, and thought he was donating his car to Make-a-Wish. The website was actually CDF's, to which he donated his car by mistake. (*Id.*)

Other donors similarly reported that they saw and heard the name "Wheels for Wishes" in newspaper, radio, and internet advertisements and that it was their understanding that Wheels for Wishes was a branch or division of Make-A-Wish. (*See id.*)

NFM's customer service representatives have contributed to donor confusion. For example, in a November, 2014 phone recording, a NFM representative answered the phone by stating, "Thank you for calling Make A Wish, uh Wheels for Wishes". (Ex. 94 p. 1.) Another call was answered "Make A Wish Foundation – or sorry, Wheels for Wishes". (*Id.* at p. 3.) When the donor asked if Wheels for Wishes was the same organization as Car Donation Foundation, the NFM representative stated "[N]o, we are not the same. Car Donation Foundation is separate. We take donations specifically for the Make-A-Wish Foundation." (*Id.*) As noted above, "Wheels for Wishes" is an assumed name of CDF. (Ex. 20.)

D. CDF Offers Conflicting Information to Donors Who Ask About the Percentage of Their Donation That Will Benefit Charity.

Compounding the donor confusion resulting from CDF's marketing campaigns, CDF phone recordings reveal that donors have been told conflicting or confusing information regarding what percentage of their donation will benefit Make-A-Wish.

In April 2015, when a donor inquired about what percentage of her donation would go to Make-A-Wish, an NFM representative stated "it's about 50 percent to 70 percent. It depends on how much we get for the car." (Ex. 94 p. 5.)

During a phone recording from November 2014, when a donor asked a NFM representative “And then all the money, all the monies sold go to charity? The children’s charity?”, the NFM representative responded “Correct, sir.” (Ex. 94 at p. 9.)

As discussed in Section IV above, on average over the last four years, approximately 80% of CDF’s gross revenue was spent on fundraising and advertising expenses and only approximately 20% went to charity.

VIII. CDF HAS PROVIDED MISLEADING AND INACCURATE TAX INFORMATION TO DONORS.

Minnesota law requires a charity to disclose information about the tax-deductibility of a contribution. Minn. Stat. § 309.556. CDF’s auditors have admonished it for providing incorrect information to donors about the tax deductibility of their donations. (Ex. 95.)

A. CDF Overstates The Deductibility of Donated Vehicles.

The GAO has stated that solicitations for charitable vehicle donations are potentially deceptive when they do not specify that taxpayers must itemize their deductions to claim a vehicle donation, since many taxpayers do not itemize their deductions. (Ex. 96.) Indeed, in 2013, only about 30 percent of taxpayers itemized their deductions, while close to 70 percent claimed the standard deduction. (Ex. 97.) CDF’s ads routinely state that vehicles donated to it are “100 percent tax deductible.” (*See, e.g.*, Exs. 83, 85, 86.) In fact, only taxpayers who itemize their deductions may deduct a vehicle donated to CDF.

The GAO has also expressed concern about advertisements that state that donors can get the “maximum deduction” when donating a vehicle, since federal law requires deductions to be capped at the sales price of the vehicle. (Ex. 96.) CDF’s ads regularly offer donors the “maximum tax deduction” (Exs. 84, p.3; 98.) For example, one such ad reads as follows:



Similarly, a recording that is played when donors call CDF and are placed on hold states “Did you know we are an IRS approved 501(c)(3) organization? That entitles you to take the maximum tax deduction allowed by law for your donation.” (Ex. 99.)

B. CDF Has Incorrectly Told Donors That They Can Claim At Least \$500 For Their Vehicle Donations.

If a donated vehicle has a claimed value of \$500 or less, a donor may deduct on his or her tax return the *lesser* of \$500 or the fair market value of the vehicle. (Ex. 100.) In an April 29, 2011 letter to CDF management, the charity’s auditing firm wrote: “During the time we spent at Car Donation Foundation’s office we heard donors being told, by Car Donation Foundation staff, that they would receive at least a \$500 donation even if the vehicle sold for less at auction. Donors are entitled to the lesser of \$500 or the fair market value of the vehicle sold at auction. This should be communicated to donors when they call.” (Ex. 95, p. 2.)

Based on a review of recent phone recordings CDF provided to the Minnesota AGO, NFM staff continued to give Minnesota donors incorrect tax information. (Ex. 101.) For example, a donor was told in November, 2014 that she would get a “automatic \$500 tax deduction for donating[.]” (*Id.* at p. 6.) Another donor was told in November, 2014 that he would receive “an acknowledgment letter that acts as a tax receipt for [a] preliminary deduction of \$500.” (*Id.* at p. 8.) In February 2015, a donor was told she would be mailed a “preliminary

receipt that tells you have a minimum of \$500 to deduct from your taxes for charity.” (Ex. 101 p. 12.) This is consistent with what numerous donors told the Minnesota AGO: that CDF or its professional fundraiser, NFM, explained to them that they could deduct at least \$500 for any donated vehicle. (Ex. 93.) As noted above, under IRS regulations, donors are not entitled to an automatic \$500 deduction for vehicles with a claimed value of \$500 or less.

As noted in Section IX.C. below, Metro Metals gave similar incorrect information to two analysts from the AGO.

C. CDF’s Auditors Point Out Other Concerns.

The IRS requires charities to provide Form 1098-C to donors who donate vehicles with a claimed value of more than \$500. (Ex. 102.) If the charity improves or uses a vehicle or gives it to a needy individual, the donor may deduct the fair market value of the vehicle. (Ex. 100.) If a charity sells a donated vehicle without substantial improvement, the donor may deduct the lesser of the sales price of the vehicle or fair market value. (*Id.*) Boxes 5a and 5b on Form 1098-C allow for the charity to certify that the vehicle is being used in a program, improved, or given to a needy individual, in which case the donor’s deduction is not capped at the sales price. (Ex. 102.)

In 2011, CDF’s auditing firm noted a “significant deficiency” in the manner in which CDF prepared tax receipts. (Ex. 95.) It pointed out that CDF was incorrectly marking boxes 5a and 5b on Form 1098-C. The firm pointed out that the IRS instructs that box 5a should not be marked for organizations that do not use the donated vehicle for significant charitable purposes for at least six months, and box 5b should not be marked for organizations that sell vehicles to the public at auction. The auditor pointed out that CDF was marking the boxes even though they

did not apply and it re-sold the vehicles at auction. (Ex. 95.) The auditor pointed out that IRS penalties for incorrectly marking the boxes are 39.6 percent of the claimed value of the vehicle.

IX. CDF AND ITS LATEST SOLICITATIONS PURPORTING TO HELP DISABLED VETERANS.

As noted below, CDF recently began to solicit vehicle donations with the ostensible purpose of benefitting disabled veterans. As of August, 2015, however, CDF has donated no money to disabled veterans.

A. Minnesota Law Regulates Professional Fundraisers.

Minnesota law provides that no person shall act as a professional fundraiser for a charitable organization in Minnesota unless it first becomes registered with the Minnesota AGO. Minn. Stat. § 309.531. Minnesota law broadly defines a “professional fund-raiser” to mean any person who for compensation performs any service for a charitable organization in which contributions are solicited by the person or who for compensation plans, manages, advises, consults or prepares materials for or regarding the solicitation of donations in Minnesota. Minn. Stat. § 309.50, subd. 6. In turn, the term “solicit” is broadly defined to include any direct or indirect request for a contribution. Minn. Stat. § 309.50, subd. 10. Contribution is defined as the promise or grant of money or property of any kind based on representations that whole or any part will be applied to a charitable purpose. Minn. Stat. § 309.50, subd. 5.

Before a registered professional fundraiser may solicit funds in Minnesota on behalf of a charity, it must file a “solicitation notice” and registration statement on forms provided by the Minnesota AGO. Minn. Stat. § 309.531. As part of its registration statement, a professional fundraiser must file a copy of its contract with the charitable organization. *Id.*, subd. 2. Among other things, the contract must contain information enabling the Minnesota AGO to identify the services the professional fundraiser is to provide and, if the professional fundraiser directly or

indirectly solicits in Minnesota, the contract must disclose the percentage or reasonable estimate of the percentage of the total amount solicited from each person to be received by the charitable organization for charitable purposes. *Id.* The charitable organization on whose behalf the professional fundraiser is acting must certify that the solicitation notice and accompanying material are true and correct. Minn. Stat. § 309.531 subd. 2. As noted above, Minnesota law also requires any professional fundraiser soliciting donations in Minnesota to disclose the name of the professional fundraiser and that the solicitation is conducted by a professional fundraiser. Minn. Stat. § 309.556.

Within 90 days after a solicitation campaign has been completed or within 90 days following the anniversary of the commencement of a solicitation campaign lasting more than one year, a professional fundraiser that solicited contributions in Minnesota in conjunction with the charitable organization shall file with the Minnesota AGO a financial report for the campaign, including gross revenue and an itemization of all expenses incurred, on a form prescribed by the Minnesota AGO. Minn. Stat. § 309.531, subd. 4.

The registration and disclosure requirements for professional fundraisers are intended to provide transparency to donors. “[W]here a charitable organization is to receive but a small share of the total funds solicited in the name of a charity or a non-profit organization, the public solicited has a right to know these facts so that people may knowingly decide on that basis whether or not they wish to make their donations.” *State v. Francis*, 95 Misc.2d 381, 385 (N.Y. Sup. Ct. 1978); *see also Vill. of Schaumburg v. Citizens for a Better Env’t et al.*, 444 U.S. 620, 638 (1980). Moreover, “[t]he fact that [charitable organizations] agree to the terms of the contracts should not preclude the Attorney General from protecting the public’s right. The contracts with the non-profit organizations are not merely bilateral, but rather establish a

triangular relationship with the public as the third party whose interest should be protected.” *Francis*, 95 Misc.2d at 385. Disclosure of charitable organizations’ finances may assist in preventing fraud as such measures may help make “contribution decisions more informed, while leaving to individual choice the decision whether to contribute to organizations that spend large amounts on salaries and administrative expenses.” *Id.*

B. Metro Metals Appears to Have Operated As An Unregistered Professional Fundraiser in Minnesota.

Metro Metals does not appear to have complied with these statutory requirements. As discussed below, Metro Metals appears to have acted as an unregistered professional fundraiser for Disabled American Veterans, Department of Minnesota, Inc. (“DAV-MN”). At no time was Metro Metals registered to act as a professional fundraiser with the Minnesota AGO for either organization, nor did it make the statutory disclosures required of professional fundraisers.

Metro Metals is licensed with the Minnesota Department of Public Safety (“DPS”) as a scrap metal processor, used vehicle parts dealer, and used motor vehicle dealer. (Ex. 103.) Metro Metals sometimes does business under the assumed name Metro Auto Auctions. (*Id.*) In its dealer application filed with DPS, Metro Metals stated that it used the assumed names Car Donation Foundation, Wheels for Wishes, and Charity Car Auctions in its used car dealer business. (*Id.*)

From 2009 until July, 2015, Metro Metals managed DAV-MN’s vehicle donation program. (Ex. 104.) On behalf of DAV-MN, Metro Metals ran frequent newspaper ads in Minnesota soliciting people to donate motor vehicles. (Ex. 105 ¶ 3.1.) Attached as Exhibit 106 is a copy of an ad that ran in June, 2015 in the St. Paul, Minnesota newspaper. Bearing the image of a soldier holding a child with a flag, the ad has the caption “Donate Your Vehicle” and prominently contains the logo for DAV-MN. The ad, which was prepared by Metro Metals,

stated that proceeds helped local veterans in Minnesota and asked donors to call (651) 255-3382, a phone number registered to Metro Metals. (Ex. 107.) A call to (651) 255-3382 is answered by a recording that stated, “Thank you for calling Vehicles for Veterans.” (Ex. 108.) The recording did not disclose that the call center was staffed by employees of a for-profit fundraising company. (Ex. 104.) The ad also asked donors to visit the website *www.vehiclesforveteransmn.com*, a website taken out by Mr. Bigley and Metro Metals in 2009. (Ex. 109.) This website automatically re-routed visitors to another website, *www.vehiclesforveterans.org*, taken out by Mr. Bigley and Metro Metals in 2007. (Ex. 110.) This website is owned exclusively by Metro Metals, and Metro Metals was solely responsible for its design and text. (Ex. 104.)

The website “Vehicles for Veterans” did not disclose Metro Metal’s role or involvement. To the contrary, attached is a printout of the website. (Ex. 111.) Under “About Us,” the website prominently stated: “When you make a car donation to Vehicles for Veterans, the proceeds from the sale of your vehicle benefit Disabled American Veterans (DAV).” (*Id.*) The website went on to state: “Since its inception in 2009, the Car Donation Foundation, the parent charity of Vehicles for Veterans, has donated over \$25 million dollars to charities such as the Disabled American Veterans to help them do the great work that is needed.” (*Id.*) In fact, Car Donation Foundation has no contract with DAV-MN and is not the “parent charity” of “Vehicles for Veterans.” Rather, “Vehicles for Veterans” appears to be a name used by Metro Metals in connection with its solicitation of vehicles for DAV-MN. The website did not disclose the involvement of Metro Metals, though the website belongs to and was exclusively managed by Metro Metals. (Ex. 104.) The listed address under “contact us” was DAV-MN’s address in a government office building. (Ex. 111.)

DAV-MN entered into its most recent agreement with Metro Metals in January, 2014. (Ex. 105.) Under the terms of that agreement, Metro Metals fields phone calls from prospective donors, accepts vehicles from donors, and sells the vehicles on behalf of DAV-MN. (Exs. 104; 105.) For this work, Metro Metals receives [REDACTED] percent of the gross revenue generated from the monthly sale or salvage of vehicles donated to DAV-MN. (Ex. 105 ¶ 5.1.) Although not provided for in the terms of DAV-MN's January, 2014 agreement with Metro Metals, DAV-MN paid the for-profit Metro Metals for the company's expenses in administering the vehicle donation program, including reimbursing Metro Metals for towing and [REDACTED] percent of all advertising costs and auction fees from outside vendors. (Exs. 104; 112 ¶1.)

Attached as Exhibit 113 is a photo of Metro Metals building, located at 2576 Doswell Avenue in St. Paul, Minnesota. Directional signage at the Metro Metals premises states that Metro Metals conducts public auto auctions, the proceeds from which benefit Wheels for Wishes and Disabled American Vets. (Ex. 113.) This tells members of the public that their purchase of a vehicle at Metro Metals will benefit a charity.

The outside of the premises also includes an insignia for "Charity Car Auctions." As discussed previously, Charity Car Auctions is an assumed name of Metro Metals. (Ex. 103.) Metro Metal's website, *charitycarauctions.com*, states that it sells cars on behalf of charities, including Make-A-Wish and Disabled American Veterans. (Ex. 114.) Under the header "Donate a Car to a Local Charity," the website states: "Do you have a vehicle you would like to donate? Donate your car to Wheels for Wishes or Vehicles for Veterans and help a Twin Cities charity today! Proceeds from vehicles donated to Wheels for Wishes benefit the Make-A-Wish Foundation of Minnesota and proceeds from cars donated to Vehicles for Veterans benefit the Disabled American Veterans of Minnesota." (*Id.*) Elsewhere, the website states: "Charity Car

Auctions is a division of Metro Auto Auctions. We are selling cars on behalf of charities, including Make-A-Wish Foundation of Minnesota, Disabled American Veterans and other local charities.” (*Id.*) Another Metro Metal’s website, www.metroautoauctions.com, had similar language as of February 2015. (Ex. 115.) The website’s home page stated: “Specializing in the sale of donated vehicles on behalf of local charities,” including Disabled American Vets and Make-A-Wish. (Ex. 115.) Under a section “Donate a Vehicle,” it stated: “Need a Tax Break? Make-A-Wish is the Answer. Donate your car, motorcycle, boat, camper.” (*Id.*)

In June, 2015, DAV-MN ended its relationship with Metro Metals and directed Metro Metals to stop using the DAV-MN name and logo in its solicitations, including on Metro Metals’ Vehicles for Veterans website. (Ex. 104.) Until July 16, 2015, Metro Metals continued to run advertisements in a St. Paul, Minnesota newspaper using DAV-MN’s name and logo to solicit vehicles. (Ex. 106.) As of September 24, 2015, Metro Metals’ Charity Car Auction website continued to state Metro Metals sells cars on behalf of “Disabled American Veterans.” (Ex. 114.)

C. NFM Also Appears to Have Acted as an Unregistered Professional Fundraiser for DAV-MN.

Although DAV-MN’s agreement was with Metro Metals, it appears that NFM also provided professional fundraiser services to DAV-MN. According to DAV-MN, Metro Metals’ call center was located at NFM’s office building. (Ex. 104.) This is consistent with phone recordings provided to the AGO from DAV-MN, which it received from NFM. (Exs. 124, 125.) For example, in a April, 2015 telephone recording, a donor is told that the call center he reached fields calls for “the Make A Wish Foundation, so...Wheels for Wishes, the Cars to Cure Breast Cancer, which is breast cancer research, and also the Vehicles for Veterans Program, which is for the Disabled American Veterans of Minnesota.” (Ex. 124 p.1.) As such, it appears that NFM—

not Metro Metals—operated the call center for DAV-MN’s vehicle donation program. It is unclear if NFM provided any other additional services to DAV-MN, including designing and placing advertising.

D. Metro Metals and NFM Provided Misleading Information About the Tax Deductibility of Donations.

Like NFM, Metro Metals also appears to have provided donors questionable information about the tax deductibility of their donations. In January 2015, two analysts from the Minnesota AGO made an inquiry at Metro Metals’ office in St. Paul about how charitable car donations work. (Ex. 116.) The Metro Metals employee told them that “we represent three charities, Disabled Veterans, Make-A-Wish Foundation, Breast Cancer Research.” The employee stated that: “We then take the car, put it through an auction, whatever we might get for it in the auction that’s what goes to the charity.” In fact, Metro Metals is not registered with the Minnesota AGO to represent these charities, and it is not accurate that all the auction proceeds benefit a charity.

The Metro Metals employee also told the analysts: “your minimum donation for tax purposes is five hundred dollars” and that “if the car goes for four hundred dollars, you still get five hundred dollars.” (*Id.*) This is not correct. Under federal law for vehicles with a claimed value of \$500 or less, a donor may only deduct the lesser of \$500 or the fair market value of the vehicle. (Ex. 100.) As noted above, CDF was also previously admonished by its auditing firm for providing similarly inaccurate information to donors about the tax deductibility of their donations.⁵

The “why donate your vehicle” section of the website Metro Metals ran for DAV-MN further stated that: “You’ll be eligible for an itemized deduction on your federal tax return.”

⁵ At the time of this audit, CDF did not have any employees, and the call center was staffed by either NFM or Metro Metals employees.

(Ex. 117.) In fact, only about 30 percent of donors itemize deductions on their federal income tax returns such that they are eligible to deduct a vehicle donation. (Ex. 97.)

Based on a review of telephone recordings, NFM also appears to have given donors of DAV-MN similarly incorrect tax information. (Exs. 108, 124.) For example, a NFM representative told one donor that he would be entitled to a “\$500 tax deduction” and he would receive a “preliminary receipt [entitling him]...to the first \$500 tax deduction.” (Ex. 124 p. 3, 6.)

E. CDF’s New Vehicles for Vets MN Campaign is Misleading.

Starting on July 18, 2015, CDF began running daily newspaper advertisements in Minnesota newspapers soliciting vehicles for disabled veterans under the name “Vehicles for Vets MN”. (Ex. 118.) CDF registered the assumed name “Vehicles for Vets MN” with the Minnesota Secretary of State’s Office on July 21, 2015. (Ex. 119.) The newspaper advertisement for “Vehicles for Vets MN” features a uniformed soldier in a wheelchair and states “Proceeds benefit local disabled veterans.” (Ex. 118.) The ad does not mention CDF or NFM. (*Id.*) It directs donors to visit the website “*vehiclesforvetismn.org*.” (*Id.*)

As of July 20, 2015, persons who visit “*vehiclesforvetismn.org*” are automatically routed to “*www.vehiclesforveterans.org*,” a website originally taken out by Metro Metals in 2007 for its “Vehicles for Veterans” campaign for DAV-MN, as discussed above. (Ex. 110.) Attached as Exhibit 120 is a printout of excerpts of the website from July 20, 2015. On its homepage, CDF states “Your car donation helps benefit disabled veterans throughout Minnesota” and “Since 2004, car donations have provided over 2.6 million dollars to charities such as Disabled American Veterans of Minnesota.” CDF has no agreements or affiliations with any veterans groups in Minnesota. (Ex. 121.) As of August 13, 2015, CDF had not made *any* grants or contributions to DAV-MN or any other veterans charity. (*Id.*)

When a Minnesota computer user searches “car donation charity” on Bing, an ad placed by CDF is at the top of the search results. (Ex. 122.) The ad, a link to the *vehiclesforveterans.org* website, has a subheading which states: “Minnesota Disabled Vets Support A Well Known Charity Today!” and “Charity Vehicle Donation for Disabled American Veterans of Minnesota.” (*Id.*) Similarly on Google, when a Minnesota computer user searches “car donation disabled american veterans”, an ad placed by CDF, with a link to the *vehiclesforveterans.org* website, has a subheading which states “Benefit Minnesota Disabled Veterans Support A Well Known Charity Today!” (Ex. 123.) Again, CDF had no agreement, affiliation, or relationship with DAV-MN or any other veterans charity as of August, 2015. (Ex. 121.)

X. CONCLUSION

Transparency is a bedrock principle for charitable solicitations. CDF has obfuscated this transparency by running a solicitation campaign that misleadingly blurs its identity with that of the Make-A-Wish charities. Minnesota residents who donated vehicles to CDF have told the Minnesota Attorney General’s Office that they believed they were donating their vehicles directly to Make-A-Wish. These donors did not appear to appreciate that approximately 80 percent of their donations were not used in furtherance of charitable activity, nor were donors aware that a significant portion of their donations benefited two private for-profit corporations owned by the two individuals who founded and manage CDF. CDF’s latest solicitations promising help to disabled veterans are also misleading.