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STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of

RENT-A-CENTER, INC. and RENT-A-CENTER
WEST, INC.

and

BENEFIT MARKETING SOLUTIONS, LLC and
BENEFIT SERVICES ASSOCIATION,

NO. 14-0082

**REPLY TO OIC'S RESPONSE TO
SECOND MOTION FOR STAY**

The Office of the Insurance Commissioner contends "there is no punishment involved" in the Amended Cease and Desist Order (the "Order"), but its argument ignores the significant costs of complying with the Order and the detrimental impact the Order will have on the business of Benefit Marketing Solutions, LLC ("BMS") and Benefit Services Association ("BSA").

The Order requires BMS and BSA to contact each and every one of the Washington consumers that have joined the RAC Benefits Plus program and provide them a copy of the Order. This is intended to and will have a significant chilling effect on BMS and BSA's business. Existing customers will undoubtedly cancel their memberships – or choose to not renew – when presented with an order that incorrectly concludes that BMS and BSA are violating Washington law.

REPLY TO OIC'S RESPONSE - 1



1 The notice will also require a significant administrative task and involve a substantial
2 cost. BMS and BSA will have to identify and locate the addresses for tens of thousands of
3 Washington individuals that have purchased a RAC Benefits Plus membership and pay the
4 postage for each mailing. Rent-A-Center previously identified it had sold 13,108 RAC
5 Benefits Plus memberships in 2012 and 2013. Extrapolating those numbers out would result
6 in an estimated 100,000 plus Washington members that would need to be contacted.
7 Complying with the order would result in substantial administrative expenses for compiling
8 the list of each member and significant costs for mailing. The out-of-pocket costs alone are
9 an unfair punishment until this Hearings Unit has resolved the dispute.

10 The Order – accepting the OIC’s erroneous conclusion that the Paid-Out Product
11 benefit is a service contract and insurance – requires BMS and BSA to remove the Paid-Out
12 Product benefit from the membership benefits in RAC Benefits Plus. This will reduce the
13 benefits available to RAC Benefits Plus members or require BMS/BSA to either (1) determine
14 a suitable replacement benefit, or (2) reduce the price of the membership. Removing the
15 benefit will not only cause significant harm to BMS and BSA’s business, but will also cause
16 harm to their existing and future customers. The OIC’s contention that it is not punishing
17 BMS/BSA by the Amended Cease and Desist Order is patently incorrect when you consider
18 the substantial administrative expenses and out-of-pocket costs that would be required to
19 comply.

20 The Order concludes that BMS and BSA are selling service contracts and insurance;
21 the OIC’s conclusions are the very issue that is the subject of the cross-motions for summary
22 judgment. To punish BMS and BSA while pending motions for summary judgment (and an
23 October 29 hearing) could determine that the OIC did not have jurisdiction or authority to
24 even issue the Amended Cease and Desist Order would be antithetical to the concept of
25 justice and fairness. The measured approach that this Hearings Unit should take is to stay the
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1 Amended Cease and Desist Order until the conclusion of the hearing (or until the disputes in
2 this matter are substantively determined).

3 The OIC objects to the stay because of some phantom harm that it alleges will be
4 suffered. The OIC does not provide any actual evidence related to BMS or BSA that supports
5 the OIC's position. Instead, the OIC argues that because other unrelated companies have
6 harmed Washington consumers, it must mean that BMS and BSA will too. This position is
7 unsupportable and unpersuasive.

8 Rather, this Hearings Unit should rely on the substantial, admissible, and relevant
9 evidence provided by BMS and BSA that no harm will accrue to Washington consumers if a
10 stay is entered:

- 11 1. BMS and BSA's record in this state since initiating the RAC Benefits Plus
12 program during which there have been no administrative complaints from
13 Washington consumers;
- 14 2. The Commercial Liability Insurance Policy that insures the benefit for
15 Washington consumers of the Paid-Out Account benefit;
- 16 3. The CLIP is issued in Oklahoma, where it is approved by the Oklahoma
17 Department of Insurance;
- 18 4. The issuer of the CLIP is licensed and approved by the Oklahoma Department
19 of Insurance; and,
- 20 5. No Washington consumer has ever had to use the benefits of the CLIP because
21 BSA has always provided the benefits of the Paid-Out Product benefit.

22 This evidence was submitted in the declarations of Bradley Denison, including the
23 most recent declaration filed in response to the OIC's motion for reconsideration.

24 The only admissible and relevant evidence establishes that there is no risk to
25 Washington consumers if BMS and BSA continue to provide the RAC Benefits Plus
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1 membership with the Paid-Out Account benefit as they have done so for years. This Hearings
2 Unit should stay the Amended Cease and Desist Order until it has been conclusively
3 determined whether the OIC has jurisdiction to regulate BMS and BSA.

4 DATED this 30th day of September, 2014.

5 Respectfully submitted:

6 RYAN, SWANSON & CLEVELAND, PLLC

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