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STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

**BENEFIT MARKETING
SOLUTIONS, LLC and BENEFIT
SERVICES ASSOCIATION,**

Unregistered and
Unauthorized Entities.

Order No. 14-0081

OIC RESPONSE TO MOTION
FOR STAY OF AMENDED
CEASE AND DESIST ORDER
AND REQUEST FOR
SANCTIONS

The Insurance Commissioner objects and requests that no stay be granted of the Amended Order to Cease and Desist. The fact that Respondents are even asking for a stay, as if the Order had not gone into effect back on May 15, 2014, is astounding. Not only has it gone into effect, but Respondents are in breach of the Amended Order as of today, and have flagrantly disregarded its requirements since June 30, 2014. Respondents have failed to furnish the Commissioner with the required documentation ordered, and have also failed to notify all Washington residents who purchased the product service protection from Rent-A-Center and Respondents, as required by the Amended Order.

1 The Commissioner granted Respondents an additional twenty-five days to
2 accomplish these tasks, upon their request. According to the Amended Order,
3 because Respondents are in continued violation of the Amended Order, sanctions
4 should be applied for every day such violation persists. Considering Respondents'
5 daily number of violations as at least one or more, likely far more, a minimum of
6 \$25,000 should be imposed for every day Respondents continue to flout the
7 Commissioner's legal and legitimate authority.

8 Regardless of further sanctions placed on Respondents as requested in the
9 Notice of Hearing, which have yet to be even considered by this tribunal, no less
10 imposed upon them, Respondents mistakenly state in their Motion for Stay that the
11 Commissioner is "seeking to punish" them before they have had their "day in court."
12 There is no punishment involved here, and an administrative hearing was available to
13 them to have their say. Any punishment for unauthorized insurance business will, if at
14 all, be determined by a hearing regarding the imposition of a fine for violating RCW
15 48.15.020, RCW 48.110.030, or RCW 48.17.060, noted up by the Commissioner. The
16 Amended Order simply tells Respondents to stop doing what they are doing, period.
17 The Amended Order to Cease and Desist could have been immediately appealed by a
18 demand for hearing before this tribunal. But rather than doing so, Respondents chose
19 to pursue another ill-considered course. They chose to ignore the Amended Order in
20 search of perhaps more fertile judicial grounds, and now claim they are being
21 punished. All arguments that Respondents have thus far and will henceforth put forth
22 regarding the Commissioner's jurisdiction in Superior Court, could and ought to have
23 been made here. Incredibly, in their current Motion, Respondents excuse their failure
24 to simply demand an administrative hearing in due course in this tribunal because it
25 would duplicate the Superior Court proceedings they themselves initiated prior to
26 exhausting their administrative options. A self-created problem, if ever there was one.

Ironically, in their Motion for Stay of the Amended Cease and Desist Order,
Respondents specify their request for a declaratory ruling from the Superior Court that
conspicuously ignores the foundation of the Commissioner's objection to their
continued behavior, that the product is unauthorized "insurance," even presuming it is

1 not a “service contract,” under RCW 48.110.020 nor that Respondents are insurance
2 producers” under RCW 48.17.010.(6).¹ So, any ruling of the Superior Court, which
3 apparently has not been asked to address the core allegation of Respondents’ conduct
4 of unauthorized insurance business under RCW 48.15.020, will not resolve the matter.
5 Notwithstanding, the Commissioner, through the Office of the Attorney General, is
6 moving to dismiss the Superior Court action for Respondents’ failure to exhaust
7 administrative remedies.

8 In any event, because the Commissioner believes that the protection product
9 sold by Respondents constitutes “insurance,” as defined in RCW 48.01.040, he has
10 every right to issue and enforce an order to cease and desist under RCW
11 48.15.023(5)(a)(i), as well as to seek a civil penalty under RCW 48.15.023(5)(a)(ii).
12 The Commissioner has done so, fully in accordance with law.

13 Respondents put out two further reasons in their Motion for Stay in addition to
14 the aforementioned. Together, they amount to a claim there is no possibility of
15 consumer harm, and that their failure to abide by the law is merely a “technical
16 statutory violation” of the service contract statute. The Commissioner invites the
17 tribunal to visit RCW 48.110.030 through RCW 48.110.050 for an exhaustive list of
18 registration requirements that ensure solvency and thus some level of consumer
19 protection. The Washington Legislature was prescient when it required such
20 measures, as Washington has been plagued by predatory service contract scams since
21 as far back as February 2008 (Exhibit 1, Email from AAG Mary Lobdell to Deputy
22 Insurance Commissioner Carol Sureau, dated February 18, 2008).

23 Yet while the most notorious examples of predatory service contract activity
24 have involved motor vehicle service contracts, the Commissioner has issued Order to
25 Cease and Desist against purveyors of so-called “home warranty” sales, as well, now
26

¹ BMS and BMA’s Motion for Stay of Amended Order to Cease and Desist, page
2, lines 6 through 9, quoting from Complaint for Declaratory Relief in Thurston County
Superior Court.

1 as then citing violation of RCW 48.15.020.² These products claimed to provide repair
2 and/or replacement of furniture, electronics, and other items in a manner remarkably
3 similar to Respondents' product service protection plan. Thus, Respondents are not
4 being singled out for "punishment," but cited for violating the insurance code just like
5 any other unlicensed entity thought to be engaging in the business of insurance.
6 A clear avenue has been available to Respondents to challenge the Commissioner.
7 Staying the effectiveness of the Amended Order to Cease and Desist, particularly
8 when Respondents are in breach of same, makes no sense and may harm unwitting
9 consumers. The Motion for stay should be denied.

10 EXECUTED this 24th day of July, 2014, in Tumwater, Washington.

11 MIKE KREIDLER
12 Insurance Commissioner

13 

14 By and through his designee

15 

16 MARCIA STICKLER
17 Insurance Enforcement Specialist
18 Legal Affairs Division

19
20
21
22
23 ² See SENSIBLE HOME WARRANTY, LLC, Commissioner's Order to Cease
24 and Desist 12-0012; ShieldStar, LLC, et al. Commissioner's Order to Cease and Desist
25 10-0202; MN Home Warranty Corporation, Commissioner's Order to Cease and Desist
26 10-0186; Nationwide Home Warranty, Commissioner's Order to Cease and Desist 08-
0088.

CERTIFICATE OF MAILING

1
2 The undersigned certifies under the penalty of perjury under the laws of the state of
3 Washington that I am now and at all times herein mentioned, a citizen of the United
4 States, a resident of the state of Washington, over the age of eighteen years, not a party
5 to or interested in the above-entitled action, and competent to be a witness herein.

6 On the date given below I caused to be served the foregoing OIC RESPONSE TO
7 MOTION FOR STAY OF AMENDED CEASE AND DESIST ORDER AND
8 REQUEST FOR SANCTIONS on the following individuals in the manner indicated:
9

10 Hon. George Finkle, Chief Hearing Officer
11 P O Box 40255
12 Olympia, WA 98504-0255

13 (XXX) Via Hand Delivery

14 **For Respondents:**

15 Rent-A-Center, Inc.
16 Rent-A-Center West, Inc.
17 5501 Headquarters Drive
18 Plano, Texas 75024

19 Gulliver Swenson, Counsel for Benefit Marketing Solutions, LLC
20 Ryan, Swanson & Cleveland, PLLC
21 1201 Third Avenue, Suite 3400
22 Seattle, Washington 98101-3034

23 (XXX) Via U.S. Regular Mail

24 SIGNED this 25th day of July, 2014, at Tumwater, Washington.

25 Renee Molnes
26 Renee Molnes

From: Carol Sureau
Sent: Monday, February 18, 2008 3:25 PM
To: Charles Brown
Subject: FW: Warranty Predators From Outside Washington State

-----Original Message-----

From: Lobdell, Mary (ATG) [mailto:MaryL@atg.wa.gov]
Sent: Monday, February 18, 2008 2:03 PM
To: justinsimoncic@hotmail.com
Cc: O'Hearne, Carla (ATG); Ferazza, Michelle (ATG); Carol Sureau
Subject: Warranty Predators From Outside Washington State

Mr. Simoncic,

Thank you for your inquiry about the onslaught of warranty mailers and phone calls that consumers have been receiving. Your inquiry was recently forwarded to me for a response. I apologize for the delay in responding to you.

Our Office is greatly concerned about the unfair and deceptive practices of companies that market auto service contracts and warranties. We have identified at least 15 out-of-state companies that are preying upon consumers. We are leading 20 states in an investigation of four companies in an attempt to stop their deceptive practices. We are also working with the Office of the Insurance Commissioner to identify those businesses that are not licensed in the state of Washington and to target these unlicensed companies for appropriate action. We are further partnering with other state agencies to identify how the warranty sellers are obtaining their marketing information and to stop any improper use. Our Office continues to alert consumers about these deceptive practices and is working with the media to get that word out. You'll find our consumer alert at <http://www.atg.wa.gov/ConsumerAlerts/default.aspx>. Additional commentary is provided at <http://www.msnbc.msn.com/id/23147777/from/ET/> and on the websites of many local television stations and newspapers.

If consumers receive any phone calls in violation of Do Not Call requirements or if they receive any phone call on a cell phone, we recommend that they file a complaint with the Federal Trade Commission (FTC). A complaint can be filed electronically at [https://m.ftc.gov/pls/dod/wsolcq\\$.startup?Z_ORG_CODE=PU01](https://m.ftc.gov/pls/dod/wsolcq$.startup?Z_ORG_CODE=PU01) or by going to www.ftc.gov and clicking on the consumer protection tab. I have been told that some of the solicitors are located outside the United States, which may put them beyond Washington's jurisdiction. The FTC has the means to enforce federal laws against these foreign businesses.

I sympathize with your concerns; unfortunately we do not have a silver bullet that will make these companies stop their practices. We hope that as we proceed with our investigations along with the combined efforts of other state agencies, we will start to see fewer of these deceptive practices in the marketplace. Please be assured that we take this problem very seriously and are working diligently to stop these practices.

Thank you for your concern,

Mary C. Lobdell

Exhibit 1, Page 1 of 2

Assistant Attorney General
Tacoma Section Chief
Consumer Protection Division
1019 Pacific Avenue - 3rd Floor
P.O. Box 2317
Tacoma, WA 98401-2317
(253) 593-2256

Print me only if you need me

From: justinsimoncic@hotmail.com [mailto:justinsimoncic@hotmail.com]
Sent: Saturday, February 02, 2008 1:56 PM
To: ATG WWW Email AGO
Subject: Contact AGO - WARRANTY PREDATORS FROM OUTSIDE WASHINGTON STATE

The following message was submitted to the Attorney General. You will be contacted by a member of the AGO staff to help you with your request shortly. Please do not respond to this message. The ATG WWW Email AGO mailbox is an unmonitored box.

From: SIMONCIC, JUSTIN F
Business Name: CAMPBELL CHRYSLER JEEP DODGE INC
Email Address: justinsimoncic@hotmail.com
Address: 217 w main st
CENTRALIA WA 98531
Address Type: Work
Phone: 360-736-3353 **Phone Type:** Work
Subject: WARRANTY PREDATORS FROM OUTSIDE WASHINGTON STATE
Message:

As the Finance Manager of Campbell C-J-D Inc, I would like to know what your office is doing to curb the predatory tactics of out of state Warranty Companies. At least 3 times per week I have our customers calling asking why thier warranty is gone when they know they purchased one from this dealership or that the vehicle is still under factory warranty. Alot of our senior customers do not like the repeated harrasment from these companies. Today, saturday, we just received a call at this dealership stating this is our 2nd notice for warranty experation. Please let me know if anything is being done, my next step is to take these cards that are mailed from these predatory companies and register AG complaints against each company for our customers. Thanks for your time.

Previous Contact: No **Date:**
Regarding:

Exhibit 1, Page 2 of 2