

BEFORE THE STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

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HEARINGS UNIT  
OFFICE OF  
INSURANCE COMMISSIONER

In the Matter of:

YourPeople, Inc. dba Zenefits FTW Insurance  
Services,

Appellant.

Docket No. 16-0219

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

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## BACKGROUND

1. On November 23, 2016, the Office of the Insurance Commissioner ("OIC") and YourPeople, Inc. dba Zenefits FTW Insurance Services ("Zenefits") entered into a Consent Order, No. 16-0219 ("Consent Order").
2. Paragraph 6 of the section of the Consent Order titled "**BASIS**" (Ex. CR, p. 3) provides the OIC's application of RCW 48.30.140 and RCW 48.30.150 to Zenefits:

The Insurance Commissioner hereby finds and concludes that RCW 48.30.140 and RCW 48.30.150 prohibit a licensee like Zenefits, acting directly or through affiliates, from offering valuable software functions or other valuable benefits for free or at less than fair market value to the public. Accordingly Zenefits and its affiliates are prohibited from offering its software for free or at less than market value to the public.

(Emphasis added).

3. Paragraph 4 of the section of the Consent Order titled "**CONSENT TO ORDER**" (Ex. CR, p. 4) provides that *Zenefits* preserves the right to challenge the OIC's application of RCW 48.30.140 and RCW 48.30.150 to its business model:

The Licensee expressly preserves the right it has to challenge the Insurance Commissioner's findings and interpretation of RCW 48.30.140 and RCW 48.30.150 through the administrative process, state courts, and legislative channels. The parties agree that there is a present and existing dispute with respect to the Insurance Commissioner's findings and interpretations of RCW 48.30.140 and RCW 48.30.150, that those findings and interpretations constitute an adverse agency action and are ripe for review and justiciable, and that the Licensee has suffered harm and has standing to challenge those findings and interpretations. The Insurance Commissioner acknowledges and agrees that Licensee shall have the right to challenge the Insurance Commissioner's findings and legal interpretations set forth in this Consent Order in an adjudicative proceeding pursuant to the Washington Administrative Procedure Act within 90 days of Licensee's receipt of this fully executed Consent Order. If an administrative hearings officer, administrative law judge or court finds that this dispute is not justiciable, for any reason, this Consent Order shall be null and void.

(Emphasis added).

4. Paragraph 1 of the section of the Consent Order titled "**AGREED ORDER**" (Ex. CR, p. 5) provides that during the pendency of any adjudicative proceeding Zenefits is to charge for the applications and functionality of its software platform that prior to the Consent Order it provided for free:

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The Licensee will not: (1) provide free use of its online, cloud-based, software-as-a-service platform that integrates the administration of human resources, payroll, and employee benefits; or (2) engage in conduct that violates RCW 48.30.140 or RCW 48.30.150 or both. From and after January 1, 2017, Licensee will begin to charge all Washington customers for the previously free apps and functionality of its software platform by offering it as part of a paid service sold at fair market value. The Licensee will continue to charge for the previously free apps and functionality of its software platform until the earlier of: (1) the entry of a final, unappealed administrative or judicial order rejecting the Insurance Commissioner's findings, conclusions, or legal interpretations set forth in paragraphs 4-6 of the foregoing factual Basis; or (2) a legislative act clarifying that the Insurance Code allows the Licensee to stop charging for the previously free functionality of its software platform. Upon the occurrence of either event, this Consent Order shall be null and void.

5. On February 16, 2017, Zenefits filed a Demand for Hearing ("Demand") with the OIC's Hearings Unit requesting a hearing to challenge the OIC's findings and interpretations set forth in the Consent Order.
6. On February 21, 2017, I issued to Zenefits a Notice of Receipt of Demand for Hearing, acknowledging the OIC's receipt of its Demand. On that same date, I transmitted the Demand and Zenefits' case to the Office of Administrative Hearings ("OAH"), and requested that an Administrative Law Judge ("ALJ") from OAH as presiding officer conduct an evidentiary hearing and issue an initial order in this matter.
7. From July 11, 2017 through July 14, 2017, ALJ Lisa N.W. Dublin of OAH, acting as Presiding Officer, conducted an evidentiary hearing on Zenefits' Demand. On October 25, 2017, Judge Dublin entered an Initial Order in this matter that contained findings of fact and conclusions of law. A copy of ALJ Dublin's Initial Order is attached hereto.
8. OAH transmitted ALJ Dublin's Initial Order to me for review and for entry of Findings of Fact, Conclusions of Law, and Final Order, pursuant to RCW 34.05.464.
9. I have reviewed and considered the record in this matter, including the evidence presented to ALJ Dublin.
10. I have given due regard to ALJ Dublin's opportunity to observe the witnesses, pursuant to RCW 34.05.464(4).

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## FINDINGS OF FACT

I adopt the Findings of Fact in ALJ Dublin's Initial Order, but make the following amendments and additions thereto:

4.10. After the last sentence add the following:

Zenefits' Talking Points also emphasize their HR automation platform, stating: "The second component of Zenefits, and what really sets us apart from the pack, is our HR automation platform." Ex. 6, p.13. Zenefits adds: "The pieces of HR which have historically been detached from one and other (sic) are linked through Benefits to streamline administrative work, reduce human error and improve employee and employer experiences." *Id.* Zenefits analogizes its business model to a hub and spoke variant, stating: "Think of Zenefits as a hub and spoke model. Zenefits acts as the hub connecting a company to the multitude of HR related spokes that previously were siloed from each other. Our HR automation platform sits on top of your current systems and pulls them all into one centralized location, allowing employees to flow easily from one system to the next." *Id.* Zenefits emphasizes the positive consequences of its dashboard for customers that use it, stating: "Since we're bringing all your vendors into one dashboard because we're acting as a cloud based hub for your HR spokes, you and your employees will manage everything online, eliminating your administrative paperwork and headaches for both the company and employees." Ex. 6, p.14. As Zenefits states: "We think of ourselves as a modern day broker who can leverage technology to provide our customers a holistic solution." Ex. 6, p. 15.

4.13. Add after "integrations." in the next to last sentence the following: "We're your one-stop shop for all things HR:" After the last sentence add the following:

Zenefits emphasizes it's a new kind of insurance broker that uses innovative technology, stating: "We believe that your employee benefits should be affordable, transparent and easy to use. That's why we built a new kind of brokerage-pairing experienced brokers with innovative technology that you and your employees will love. We work with companies of different sizes, in every industry and at every stage of maturity. **And we'd love to work with you.**" Ex. 7, p. 19. Zenefits describes as follows how different its technology is compared to traditional HR software, stating: "The big difference is that Zenefits actually does stuff. While traditional HRIS systems are static, offline and disconnected, Zenefits is dynamic, online and integrated with your other systems. When you or your employees change something-new baby, new spouse, new address-Zenefits automatically makes the change in your other systems, too. In other words, all those things you wish your HRIS solution would do? (sic) We do those things." Ex. 7, p. 7.

4.19. Change references to phrase "staff attorney(s)" to "insurance enforcement specialist(s)."

4.20. Capitalize the word "division" in the first sentence.

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4.21. The first sentence to read as follows: "On January 9, 2015, Insurance Enforcement Specialist Marcia Stickler, of the OIC's Legal Affairs Division, issued an 'Informal Legal Opinion re compliance of Zenefits with RCW 48.30.150' ("Opinion"). Ex. T."

4.26. Change references in both findings from acronym "DC" to "Deputy Commissioner."

4.28.

4.31. Except for the first sentence therein, I delete the entire content of this paragraph. I add the following after the first sentence: "These declarations tout the platform developed by Zenefits and its benefits."

4.32. One customer representative, in her declaration (Ex. BQ, pp. 2-3), states in part:

7. I value the benefits of Zenefits (sic) HR platform because it has helped me streamline our HR processes with quick paperless onboarding and offboarding of employees, electronic signatures for all documents, easy sync with our insurance providers, ability to track and have employees manage their own Paid-Time-Off, the option to securely store HR documents such as I-9 and W4 forms and offer letters, the wide range of insurance offerings, the ease of selection and enrollment of insurance options for our employees, the ease for me as HR manager to monitor employee enrollments and send reminders to complete the process, and great customer service.

8. The Zenefits website portal gives employees 24/7 access to their information, and they can directly and securely add and update their employment agreements, Form I-9s, W4s, time-off requests, and dependents' information, benefits selection at any time. Our managers can now approve employee time off requests and they magically show up on our shared company Google calendar. Zenefits saves my company time and money, and by allowing employees to upload and enter their own information one time, it provides better accuracy. I love Zenefits' one-stop shop for HR tools.

(Emphasis added).

4.33. Another customer representative, in his declaration (Ex. BR, p. 1), states in part:

4. . . . I was very interested in the ability to streamline employee onboarding, integrate with our payroll and accounting software, and keep everything on one convenient platform.

\* \* \*

7. . . . [A]nd having worked for large organizations that could afford to build or buy highly automated HR information systems, I knew what was possible. Using Zenefits was a huge improvement. . . .

8. . . . I determined that Zenefits represented the best fit for [our company] for several reasons: They offered a broad selection of insurance options that could be easily reviewed and compared online, they could handle the application and onboarding process of employees electronically rather than on paper regardless of which insurance plan we selected; and they were able to electronically feed premium information for any insurance plan into our existing QuickBooks accounting and payroll software for correctly calculating payroll contributions and deductions.

(Brackets and emphasis added).

4.34. Another customer representative, in his declaration (Ex. BS, pp. 1-2), states in part:

4. . . . I was particularly interested the seamless, online platform to cut back on paperwork and unnecessary labor in performing human resources and other administrative tasks. Zenefits' platform was a major labor-saving device for [our company].

\* \* \*

7. Before using Zenefits' services, [our company] handled the above mentioned administrative and human resources tasks using paper documents and available staff, which was time-consuming, expensive, and labor intensive. I also had to unnecessarily rely on employees and labor and tax attorneys. Processing taxes and insurance payments was also more burdensome prior to using Zenefits' online services.

8. [Our company] decided to use Zenefits because its new technology was clean and simple, eased [our company's] administrative burden, and reduced our paperwork. We have been very pleased with Zenefits' offerings.

(Brackets and emphasis added).

4.35. Another customer representative, in his declaration (Ex. BT, p. 2), states in part: "9. . . . [Our company] plans to continue using Zenefits for insurance and for its other administrative services because Zenefits' online offerings made our administrative tasks simpler and more cost-effective." (Brackets added).

4.36. Finally, yet another customer, in his declaration (Ex. BU, p. 2), states in part:

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5. When I first became aware of the Zenefits suites of services, I thought it was a great idea. Once I tried it, I loved it. The technology is clean and simple. It eases [our company's] administrative burden. I also found the Zenefits platform to be empowering for my business; by spending less time and money on HR and administrative tasks, my team and I were better able to concentrate on growing our core business.

\* \* \*

7. . . . I chose Zenefits as [our company's] broker because of the simplicity and ease of use with which the insurance was presented. Traditionally, insurance brokers ask customers to distill the information and options. Zenefits simplifies the process and is more consumer-friendly, providing a streamlined platform to view insurance plans that eliminates mountains of paperwork and red tape.

(Brackets and emphasis added).

### CONCLUSIONS OF LAW

I adopt the preamble of the Conclusions of Law including footnote 2 referenced therein, and Conclusions of Law 5.1.-5.2. in ALJ Dublin's Initial Order, however reject Conclusions of Law 5.3.-5.11. therein, and replace them with Conclusions of Law 5.3.-5.44., which read as follows:

#### RCW 48.30.140.

5.3. RCW 48.30.140 addresses rebating and other activities by insurers, insurance producers, or title insurance agents, and prohibitions on the same, while identifying certain exceptions to and exclusions therefrom, and states:

(1) Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, insurance producer, or title insurance agent shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

(2) Subsection (1) of this section shall not apply as to commissions paid to a licensed insurance producer, or title insurance agent for insurance placed on that person's own property or risks.

(3) This section shall not apply to the allowance by any marine insurer, or marine insurance producer, to any insured, in connection with marine insurance, of such

discount as is sanctioned by custom among marine insurers as being additional to the insurance producer's commission.

(4) This section shall not apply to advertising or promotional programs conducted by insurers or insurance producers whereby prizes, goods, wares, gift cards, gift certificates, or merchandise, not exceeding one hundred dollars in value per person in the aggregate in any twelve month period, are given to all insureds or prospective insureds under similar qualifying circumstances. This subsection does not apply to title insurers or title insurance agents.

(5) This section does not apply to an offset or reimbursement of all or part of a fee paid to an insurance producer as provided in RCW 48.17.270.

(6)(a) Subsection (1) of this section shall not be construed to prohibit a health carrier or disability insurer from including as part of a group or individual health benefit plan or contract containing health benefits, a wellness program which meets the requirements for an exception from the prohibition against discrimination based on a health factor under the health insurance portability and accountability act (P.L. 104-191; 110 Stat. 1936) and regulations adopted pursuant to that act.

(b) For purposes of this subsection: (i) "Health carrier" and "health benefit plan" have the same meaning as provided in RCW 48.43.005; and (ii) "wellness program" has the same meaning as provided in 45 C.F.R. 146.121(f).

(Emphasis added).

- 5.4. As stated in *Tesoro Refining and Marketing Co. v. Dep't of Revenue*, 164 Wn.2d 310, 317, 190 P.3d 28 (2008): "The goal of statutory interpretation is to carry out the legislature's intent. *Burns*, 161 Wash.2d at 140, 164 P.3d 475. If the meaning of the statute is plain, the court discerns legislative intent from the ordinary meaning of the words."<sup>1</sup> "Words in a statute are given their ordinary and common meaning absent a contrary statutory definition." As stated in *Tenino Aerie v. Grand Aerie*, 148 Wn.2d 224, 239, 59 P.3d 655 (2002): "Legislative definitions provided in a statute are controlling. . . ." See also *Postema v. Postema Enters., Inc.*, 118 Wn. App. 185, 195, 72 P.3d 1122 (2003), review denied, 151 Wn.2d 1011 (2004) ("If a term is defined in a statute, we must use that definition."). However, "Washington courts use Webster's Third New International Dictionary in the absence of other authority." *State v. Glas*, 106 Wn. App. 895, 27 P.3d 216 (2001)(citing *In re Personal Restraint of Well*, 133 Wn.2d 433, 438, 946 P.2d 750

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<sup>1</sup> Although an Insurance Commissioner cannot bind the courts, the courts appropriately defer to an Insurance Commissioner's interpretation of insurance statutes and rules. *Credit General Insurance Co. v. Zewdu*, 82 Wn. App. 620, 627, 919 P.2d 93 (1996); *Premera v. Kreidler*, 133 Wn. App. 23, 37, 131 P.3d 930 (2006). As the Court stated in *Premera*: "An agency's interpretation of the statutes it administers should be upheld if it reflects a plausible construction of the statute's language and is not contrary to legislative intent." 133 Wn. App. at 37 (emphasis added).

(1997)). The Washington Supreme Court has clarified that the plain meaning rule also encompasses related statutes:

Additionally, while traditional plain language analysis of statutes focused exclusively on the language of the statute, this court recently has also recognized that “all that the Legislature has said in the statute and related statutes” should be part of plain language analysis. *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.* 146 Wn.2d 1, 11, 43 P.3d 4 (2002).

*Cerrillo v. Esparza*, 158 Wn.2d 194, 202, 142 P.3d 155, 159 (2006).

- 5.5. The noun “inducement” in RCW 48.30.140(1) is not statutorily defined. Webster’s Third New International Dictionary, 1154 (2002) defines the noun “inducement,” in part, as follows:

**1 a :** the act or process of inducing <put into effect a system of ~ to encourage workers to turn out more work> **b :** a quality or state which induces (as to action) or lures or entices . . .

(Emphasis added).

- 5.6. At 7:11-12 of its Post-Hearing Brief before OAH, which along with its original Brief before OAH are incorporated by reference in its Brief Regarding the Review of Initial Order via footnote 1 therein, Zenefits cites to a portion of the Black’s Law Dictionary definition of the noun “inducement,” which specifically addresses the common usage of the word in the context of contract law. However, a look at the entire definition of the noun “inducement” in Black’s Law Dictionary (10<sup>th</sup> Ed.) demonstrates the general definition therein differs little from the definition in Webster’s Third New International Dictionary above, and includes specific definitions of the word with specific applicability in the context of patents, contracts, and criminal law, and states in its entirety as follows:

**1. The act or process of enticing or persuading another person to take a certain course of action.** See *fraud in the inducement* under FRAUD.

- **active inducement** (1942) *Patents*. The act of intentionally causing a third party to infringe a valid patent. • Active inducement requires proof of (1) an actual intent to cause the patent infringement and (2) knowledge of the patent.

**2. *Contracts*.** The benefit or advantage that causes a promisor to enter into a contract. **3. *Criminal law*.** An enticement or urging of another person to commit a crime. **4.** The preliminary statement in a pleading; esp., in an action for defamation, the plaintiff’s allegation that extrinsic facts gave a defamatory meaning to a statement that is not defamatory on its face, or, in a criminal indictment, a statement of preliminary facts necessary to show the criminal character of the alleged offense. Cf. INNUENDO (2); COLLOQUIUM. — **induce**, *vb*.

(Emphasis added).

- 5.7. The noun “valuable consideration” in RCW 48.30.140(1) is also not statutorily defined. Webster's Third New International Dictionary, 2530 (2002) defines the noun “valuable consideration,” in part, as follows:

: an equivalent or compensation having value that is given for something (as money, marriage, services) acquired or promised and that may consist either in some right, interest, profit, or benefit accruing to one party or some responsibility, forbearance, detriment, or loss exercised by or falling upon the other party . . .

(Emphasis added).

- 5.8. Taking into account the definitions of nouns “inducement” and “valuable consideration” above, I conclude that RCW 48.30.140(1) generally prohibits an insurance producer from directly or indirectly persuading, luring, or enticing another to acquire insurance, or to remain insured, by offering, allowing, or giving services or other enticements not expressly provided for in the policy.<sup>2</sup>
- 5.9. Simply put, Zenefits, prior to issuance of the Consent Order (Ex. CR, p. 5), persuaded, lured, and enticed their customers in the state of Washington to name Zenefits their broker of record (BOR) by giving them a taste of the functionality of their online HR automation platform by letting them access certain free “core HR services” and the employee benefits management app, which represented services or enticements in violation of RCW 48.30.140(1). Initial Order, Findings of Fact 4.7-4.8. Similarly, once a customer named Zenefits as their BOR, they could then access employee benefit management services from Zenefits, with additional functionality, even though not a part of their policy, which also represented services or enticements in violation of RCW 48.30.140(1). Initial Order, Finding of Fact 4.8.
- 5.10. Zenefits admits its HR automation platform is really what sets it apart. Ex. 6, p. 13. Zenefits touts how its HR automation platform sits on top of its customers’ current systems and pulls them all into once centralized location, allowing their employees to flow easily from one system to the next. *Id.* Zenefits emphasizes to its customers that it thinks of itself

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<sup>2</sup> As explained in *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 528, 243 P.3d 1283 (2010):

“The dictionary describes “or” as a “function word” indicating “an *alternative* between different or unlike things.” WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1585 (2002) (emphasis added). In this sense, “or” is used to indicate an *inclusive* disjunctive—one or more of the unlike things can be true. The dictionary gives the example: “wolves [or] bears are never seen in that part of the country.” *Id.*

The inclusive disjunctive “or” between “as an inducement to insurance” and “after insurance has been effected,” in RCW 48.30.140(1), signifies that insurance producers are prohibited, among other things, from offering, allowing, or giving services or enticements to both prospective and current insureds not expressly provided for in the policy.

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as a modern day broker that can leverage technology to provide its customers with a “holistic” solution. Ex. 6, p. 15. Zenefits states that it built a new kind of brokerage – pairing experienced brokers with innovative technology that its customers and their employees will love. Ex. 7, p. 19. Pages 4-6 of Zenefits’ Brief Regarding Review of Initial Order echoes these sentiments.

- 5.11. Declarations from Zenefits’ own customers admit that they made Zenefits their BOR because their “technology was clean and simple” (Ex. BS, p. 2, ¶ 8); “the ease of use with which the insurance was presented” (Ex. BU, p. 2, ¶ 7); “they offered a broad selection of insurance options that could be easily reviewed and compared online, . . . could handle the boarding process of employees electronically rather than on paper regardless of which insurance plan we selected; and they were able to electronically feed premium information for any insurance plan into our existing QuickBooks accounting and payroll software. . . .” Ex. BR, p. 3, ¶ 8. The same customers also admit once they tried Zenefits free services, they loved it. Ex. BU, p. 2, ¶ 5. One customer opines that he loves “Zenefits’ one-stop shop for HR tools” (Ex. BQ, p. 3, ¶ 8), while another states: “I was very interested in the ability to streamline employee onboarding, integrate with payroll and accounting software, and keep everything on one convenient platform. Ex. BR, p. 1, ¶ 4.
- 5.12. In *Calvin Phillips & Co. v. Fishback*, 84 Wash. 124, 146 P. 181 (1915) the Washington Supreme Court was faced with the scenario of a licensed insurance agent, who also engaged in negotiating loans of money to purchase real estate. The insurance agent encouraged applicants for loans to grant it the exclusive right to write all fire insurance carried on the building(s) covered by the security, and if that did not occur would make the prospect of the applicant being granted the loan less favorable (i.e., not a guarantee). The Court explained that what the insurance agent did in this matter was a universal practice at the time by loan agents in order to augment the security behind the loans it provided customers. The court addressed whether this practice by the insurance agent violated the illegal inducement/rebating statute on the books at the time.<sup>3</sup> The majority opinion in *Fishback* answered in the negative, stating at 128-29:

If the inducement and consideration flowing from the [insurance agent] in such transactions constitutes any inducement or favor for anything, it is for the granting of a loan or loans. As between the agent and the insured, it is rather a detriment than a rebate, benefit, favor, or inducement to the insured. There is no pretense that any premium other than the established or ‘board rates’ of insurance is ever charged by [the insurance agent] in its transactions.

(Brackets and emphasis added).

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<sup>3</sup> The dissent in *Fishback* notes at pages 129-130 reads in relevant part:

‘No licensed insurance agent \* \* \* shall offer \* \* \* any rebate of \* \* \* the premium payable \* \* \* or any [\*130] other valuable consideration or inducement to or for insurance \* \* \* or other thing of value whatsoever as inducement to insurance or in connection therewith which is not specified in the policy.’

The majority opinion in *Fishback* essentially reasoned that the customers of the insurance agent in question were not illegally induced to purchase insurance because they had to endure the detriment of being obligated to pay back the loan, while still paying full price for any insurance. In other words, the majority saw the insurance agent's approval of a loan as the inducement to its customers, while the purchase of insurance from the agent facilitated that goal.

The dissent in *Fishback*, 84 Wash. at 130 (J. Mount, dissenting op.) parted company with the majority opinion, reasoning as follows:

The statute is broad in its terms and was intended to prevent rebating in any form of the premiums upon insurance policies, so that insurance policies should be independent of all other considerations than those expressed upon the face of the policy. When an insurance agent exacts a promise of insurance as a consideration for a loan of money, he is certainly offering a valuable consideration and an inducement for the insurance. This seems to me to be too plain to admit of serious discussion. If insurance agents may, under the statute quoted in the majority opinion, offer loans, or services in procuring loans, or an advantageous sale of real estate, as an inducement for insurance contracts, then they may offer articles of merchandise, or any other thing of value. If an insurance agent should say to a client desiring insurance, 'I can give you no rebate upon the insurance premium which must be paid in full in cash, but if you will grant me the exclusive right to insure your buildings I can procure for you a loan of money which you may need,' could it be reasonably said that this transaction would not be an inducement for the insurance? Plainly not. And yet it seems to me this is exactly what the majority says is legal under the statute. If so, the statute is of no force.

(Emphasis added).

- 5.13. Unlike the customers in *Fishback*, Zenefits' customers do not take on the baggage of a loan or some other obligation in conjunction with the purchase of insurance from Zenefits. Rather, Zenefits provides its customers with free services (valuable consideration) to induce them to purchase insurance, not to garner some sort of approval from Zenefits. Similar to the desire customers had to garner loan approval in *Fishback*, as the dissent explains was the inducement to the insurance in question, Zenefits' previous offering of a portion of the functionality of their HR platform ("core HR services" and employee benefits management app) for free to their Bronze tier of customers in the state of Washington, and added functionality for those same customers who made them BOR (employee benefits management services), was the inducement or valuable consideration Zenefits was prohibited from offering, giving or allowing to its customers in the state of Washington per RCW 48.30.140(1).

RCW 48.30.150.

5.14. RCW 48.30.150 addresses illegal inducements by insurers, insurance producers, title insurance agents, or other persons, and states:

(1) No insurer, insurance producer, title insurance agent, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever:

(a) Any shares of stock or other securities issued or at any time to be issued on any interest therein or rights thereto; or

(b) Any special advisory board contract, or other contract, agreement, or understanding of any kind, offering, providing for, or promising any profits or special returns or special dividends; or

(c) Any prizes, goods, wares, gift cards, gift certificates, or merchandise of an aggregate value in excess of one hundred dollars per person in the aggregate in any consecutive twelve-month period. This subsection (1)(c) does not apply to title insurers or title insurance agents.

(2) Subsection (1) of this section shall not be deemed to prohibit the sale or purchase of securities as a condition to or in connection with surety insurance insuring the performance of an obligation as part of a plan of financing found by the commissioner to be designed and operated in good faith primarily for the purpose of such financing, nor shall it be deemed to prohibit the sale of redeemable securities of a registered investment company in the same transaction in which life insurance is sold.

(3)(a) Subsection (1) of this section shall not be deemed to prohibit a health carrier or disability insurer from including as part of a group or individual health benefit plan or contract providing health benefits, a wellness program which meets the requirements for an exception from the prohibition against discrimination based on a health factor under the health insurance portability and accountability act (P.L. 104-191; 110 Stat. 1936) and regulations adopted pursuant to that act.

(b) For purposes of this subsection: (i) "Health carrier" and "health benefit plan" have the same meaning as provided in RCW 48.43.005; and (ii) "wellness program" has the same meaning as provided in 45 C.F.R. 146.121(f).

(Emphasis added).

- 5.15. The noun “connection” in RCW 48.30.150(1) is not statutorily defined. Webster's Third New International Dictionary, 481 (2002) defines the noun “connection,” in part, as follows:

1 a : the act of connecting : a coming into or being put in contact . . . 2 : the state of being connected or linked . . . 3 a : relationship or association in thought (as of cause and effect, logical sequence, mutual dependence or involvement) . . .

(Emphasis added).

- 5.16. As Zenefits notes and briefly paraphrases at 9:15-16 of its Post-Hearing Brief before OAH, the term “insurance transaction” in RCW 48.30.150(1) is defined in RCW 48.01.060, which states:

“Insurance transaction” includes any:

(1) Solicitation.

(2) Negotiations preliminary to execution.

(3) Execution of an insurance contract.

(4) Transaction of matters subsequent to execution of the contract and arising out of it.

(5) Insuring.

(Emphasis added).

- 5.17. RCW 48.01.020 explains the broad reach of the insurance code<sup>4</sup> with reference to insurance<sup>5</sup> and insurance transactions, distinct concepts under the insurance code, stating: “All insurance and insurance transactions in this state, or affecting subjects located wholly or in part or to be performed within this state, and all persons having to do therewith are governed by this code.”
- 5.18. Contrary to Zenefits’ legal argument at 9:14-15 of its Post-Hearing Brief that “Zenefits free apps and services are not offered ‘in connection with’ an insurance transaction”; or at 9:16-20 of the same brief that its “offering of free non-insurance services with no obligation to purchase insurance, sit for a pitch or demonstration, or even consider the purchase of insurance has *no connection* with the solicitation or negotiation of insurance,” or that the evidence in the record “confirms that no person could be ‘induced to purchase insurance’ by a benefit available to the general public that she could receive without purchasing insurance”; the evidence and law shows that Zenefits’ provision of certain “core HR services” and the employee benefits management app to all comers is a form of

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<sup>4</sup> RCW 48.01.010 explains that “Title 48 RCW constitutes the insurance code.”

<sup>5</sup> RCW 48.01.040 defines “insurance” as “a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies.” A cursory reading of that definition shows that it is obviously much narrower than the definition of “insurance transaction” in RCW 48.01.060.

“solicitation,” albeit more modern,<sup>6</sup> and therefore is an “insurance transaction” per RCW 48.01.060(1). Not to mention that Zenefits’ provision of additional functionality (i.e., employee benefit management services) to those customers who choose to make Zenefits their BOR is a matter arising out of an insurance contract and also an “insurance transaction” per RCW 48.01.060(4).

- 5.19. The noun “solicitation” in RCW 48.01.060(1) is not statutorily defined. Webster's Third New International Dictionary, 2169 (2002) defines the noun “solicitation,” in part, as follows:

1 : the pursuit, practice, act, or an instance of soliciting . . . 2 : the operation, influence, pressure, or other inducing effect of something that solicits or attracts or draws : a moving or drawing force : INCITEMENT, ALLUREMENT <unable to resist the ~s of appetite>

(Emphasis added). Casual observation of this definition shows that it is eerily similar to that above for “inducement.”

- 5.20. Piecing together the definitions of “connection,” “solicitation,” “insurance transaction” and “inducement” together, I conclude that RCW 48.30.150(1)(c) prohibits an insurance producer from persuading, luring, or enticing another to acquire insurance, or in connection with something that solicits, attracts or draws one to insurance or arises out of it, during any consecutive twelve-month period, offering or promising to give or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever goods or merchandise valued at more than \$100.
- 5.21. Zenefits, prior to issuance of the Consent Order (Ex. CR, p. 5), and during a consecutive twelve-month period, persuaded, lured, and enticed their customers in the state of Washington to name Zenefits their BOR, and in connection with something that solicited, attracted or drew them to insurance with Zenefits or arose out of it. Zenefits accomplished this by giving their customers a taste of the functionality of their online HR automation platform by letting them access for free certain “core HR services” and the employee benefits management app, and giving customers access to their employee benefit management services once they named Zenefits their BOR. The free “core HR services,” employee benefits management app, and employee benefit management services represented goods and merchandise valued at more than \$100. By doing so,

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<sup>6</sup> Zenefits’ previous offer of certain “core HR services” and the employee benefits management app for free to all comers (i.e., customers) in the state of Washington via its Bronze level, in conjunction with its subscription offerings at the Silver, Gold and Platinum levels, is a form of “freemium.” Attachment 1 to Zenefits’ Hearing Brief before OAH, a May 2014 article entitled “Making Freemium Work,” in the Harvard Business Review, explains that “freemium . . . has become the dominant business model among internet start-ups and smartphone developers.” The article further explains: “Several factors contribute to the appeal of a freemium strategy. Because free features are a potent marketing tool, the model allows a new venture to scale up and attract a user base without expending resources on costly ad campaigns or a traditional sales force.”

Zenefits violated RCW 48.30.150(1)(c).

- 5.22. Both controlling and persuasive case law identifies how broadly the courts view the activity of "solicitation" directly referenced in RCW 48.01.060(1), and incorporated indirectly in RCW 48.30.150(1) by its reference to "insurance transaction," as it relates to the insurance industry.
- 5.23. In *National Federation of Retired Persons v. Ins. Comm'r*, 120 Wn.2d 101, 838 P.2d 680 (1992), appellant, a nonprofit corporation licensed in Texas, which described itself as a "philanthropic association for the benefit of retirees and matured persons," argued that its distribution of free insurance information pamphlets via the mail to its members and non-members, relating to its health education and consumer aid programs, did not constitute an "insurance transaction" within the meaning of RCW 48.01.060, and were outside the scope of the Insurance Commissioner's authority. The Washington Supreme Court disagreed in *National Federation of Retired Persons*, and stated at pages 110-112:

[1] Our Insurance Code, RCW Title 48, does not specifically define the term "solicitation", and a review of Washington case law has yielded no authority defining the term in the context of RCW 48.01.060.

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[2] Appellant NFRP contends that its distributions do not constitute solicitations because its mailings are conducted independently of any insurance company, and because NFRP receives no remuneration from recipients of those mailings. . . . Appellant cites no authority for the proposition that financial remuneration from recipients of insurance related mailings is a necessary prerequisite to a finding that the mailings constitute solicitations. Such an argument is questionable at any rate because NFRP admittedly receives payment from insurers who purchase completed lead cards.

[3][4] Even if we were not to adopt Oregon's judicial definition of the word "solicits", NFRP's activities would still constitute solicitation under the rule of statutory construction that statutory language is given its plain meaning absent legislative provision to the contrary. According to Black's Law Dictionary, "solicit" means: "[t]o appeal for something . . . [t]o tempt . . . to lure . . . [t]o awake or excite to action . . . or to invite. . . ." Materials which advise recipients concerning available insurance policies, inform them of the attractive provisions of such policies, and encourage them to act quickly in order to secure optimal benefits seem clearly to meet this definition. We conclude that NFRP's insurance-related mailings constitute solicitations within the meaning of RCW 48.01.060. As such, they constitute insurance transactions and are thus subject to the jurisdiction of the Insurance Commissioner under RCW 48.01.020.

(Emphasis added).

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- 5.24. Citing the Court's decision in *National Federation of Retired Persons*, in *Chicago Title Ins. Co. v. The Office of the Ins. Comm'r*, 178 Wn.2d 120, 135, 309 P.3d 372 (2013), the Court opined once more on "solicitation" in the insurance realm, stating:

But the authority to solicit necessarily includes the authority to market. The meaning of solicitation "includes inviting, requesting, urging, or advising a person to subscribe to insurance, endeavoring to obtain such a subscription, or approaching a person for the purpose of receiving an application for insurance coverage." Nat'l Fed'n of Retired Persons v. Ins. Comm'r, 120 Wn.2d 101, 110-11, 838 P.2d 680 (1992) (*NFRP*) (citing *Paulson v. W. Life Ins. Co.*, 292 Or. 38, 62, 636 P.2d 935 (1981)). We define "solicitation" broadly, and we do not require that the person approached be an end consumer or that the solicitor seek applications for its own insurance.

(Emphasis added).

- 5.25. In *Friedman v. AARP, Inc.*, 855 F.3d 1047 (9<sup>th</sup> Cir. 2017), the Court was tasked with interpreting California Insurance Code provisions that made it unlawful for any person to "transact" insurance in California without a license.<sup>7</sup> Appellant alleged, and AARP did not dispute, that AARP was not licensed in California to "solicit, negotiate, or effect contracts of insurance," nor was it licensed to "transact" insurance. At issue was whether appellant adequately pled that AARP both "transacts" and "solicits" insurance without a license. The court in *Friedman* answered in the affirmative, citing to AARP's website marketing efforts guiding customers to opportunities to apply for or purchase insurance, and reasoning as follows at page 1054:

Finally, AARP's marketing materials contain language that a reasonable observer could plausibly interpret as soliciting his or her business. For example, AARP's marketing documents explain why members should "get an AARP Medicare Supplement Plan," and then list supporting reasons. ER 276. AARP's website also allows consumers to "View Plans and Pricing" and call a toll-free number to speak to an insurance agent and "receive complete information including benefits, costs, eligibility requirements, exclusions and limitations." ER 276. In light of AARP's direct financial incentive in securing additional enrollees in UnitedHealth's Medigap program, we have little difficulty in concluding that these representations support plausible allegations of solicitation.

Despite the foregoing, the district court concluded that the complaint failed to adequately allege that AARP "solicits" insurance. The court's primary rationale was that "none of those websites permits an individual to purchase insurance coverage

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<sup>7</sup> The definition of "transact" at issue in that matter (Cal. Ins. Code § 35) was much like the definition of "insurance transaction" in RCW 48.01.060, and stated that "transact" included "solicitation," "negotiations preliminary to execution," "execution of a contract of insurance," or "transaction of matters subject to execution of the contract and arising out of it."

or submit an application for insurance." ER 6. We are not persuaded, however, that the ability (or lack of ability) to directly purchase or apply for insurance is dispositive. While the California Insurance Code does not define "solicitation," various provisions of the Code suggest that the California legislature intended "solicitation" to encompass both requests for "applications for [insurance] contracts," Cal. Ins. Code § 1611, and marketing if the "purpose of the method of marketing is the solicitation of insurance" by putting consumers in contact with an insurance agency or company, Cal. Ins. Code § 10192.20(b)(3). Because the UCL sweeps broadly, *People ex rel. Harris*, 329 P.3d at 188, we decline to adopt the narrow construction of "solicitation" used by the district court. Even if consumers cannot directly apply for or purchase insurance through AARP, Friedman has plausibly alleged that AARP's marketing materials are designed to lead its members to contact UnitedHealth to consummate sales of insurance.

(Emphasis added).

- 5.26. The goal of Zenefits' business model - "freemium" - see footnote 6 above - is for its customers in the state of Washington to make them their BOR. To achieve this, Zenefits permits its customers get their feet wet with the functionality in their HR automation platform for free, by accessing certain "core HR services" and the employee benefits management app, which under *National Federation of Retired Persons, Chicago Title Ins. Co.* and *Friedman*, is connected to an insurance transaction (i.e., "solicitation"). Once the customer makes Zenefits their BOR, the additional functionality those customers get via employee benefit management services is also connected to an insurance transaction (i.e., transaction of matters arising out of the insurance contract).
- 5.27. To reiterate, Zenefits admits its HR automation platform is really what sets them apart. Ex. 6, p. 13. Zenefits touts how its HR automation platform sits on top of its customers' current systems and pulls them all into once centralized location, allowing their employees to flow easily from one system to the next. *Id.* Zenefits emphasizes to its customers that it thinks of itself as a modern day broker that can leverage technology to provide its customers with a "holistic" solution. Ex. 6, p. 15. Pages 4-6 of Zenefits' Brief Regarding Review of Initial Order echoes these sentiments.
- 5.28. Zenefits states that it built a new kind of brokerage – pairing experienced brokers with innovative technology that its customers and their employees will love. Ex. 7, p. 19. Declarations from Zenefits' own customers admit that they made Zenefits their BOR because their "technology was clean and simple" (Ex. BS, p. 2, ¶ 8); "the ease of use with which the insurance was presented" (Ex. BU, p. 2, ¶ 7); "they offered a broad selection of insurance options that could be easily reviewed and compared online, . . . could handle the boarding process of employees electronically rather than on paper regardless of which insurance plan we selected; and they were able to electronically feed premium information for any insurance plan into our existing QuickBooks accounting and payroll software. . . ." Ex. BR, p. 3, ¶ 8. The same customers also admit once they tried Zenefits

free services, they loved it. Ex. BU, p. 2, ¶ 5. One customer opines that he loves “Zenefits’ one-stop shop for HR tools” (Ex. BQ, p. 3, ¶ 8), while another states: “I was very interested in the ability to streamline employee onboarding, integrate with payroll and accounting software, and keep everything on one convenient platform. Ex. BR, p. 1, ¶ 4.

Exceptions to and Exclusions from General Prohibitions in RCW 48.30.140 and RCW 48.30.150  
Codified in RCW Chapter 48.30 and WAC Chapter 284-17.

- 5.29 The rules of statutory construction require that when possible the various provisions of an act be harmonized; this usually arises within particular statutory chapters. *State v. Williams*, 62 Wn. App. 336, 338, 813 P.2d 1293 (1991), review denied, 117 Wn.2d 1027 (1991). Statutes that concern the same subject matter, *in pari materia*, should be construed “as constituting one law to the end that a harmonious total schema which maintains the integrity of both is derived.” *Beach v. Bd. of Adjustment*, 73 Wn.2d 343, 346, 438 P.2d 617 (1968); *State v. Houck*, 32 Wn.2d 681, 684, 203 P.2d 693 (1949). In seeking to harmonize provisions of a statute, statutes relating to the same subject must be read as complementary instead of in conflict with each other. *State v. Chapman*, 140 Wn.2d 436, 448, 998 P.2d 282 (2000).
- 5.30 It is also a well-settled principle of statutory construction that we should construe the law to avoid absurd results. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). I must also interpret and construe statutes so that all the language used is given effect, with no portion rendered meaningless or superfluous. *G-P Gypsum Corp. v. Dep’t of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010).
- 5.31. Contrary to Zenefits’ assertion at 10:11-15 of its Post-Hearing Brief before OAH that a “benefit provided by an insurance producer that remains available on the same terms to insurance and non-insurance customers alike regardless of whether the customer buys an insurance policy cannot constitute an ‘inducement to insurance,’” which I disagree with for the reasons articulated above, there is no exception or exclusion for such benefits in RCW Chapter 48.30, or RCW Title 48 for that matter, from the broad reach of the prohibitions in RCW 48.30.140 and RCW 48.30.150. To conclude otherwise would lead to absurd results whereby an insurance producer could legally give an unlimited amount in value of goods and merchandise to prospective insureds and insureds. This would render superfluous and meaningless certain statutory and regulatory provisions in RCW Chapter 48.30 and WAC Chapter 284-17, and fail to harmonize the various statutory and regulatory provisions therein, contrary to the rules of construction outlined above.
- 5.32. Specifically, RCW 48.30.140(2)-(6), and RCW 48.30.150(2)-(3), contain specific exceptions to or exclusions from the prohibitions in RCW 48.30.140(1) and RCW 48.30.150(1)(c), none of which Zenefits argues applies under the facts of its case. Other exceptions and exclusions, which Zenefits also does not argue apply, some of recent origin, and some old, are also housed in RCW Chapter 48.30 and WAC Chapter 284-17, and are set out below.

- 5.33. In *Clark Cty. Pub. Util. Dist. No. 1 v. Dep't of Revenue*, 153 Wn. App. 737, 747, 222 P.3d 1232 (2009) the court addressed the rule of *expressio unius est exclusio alterius*, and stated:

We may not add words where the legislature has chosen to exclude them. *Rest. Dev., Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003). We adhere to the rule of *expressio unius est exclusio alterius*, or specific inclusions exclude implication. Black's Law Dictionary 661 (9th ed. 2009). In other words, if a statute specifically designates the things on which it operates, we infer that the legislature intended all omissions. *In re Pers. Restraint of Bowman*, 109 Wn. App. 869, 875, 38 P.3d 1017 (2001), *review denied*, 146 Wn.2d 1001 (2002).

In *Western Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599, 611, 998 P.2d 884 (2000), the Court opined on the same rule, and stated:

As we have noted, the mention of one thing implies the exclusion of others, under the maxim "*expressio unius est exclusio alterius*." *State ex rel. Port of Seattle v. Department of Public Serv.*, 1 Wn.2d 102, 95 P.2d 1007 (1939). Thus, where the Legislature did not expressly exclude paging services from the broad definition of network telephone services in RCW 82.04.065(4), it must be assumed the Legislature did so intentionally.

Under the maxim *expressio unius est exclusio alterius*, and *Clark Cty. Pub. Util. Dist. No. 1* and *Western Telepage*, since the Legislature did not expressly exclude from the prohibitions of RCW 48.30.140(1) and RCW 48.30.150(1)(c) an insurance producer providing unlimited goods and merchandise (i.e., in excess of \$100) to the public wherein they have no obligation to purchase insurance, the Legislature did so intentionally and intended all such omissions. Recent legislative adoption of amendments to the language of RCW 48.30.140 and RCW 48.30.150, and specific statutory exceptions to or exclusions from both provisions, combined with the OIC's adoption of regulatory provisions with additional exceptions to or exclusions from both provisions, buttresses this conclusion.

- 5.34. Engrossed Substitute Senate Bill 5743 ("Bill"), approved May 14, 2015, and effective July 24, 2015, amended, among other things, the amount of goods and merchandise in RCW 48.30.140(4) and RCW 48.30.150(1)(c) that an insurance producer could offer, give, allow to, or on behalf of a prospective insured or insured, in the aggregate during any consecutive twelve-month period, and that would not violate RCW 48.30.140 or RCW 48.30.150, from \$25 to \$100. The Senate Bill Report for the Bill summarizes testimony in favor of the Bill, which put forth the ability of small insurers to compete with large insurers, and the OIC's ability to enforce the \$100 amount, as support for the Bill, and states in part:

The neighborhood insurers are having to compete with the large insurers with the ability to run many ads. The bill helps them be more competitive. The \$100 number allows the Office of the Insurance Commissioner (OIC) to enforce the amount. A number of states may have a lower number but may have more flexibility elsewhere.

(Emphasis added).

Interestingly, the same Senate Bill Report notes testimony of Deputy Commissioner John Hamje of the OIC urging that the Bill not be passed, because among other things, the \$100 amount was too high, and a new provision for unlimited charitable contributions by insurance producers to not-for-profit organizations would cover too many organizations.

- 5.35. The new legislative provision minted by the Bill that Deputy Commissioner Hamje referred to was RCW 48.30.135, which provides for unlimited sponsorship or contributions by insurance producers to bona fide charitable or nonprofit organizations, defined therein, and states:

(1) An insurance producer may sponsor events for, or make contributions to a bona fide charitable or nonprofit organization, if the sponsorship or contribution is not conditioned upon the organization applying for or obtaining insurance through the insurance producer.

(2) For purposes of this section, a bona fide charitable or nonprofit organization is:

(a) Any nonprofit corporation duly existing under the provisions of chapter 24.03 RCW for charitable, benevolent, eleemosynary, educational, civic, patriotic, political, social, fraternal, cultural, athletic, scientific, agricultural, or horticultural purposes;

(b) Any professional, commercial, industrial, or trade association;

(c) Any organization duly existing under the provisions of chapter 24.12, 24.20, or 24.28 RCW;

(d) Any agricultural fair authorized under the provisions of chapter 15.76 or 36.37 RCW; or

(e) Any nonprofit organization, whether incorporated or otherwise, when determined by the commissioner to be organized and operated for one or more of the purposes described in (a) through (d) of this subsection.

(3) RCW 48.30.140 and 48.30.150 do not apply to sponsorships or charitable contributions that are provided or given in compliance with subsection (1) of this section.

(Emphasis added).<sup>8</sup>

5.36. WAC 284-17-805,<sup>9</sup> filed on December 7, 2015, and effective January 7, 2016, appears to implement RCW 48.30.135, while adding a specific provision addressing assignment or payment by an insurance producer of all or a portion of a commission, fee, or other consideration received in connection with the sale, solicitation, or negotiation of insurance to a bona fide charitable or nonprofit organization, and states:

(1) An insurance producer may pay or assign all or a portion of a commission, fee, or other consideration received in connection with the sale, solicitation, or negotiation of insurance to a bona fide charitable or nonprofit organization as defined in chapter 48.30 RCW if all of the following conditions are met:

(a) The insured or prospective insured has no influence over which bona fide charitable or nonprofit organization receives the payment or assignment;

(b) The payment or assignment is not made in the insured's or prospective insured's name;

(c) The insured or prospective insured is not entitled to a tax benefit for the payment or assignment; and

(d) The insured or prospective insured does not select or influence the selection of the person or persons who benefit from the bona fide charitable or nonprofit organization.

(2) An insurance producer may sponsor events for, or make contributions to a bona fide charitable or nonprofit organization if the sponsorship or contribution is not conditioned upon any person affiliated with or interested in the bona fide charitable or nonprofit organization applying for or obtaining insurance through the insurance producer.

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<sup>8</sup> Ironically, contrary to Zenefits' statement at 12:15-17 of its Hearing Brief before OAH that "as a result, Washington is now the only state in the nation to force small businesses and nonprofits to pay for technology and services that are free everywhere else" (emphasis added), Zenefits can invoke RCW 48.30.135 and WAC 284-17-805 to make unlimited contributions to nonprofits it chooses.

<sup>9</sup> RCW 48.02.060(3) states the Commissioner may: "(a) Make reasonable rules for effectuating any provision of this code, except those relating to his or her election, qualifications, or compensation. Rules are not effective prior to their being filed for public inspection in the commissioner's office." The rules of statutory construction outlined above apply to agency regulations as well as statutes. *Tesoro Refining and Marketing Co. v. Dep't of Revenue*, 164 Wn.2d 310, 322, 190 P.3d 28 (2008); *Madre v. Health Care Auth.*, 149 Wn.2d 458, 472, 70 P.3d 931 (2003).

(3) An insurance producer may not sponsor events for or make contributions to a bona fide charitable or nonprofit organization if the sponsorship or contribution is conditioned upon the referral of insurance business to the insurance producer or endorsement of the insurance producer or insurance product by the bona fide charitable or nonprofit organization.

5.37. For the OIC to allow Zenefits to offer employee benefit management services, the employee benefits management app, and “core HR services” for free to its customers would render superfluous and meaningless the recent exceptions to or exclusions from RCW 48.30.140 and RCW 48.30.150 codified in both RCW 48.30.135 and WAC 284-17-805. These provisions permit insurance producers in unlimited fashion to sponsor events for, or make contributions to, bona fide charitable or nonprofit organizations, provided there is no obligation for the organizations to become an insured. RCW 48.30.135 and RCW 284-17-805 would not be necessary if Zenefits’ reading of RCW 48.30.140 and RCW 48.30.150 was correct.

5.38. Another newly minted statutory provision in the Bill was RCW 48.30.133,<sup>10</sup> which provides that an insurance producer may reward any person in any consecutive twelve-month period with, among other things, goods or merchandise not in excess of \$100, for the referral of insurance business to the insurance producer, and states:

(1) An insurance producer may give to an individual, prizes, goods, wares, gift cards, gift certificates, or merchandise not exceeding one hundred dollars in value per person in any consecutive twelve-month period for the referral of insurance business to the insurance producer, if the giving of the prizes, goods, wares, gift cards, gift certificates, or merchandise is not conditioned upon the person who is referred applying for or obtaining insurance through the insurance producer.

(2) The payment for the referral must not be in cash, currency, bills, coins, check, or by money order.

(3) The provisions of RCW 48.30.140 and 48.30.150 do not apply to prizes, goods, wares, gift cards, gift certificates, or merchandise given to a person in compliance with subsections (1) and (2) of this section.

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<sup>10</sup> Of note is that in Section 3 of an original version of the Bill, ultimately amended and not passed, RCW 48.30.133(1) would have allowed insurance producers to give to an individual, among other things, goods or merchandise not in excess of \$25 *per referral* in any consecutive twelve-month period. Deputy Commissioner Hamje testified against this draft language before the legislature and advocated for a twelve-month cap on payments for referrals to any single individual, which ultimately wound up in the final bill, save for the fact that it was \$100 versus \$25. The Senate Bill Report summarizes his testimony, in part, as follows:

The possibility of referrals for the reward without limits will go too far. Some people may seek out prospects and be part of the sale process. The incentive should be limited to an amount per person per year aggregate to avoid this abuse.

(4) Notwithstanding subsections (1) and (2) of this section, an insurance producer may pay to an unlicensed individual who is neither an insured nor a prospective insured a referral fee conditioned on the submission of an application if made in compliance with the provisions of RCW 48.17.490(4).

- 5.39. RCW 48.30.157, the language of which largely originated with Substitute House Bill 112, passed in 1979, provides some relief for insurance producers from the grasp of RCW 48.30.140 and RCW 48.30.150 by providing that the Commissioner may permit an insurance producer to enter into arrangements with insureds and prospective insureds to charge a reduced fee for services beyond those customarily provided in connection with the solicitation and procurement of insurance, and states:

Notwithstanding the provisions of RCW 48.30.140, 48.30.150, and 48.30.155, the commissioner may permit an insurance producer to enter into reasonable arrangements with insureds and prospective insureds to charge a reduced fee in situations where services that are charged for are provided beyond the scope of services customarily provided in connection with the solicitation and procurement of insurance, so that an overall charge to an insured or prospective insured is reasonable taking into account receipt of commissions and fees and their relation, proportionally, to the value of the total work performed.

Instead of seeking permission from the OIC to charge reduced fees to its customers (i.e., insureds and prospective insureds) for its employee benefit management services, or employee benefits management app or core HR services, respectively, prior to the Consent Order, Zenefits offered them for free to its customers without permission from the OIC. To allow Zenefits to offer such services for free would render RCW 48.30.157 meaningless and superfluous.

- 5.40. WAC 284-17-835, filed December 7, 2015, and effective January 7, 2016, addresses an insurance producer's conduct of promotional games of chance open to the general public. Contrary to RCW 48.30.140(4), which requires that prizes that are part of an insurance producer's advertising or promotional programs be given to all insureds or prospective insureds under similar qualifying circumstances, WAC 284-17-835 allows for an insurance producer to give the prize to just one, or less than all insured or prospective insureds, and states:

An insurance producer may conduct a promotional game of chance provided that:

- (1) The promotional game of chance is undertaken solely for the purpose of advertising and promoting the insurance producer;
- (2) No person eligible to receive the prize is required to apply for insurance, purchase insurance, refer a person to the insurance producer, or pay any other consideration to enter the promotional game of chance;

- (3) The promotional game of chance is open to the general public;
- (4) The value of the prize is limited to one hundred dollars in value;
- (5) No person receives a total of prizes exceeding one hundred dollars in value in the aggregate in any consecutive twelve-month period from the insurance producer;  
and
- (6) The promotional game of chance complies with chapter 9.46 RCW and any and all other applicable Washington state statutes and rules.

(Emphasis added).

WAC 284-17-835 is further evidence that the OIC is able to interpret statutes like RCW 48.30.140 broadly when it deems it good regulatory policy. Zenefits' position, on the other hand, would dispense with OIC regulatory oversight or policy making, and allow for it to provide for free to insureds and prospective insureds employee benefit management services, or the employee benefits management app or core HR services, respectively. This would be contrary to the statutory and regulatory scheme in RCW Chapter 48.30 and WAC Chapter 284-17.

Whether this Final Order applies to any person<sup>11</sup> besides Zenefits

- 5.41. At 8:1-3 of its Brief Regarding Review of Initial Order, Zenefits claims that "OAH universally revised the issue to be decided, replacing the 'licensee like Zenefits' language with just 'Zenefits.' See, e.g., Initial Order ¶¶ 2.1, 2.2, 6.2, 6.3." At 8:3-6 of the same Brief, Zenefits asserts that "neither party requested in their briefs or at the hearing that the issue be modified, and OAH offers no authority or reasoning for rejecting the language adopted by the Commissioner in his Consent Order or for limiting the scope of the Initial Order." (Emphasis added). Zenefits then leaps and argues in the same brief at 8:6-11 that if OAH's Initial Order is adopted, it:

[W]ill still prohibit other Washington businesses that offer insurance and non-insurance services from integrating their systems (for example, banks cannot integrate insurance management databases with free checking accounts) regardless of whether this language is reinserted. Nevertheless, the Initial Order must be amended to conform to the Commissioner's Consent Order and to the issue presented for consideration by both parties.

(Brackets and emphasis added).

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<sup>11</sup> RCW 48.01.070 defines "person" as: "[A]ny individual, company, insurer, association, organization, reciprocal or interinsurance exchange, partnership, business trust, or corporation."

Contrary to Zenefits' position in its Brief, neither the Initial Order, nor the Findings of Fact, Conclusions of Law, and Final Order issued herein, represent an agency order, directive or, regulation of general applicability, which constitutes a "Rule" per RCW 34.05.010(16).<sup>12</sup> And they are also not an instance of "Rule making" per RCW 34.05.010(18).<sup>13</sup>

- 5.42. That said, Paragraph 4 of the section of the Consent Order titled "**CONSENT TO ORDER**" (Ex. CR, p. 4) provides *only* Zenefits (i.e., Licensee) with the right to challenge the OIC's application of RCW 48.30.140 and RCW 48.30.150 to *its* business model:

The Licensee expressly preserves the right it has to challenge the Insurance Commissioner's findings and interpretation of RCW 48.30.140 and RCW 48.30.150 through the administrative process, state courts, and legislative channels. The parties agree that there is a present and existing dispute with respect to the Insurance Commissioner's findings and interpretations of RCW 48.30.140 and RCW 48.30.150, that those findings and interpretations constitute an adverse agency action and are ripe for review and justiciable, and that the Licensee has suffered harm and has standing to challenge those findings and interpretations. The Insurance Commissioner acknowledges and agrees that Licensee shall have the right to challenge the Insurance Commissioner's findings and legal interpretations set forth in this Consent Order in an adjudicative proceeding pursuant to the Washington Administrative Procedure Act within 90 days of Licensee's receipt of this fully executed Consent Order. If an administrative hearings officer, administrative law judge or court finds that this dispute is not justiciable, for any reason, this Consent Order shall be null and void.

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<sup>12</sup> RCW 34.05.010(16) defines "Rule" as:

[A]ny agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his or her designee where notice of such restrictions is given by official traffic control devices, (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes, or (v) the determination and publication of updated nexus thresholds by the department of revenue in accordance with RCW 82.04.067.

(Brackets added).

<sup>13</sup> RCW 34.05.010(18) defines "Rule making" as: "[T]he process for formulation and adoption of a rule."

(Emphasis added).

- 5.43. The position espoused by Zenefits in its Brief that any order issued following an adjudicative proceeding<sup>14</sup> before either OAH or the OIC Hearings Unit must address parties not before it ventures into a realm of claims that are neither ripe nor justiciable. In *Asarco, Inc. v. Dep't of Ecology*, 145 Wn.2d 750, 759-760, 43 P.3d 471 (2002) the Washington Supreme Court explained the concepts of ripeness and justiciability, and concluded that while it may have been convenient for a litigant to have the courts decide a controversy before the Department of Ecology issued a clean-up order to that party, this did result in a ripe claim, and stated:

[1] The ripeness doctrine exists "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49, 87 S. Ct. 1507, 18 L. Ed. 2d 681 (1967).

[2] Asarco presents us with a justiciability conundrum; while this is an "as applied" challenge, nothing has been applied. The mere convenience to Asarco of deciding the controversy ahead of Ecology's clean-up order is not enough to ripen the claim. If we find "applied challenges" justiciable before anything has been applied, we risk becoming an advisory court and overstepping our constitutional authority. Further, general constitutional challenges could be disguised as a more limited "as applied" challenge. One should not substitute for the other.

[3] [4] [5] [6] [7] [8] Justiciability requires:

"(1) . . . an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive."

*First United Methodist Church of Seattle v. Hearing Exam'r*, 129 Wn.2d 238, 245, 916 P.2d 374 (1996) (quoting *First Covenant Church v. City of Seattle*, 114 Wn.2d 392, 398, 787 P.2d 1352 (1990) (quoting *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973))). Clearly, (4) is not present here, as this case is not developed sufficiently for this Court to render a decision which will

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<sup>14</sup> RCW 34.05.010(1) defines "Adjudicative proceeding," in part, as: "[A] proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency." (Brackets added).

conclude the matter.

(Emphasis added).

Recently, in *Lee v. State*, 185 Wn.2d 608, 616, 374 P.3d 157 (2016), this state's highest court again addressed justiciability, reciting the same factors set out in *Asarco* years earlier, and stating in part: "Justiciability is a threshold requirement that must be satisfied before proceeding to a litigant's claims. *Huff*, 184 Wn.2d at 650. The focus is 'whether the question sought to be adjudicated is appropriate for the court to address.' *Id.*"

While Zenefits would prefer that OAH and the OIC Hearings Unit issue orders affecting *all licensees like Zenefits*, in the spirit of agency rule making, matters involving licensees who are not Zenefits are neither ripe nor justiciable per the standards articulated by the Court in *Asarco* and *Lee*.

- 5.44. In *Bloome v. Haverly*, 154 Wn. App. 129, 140-141, 225 P.3d 330 (2010), the court addressed the four elements of a justiciable controversy, and when any are absent, the courts stepping into the prohibited area of advisory opinions:

A justiciable controversy is

"(1) ... an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive."

*To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (alteration in original) (quoting *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973)). "Absent these elements, the court 'steps into the prohibited area of advisory opinions.'" *Branson v. Port of Seattle*, 152 Wn.2d 862, 877, 101 P.3d 67 (2004) (internal quotation marks omitted) (quoting *Walker v. Munro*, 124 Wn.2d 402, 411-12, 879 P.2d 920 (1994)).

(Emphasis added).

Per the criteria outlined in *Bloome*, there are no justiciable controversies to be decided herein involving licensees other than Zenefits. Rather, per criteria (1) of *Bloome*, disagreements OIC may have with other licensees as to the application of RCW 48.30.140 and RCW 48.30.150 are simply "possible, dormant, hypothetical, speculative, or moot." As to criteria (2)-(3) of *Bloome*, only the OIC and Zenefits have genuine and opposing interests in this matter that are direct and substantial, whereas all other licensees have simply potential, theoretical, abstract, or academic interests. Finally, per criteria (4) of

*Bloome*, the determinations by OIC herein are only final and conclusive as to Zenefits. Therefore, under *Bloome*, the Findings of Fact, Conclusions of Law, and Final Order entered herein is only applicable to Zenefits.

### **ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, I reject Paragraphs 6.1.-6.3. in ALJ Dublin's Initial Order, and replace them with Paragraphs 6.1.-6.2. which read as follows:

- 6.1. Presuming RCW 48.30.135, RCW 48.30.157, and WAC 284-17-805 are inapplicable, Zenefits' provision of valuable software functions or other valuable benefits (including employee benefit management services, the employee benefits management app, and core HR services) for free or at less than fair market value to their customers in the state of Washington (i.e., insureds and prospective insureds) violates both RCW 48.30.140(1) and RCW 48.30.150(1)(c).
- 6.2. Consistent with Paragraph 1 of the section of the Consent Order titled "**AGREED ORDER**" (Ex. CR, pp. 5-6), Zenefits will continue to charge its customers for the products set forth in Paragraph 6.1. as part of a paid service sold at fair market value until the earlier of: (1) the entry of a final, unappealed administrative or judicial order rejecting the Findings of Fact, Conclusions of Law, and Final Order set forth herein; or (2) a legislative act or regulatory provision clarifying the Insurance Code (RCW Title 48) allows Zenefits to stop charging for the products set forth in Paragraph 6.1.

November 30, 2017



William G. Pardee  
Reviewing Officer

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General.

FINDINGS OF FACT, CONCLUSIONS  
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CERTIFICATE OF SERVICE

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

On the date given below I caused to be filed and served the foregoing Findings of Fact, Conclusions of Law and Final Order on the following people at their addresses listed below:

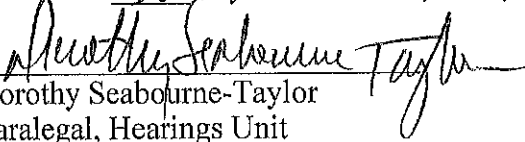
Joshua Stein  
Doug Tilley  
Your People Inc. dba  
Zenefits FTW Insurance Services  
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Mike Kreidler, Insurance Commissioner  
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner  
Melanie Anderson, Deputy Commissioner, Consumer Protection Division  
Jeff Baughman, Licensing & Education Manager, Consumer Protection Division  
Toni Hood, Deputy Commissioner, Legal Affairs Division  
Darryl Colman, Insurance Enforcement Specialist, Legal Affairs Division  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

Dated this 30<sup>th</sup> day of November, 2017, in Tumwater, Washington.

  
Dorothy Seabourne-Taylor  
Paralegal, Hearings Unit

FINDINGS OF FACT, CONCLUSIONS  
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**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

YourPeople, Inc. dba Zenefits FTW  
Insurance Services,

Appellant.

Docket No. 02-2017-INS-00009

**INITIAL ORDER**

Agency: Office of the Insurance Commissioner  
Agency No. 16-0129

**1. ISSUE**

1.1. Whether RCW 48.30.140 and RCW 48.30.150 prohibit a licensee like Zenefits, acting directly or through affiliates, from offering valuable software functions or other valuable benefits free or at less than fair market value to the public, as discussed in the Consent Order entered into by the parties in November 2016 and the Demand for Hearing Filed by Zenefits on February 16, 2017?

**2. ORDER SUMMARY**

2.1. Contrary to the Consent Order entered into by the parties in November 2016 and the Demand for Hearing Filed by Zenefits on February 16, 2017, RCW 48.30.140 and RCW 48.30.150 do not prohibit Zenefits, acting directly or through affiliates, from offering valuable software functions or other valuable benefits free or at less than fair market value to the public.

2.2. However, RCW 48.30.140 and RCW 48.30.150 prohibit Zenefits, acting directly or through affiliates, from offering valuable software functions or other valuable benefits free or at less than fair market value to those who purchase insurance through Zenefits or otherwise designate Zenefits as Broker of Record, as discussed in the Consent Order entered into by the parties in November 2016 and the Demand for Hearing Filed by Zenefits on February 16, 2017.

**3. HEARING**

3.1. Hearing Date: July 11-14, 2017

3.2. Administrative Law Judge: Lisa N. W. Dublin

3.3. Appellant: YourPeople Inc., dba Zenefits FTW Insurance Services ("Zenefits")

3.3.1. Representatives: Peter Walsh, Jennifer Fleury and consultant Beth Berrendt of Hogan Lovells US, LLP; Rob McKenna, Orrick Herrington & Sutcliffe, LLP; Senior Counsel Doug Tilley, and General Counsel Joshua Stein, Zenefits

3.3.2. Witnesses:

- 3.3.2.1. Jeff Hazard, Vice President of Sales and Principal Agent for Zenefits
- 3.3.2.2. Carol Sureau, Former Deputy Commissioner of Legal Affairs for OIC
- 3.3.2.3. Stefan Kalb, Zenefits customer

3.4. Agency: Office of the Insurance Commissioner ("OIC")

3.4.1. Representative: Darryl Colman; observers: Ross Valore and Dave Jorgenson

3.4.2. Witnesses:

- 3.4.2.1. John Hamje, Former Deputy Commissioner for the Consumer Protection division of OIC
- 3.4.2.2. Debra Calhoun, OIC investigator

3.5. Exhibits: Exhibits A-BB, BE-BU, BX, CD-CU, 1-7, 11-12, 14, 15 p.1, 16 pp. 1-3, 17, 18 pp. 1-4, 19, 20 pp 1-48, and 21 were admitted. Exhibits 15 p.1, 16 pp. 1-3, 18 pp. 1-4, and 20 pp. 1-48 are subject to the protective order entered July 13, 2017.

#### 4. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

##### *Jurisdiction*

- 4.1. On November 21, 2016, Zenefits and OIC entered into a Consent Order, which authorized Zenefits to request an administrative hearing within 90 days. Ex. CR.
- 4.2. On or about February 16, 2017, OIC received Zenefits' Demand for Hearing.

##### *Zenefits Products and Services*

- 4.3. Zenefits is an online human resources management company and insurance brokerage founded in 2013 that offers a cloud-based, software-as-a-service platform for the administration of human resources, payroll and employee benefits. Zenefits operates in all 50 states, and in Washington works primarily with small businesses. Zenefits refers to the software functions it offers as applications ("apps"). Zenefits offers a variety of apps, accessible by Smartphone; some of these apps are free to everyone, and others Zenefits charges a fee. Other third-party apps that Zenefits partners with, such as Google, Microsoft, and Uber, charge a fee to users directly.

- 4.4. Zenefits is also a licensed insurance broker in the state of Washington in the areas of health, dental, vision, life, disability, property and casualty insurance, and has been at all times relevant hereto. Ex. 3, p.1; Ex. AZ, p.5. As such, Zenefits negotiates insurance rates with carriers on employees' behalf, sells insurance products to employers for their employees, and manages these policies as part of its employee benefits management services. Zenefits then collects commissions from the insurance carriers on policies sold.
- 4.5. Under its Terms of Use Agreement dated May 23, 2017, Zenefits notifies customers they "are not required to use Zenefits for insurance services in order to obtain an account and use the Service." Testimony of Hazard.
- 4.6. For first quarter 2017, commissions on insurance sales allegedly amounted to 25% or less of Zenefits' new-customer revenue. However, as of August 2015, about 90% of Zenefits revenue companywide was generated through the insurance services it provided. Ex. AZ, p.14. Also as of August 27, 2015, approximately 31.2% of Zenefits' 657 Washington customers used the Zenefits HR platform as well as Zenefits as an insurance producer. Ex. 18, p.2.
- 4.7. Zenefits has four (4) tiers, or levels, of HR services available, which Zenefits has named after various metals. At the Bronze level, certain core HR services are free to all except (currently) Washington residents. These free HR services include account setup and access to the dashboard, on-boarding and off-boarding employees, PTO tracking, reports, and managing email accounts. See Exs. 5, BP. Anyone can go to the Zenefits website, create an account, and obtain the free HR services offered at the Bronze level. These HR services are available to employers regardless of whether they purchase insurance.
- 4.8. Also at the Bronze level, customers have access to the employee benefits management app, where they can purchase insurance products from amongst Zenefits' offerings, and obtain benefits management services. Ex. BP. Customers are not obligated to purchase insurance through Zenefits to take advantage of the other HR apps at this level. However, customers cannot obtain Zenefits' employee benefits management services unless they purchase insurance products through Zenefits.
- 4.9. At the next level, the Silver level, at a cost of \$5.00 per month per employee, customers have access to Premium HR applications including time-off management, managing and tracking federal compliance deadlines, and ACA assistance. Ex. BP, p.3. Customers may also access all Bronze-level offerings. At the next level, the Gold level, at a cost of \$8.00 per month per employee, customers have access to payroll management features, as well as all the apps available at the Silver level. For \$12.00 per month per employee, customers can

access the Platinum level of apps, which includes all the apps available at the Gold, Silver and Bronze levels as well as access to a live HR specialist. *Id.*

### *Zenefits Marketing*

- 4.10. Zenefits markets itself primarily through its website – [www.zenefits.com](http://www.zenefits.com) -- as well as through printed materials and live demonstrations. During live demonstrations to employers, Zenefits uses a script, slides and talking points. Ex. 6. In its slide show, in answer to the question "So, what *is* Zenefits?", Slide Three states most pertinently, "First and foremost, Zenefits is an insurance brokerage." The "Intent" is to "Clarify Zenefits' services and introduce Zenefits as an insurance brokerage in addition to being an HR platform." Ex. 6, p.13. Zenefits' Talking Points reiterate this later, stating "Zenefits' core function is that of an insurance brokerage. We are a national broker managing over \$350 million in premiums." *Id.*, p.15.
- 4.11. Zenefits' Talking Points state most relevantly: "The best part is that out [sic] platform is free to use. We don't license our technology, charge per month or per employee, or lock you into any contracts. Because we're an insurance brokerage, we actually make all our money from existing broker commissions." *Id.*, p.14.
- 4.12. For the HRIS & Onboarding Demo, Zenefits shows the following:
1. Following the on-boarding process, we integrate to Payroll
  2. Now this is what it looks like when we to [sic] sync with your company benefits. Your plans, license and insurance cards all stay the same, however we consolidate this into our platform for ease of use
  3. Go through medical – slowly – outline options + co-pay. Same for dental & vision
  4. And from an employee standpoint – he/she is done – Jeremy is done!
  5. Employee signs all your forms, start the payroll onboarding....
  6. \*Now if we go back to the beginning, the employer spent about 2 minutes entering in 10 fields and that's it. The employee spent about 10-15 minutes and has electronically signed their offer letter, employee handbook, NDA, W4, benefit application, etc. As your broker, we get all of that information pushed directly into the carrier websites. We set up the employee's profile in Zenefits and we push all their info into Payroll. So we completely eliminate the admin work associated with adding employees to those systems and we ensure the information is accurate across all systems.

Ex. 6, p.7.

So after employee is completed onboarding, Zenefits is: 1) Pushing the employee information into Payroll....2) Prompting the Employee to enroll in their benefits plans....3) Calculating the deductions from their plans...4) Push their deductions back to payroll....5) Store everything in 1 happy, central place so you have full and detailed records on every employee.

*Id.*, p.5.

- 4.13. Zenefits' marketing materials to Washington businesses provide, under the heading **"Here's how Zenefits works. We think you'll like it."**:

*Zenefits connects your HR systems together – from your payroll to your health insurance provider – so you and your employees can manage all your HR in one online dashboard. That means you won't need to log in seven places just to manage your HR. But it also means that any changes you make in one system will automatically be pushed to the others.*

Ex. 7, p.4 (Italics added). These same materials discuss how employees **"can easily"** ... "request vacation and time off", "view the full employee directory", "add dependents to insurance", "view insurance plans and pricing", and "clock-out and clock-in". *Id.*, p.5. Zenefits further explains that it is "the only software platform that *unifies* payroll, benefits and compliance without expensive software or complex integrations." *Id.*, p.9 (italics added). Similarly, Zenefits states, **"Get a single platform to manage all of your HR, benefits and compliance needs."** *Id.*, p.19.

- 4.14. Zenefits admits that "PEOs<sup>1</sup> charge up to \$2,000.00 per year per employee" whereas "Zenefits offers all of the same services – end-to-end payroll, benefits, and HR outsourcing – without the steep fees or long-term contracts." *Id.*, p.7. According to Zenefits, "we don't rely on admin fees to be profitable." *Id.*, p.8. Rather, Zenefits "operates on broker commissions alone, which means that [Zenefits] can offer the same core services" that its competitors allegedly offer for approximately \$97.00-\$150.00 per employee per month, "with a better online interface, for free." *Id.*, pp.36, 51, 57, 63.
- 4.15. In a white paper, Zenefits identifies the "headache" of "juggling too many HR Systems", stating in particular part, "Chances are you've a [sic] got payroll software (ADP, Zenpayroll, etc.), a health insurance portal (Blue Cross, Cigna, etc.), and some form of an HR document depository. The funny thing is that these systems

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<sup>1</sup> "PEOs" stands for Professional Employer Organizations. Ex. 1, p.8.

rely on a lot of the same information, and yet none of them are able to talk to one another. **YOUR HR SOLUTION SHOULD connect and sync your HR systems**". Ex. 7, p.100. This white paper then identifies the additional "headache": "Vendors are sucking up your time (and money)." Zenefits states in particular part, "You've got your payroll provider, your insurance broker, your carrier, your FSA administrator, your 401(k) manager, your time-tracking software partner ... (we could go on, but let's just skip ahead)...and your lawyer. And unless you invite them all to dinner, these folks will probably never meet one another. But it doesn't have to be this way – imagine if you could manage all of your vendors on one screen so that all of their systems look, act, and feel the same. **YOUR HR SOLUTION SHOULD help you manage your vendors**". Ex. 7, p.101. Zenefits then identifies itself as the remedy for these headaches. *Id.*, p.105.

- 4.16. In another white paper, regarding employee benefits, Zenefits identifies itself as the solution for millennials infuriated with repeatedly filling out the same information on various forms: "Zenefits connects your HR systems together in minutes so that you and your employees can manage all of your HR and benefits from a single online dashboard." Ex. 7, p.123.
- 4.17. Zenefits admits that most of its insurance customers use the HR platform. Testimony of Jeff Hazard. However, Zenefits insurance customers are not required to use any of the HR programs or cloud-based software. Ex. AZ, p.6.

#### *OIC Investigation*

- 4.18. OIC is comprised of several divisions that oversee investigative, compliance and enforcement matters. Following his election, Insurance Commissioner Kreidler began to streamline these divisions. Under the direction of Commissioner Kreidler and former Deputy Commissioner of Legal Affairs Carol Sureau, a culture change took place, ensuring OIC employed core values including predictability, consistency and transparency. This was deemed the "Kreidler Process." Ms. Sureau helped to develop a structure of management to implement the Kreidler Process. This included an emphasis on ensuring opinions and investigations were reduced to a written document.
- 4.19. A new policy for enforcement action went into place under the Kreidler Process. Once OIC identified an issue or complaint to investigate, it assigned an investigator to do a full and formal investigation into the issue or complaint and write an investigation report. That report would be sent to Legal Affairs for legal analysis by staff attorneys and potentially the division chair. The staff attorney would then write a memorandum ("memo") indicating whether or not there was a violation, outlining the facts and applying the law. If there was a violation, the memo would be sent to either one of two places. If it was a minor producer violation it would be sent to the Producer Enforcement Group ("PEG") comprised of a deputy from legal

affairs, a deputy from consumer protection and a senior staff attorney, for further review. If it was a major violation it would be sent to the Compliance Committee, comprised of all deputies and the assigned assistant attorney general. The Compliance Committee would also create a memo and make a recommendation for action. This memo would be sent to the staff attorney for enforcement.

4.20. In response to an inquiry in June 2014, OIC's Legal Affairs division conducted an informal review of Zenefits' business model which did not comply with the above investigative process. See Exs. F, W. Later in 2014, OIC's Consumer Protection Division led by Deputy Commissioner John Hamje received emails, including from the Independent Insurance Agents & Brokers of Washington ("IIABW"), alleging that Zenefits was providing unlawful inducements/rebates. See Exs. H, K, L. In October 2014, Legal Affairs Division Deputy Commissioner AnnaLisa Gellerman along with Commissioner Kreidler and Chief Deputy Commissioner Jim Odiome met with Zenefits, to discuss this. See Exs. U, W.

4.21. On January 9, 2015, Assistant Attorney General (AAG) Marcia Stickler issued an "Informal Legal Opinion re compliance of Zenefits with RCW 48.30.150" ("Opinion"). Ex. T. This Opinion provided in relevant part:

Is the free human resources platform provided by Zenefits, one of which includes acting as an insurance producer, compliant with RCW 48.30.150?

Yes.

[RCW 48.30.150] requires that a prohibited inducement have some connection with an insurance transaction or otherwise be an inducement, or incentive, to the purchase of insurance. The prohibition on giving insureds or prospective insureds "any prizes, goods, wares or merchandise of an aggregate value in excess of \$25" in RCW 48.30.150 does not seem to apply because Zenefits offers the human resources applications without charge or obligation to the general public and does not depend on or seek insurance business as a result. *Those who do buy insurance through Zenefits get no special reward or privilege, i.e., a rebate.* Since the insurance and non-insurance products/services offered by Zenefits are available to the general public without cost and there is no inducement or relation to the insurance products it offers, Zenefits does not violate the illegal inducement statute.

...

Inasmuch as small businesses and consumers benefit from this service, and the purchase of insurance is not connected to the

other services, *and the user will get no enhanced benefit if he or she does purchase insurance from Zenefits*, there is not a violation of the illegal inducement or rebate statute.

*Id.* (italics added).

4.22. Following this opinion, in February 2015, OIC commenced a formal investigation into Zenefits' offerings as they related to the anti-rebating and anti-inducement provisions of the state insurance code.

4.23. OIC assigned Investigator Debra Calhoun to conduct the formal investigation. As part of her investigation, Investigator Calhoun contacted Zenefits customers. One customer commented that he "was interested in the online dashboard that would allow employees to update their personal information (address/phone), schedule time off, and all this information could be updated throughout the payroll and insurance benefit sites without the need to fill out paperwork for each area." Ex. AI, p.12. Another customer similarly reflected that "the program gives the employees the ability to handle their own PTO, HR paperwork, and benefits through a portal with easy on screen comparisons. Now, they can monitor their own information without needing to contact her." Ex. AI, p.23. A third customer commented:

They did recently change their BOR to Zenefits, but that process is not up and running yet. She liked the idea that the software will generate all the needed health insurance notices directly to the employees. The system also tracks that the employee received the notice and logs that information to show the business is in compliance.

Ex. AI, p.29; Ex. 14, p.29. Yet another customer, who had not yet made Zenefits its broker of record ("BOR"), commented that "if an employee chooses to get insurance coverage the software would allow for an auto deduct from the employees paycheck." Ex. AI, p.32; Ex. 14, p.32.

4.24. Investigator Calhoun met with Zenefits, and also received written responses to her requests for information, from Zenefits legal counsel. In one such response dated April 3, 2015, Zenefits counsel wrote as follows:

In information request No. 13(c) you ask "can the employer remain with their current broker of record, keep their insurance coverage the same, and receive all the benefits of Zenefits HR software free of charge? Or, would it be required that the broker of record for the company's insurance coverage be changed to Zenefits?

Yes, an employer can maintain its current broker of record, keep its insurance the same and receive all the non-insurance benefits of the Zenefits HR platform – but not all of those other benefits are free. As noted above, many of the services available on Zenefits have a separate fee (e.g., 401(k)'s, commuter benefits, stock options tracking). The employer would have access to all of Zenefits' non-insurance related services, at the same price and on the same terms as if it used Zenefits for insurance. In this scenario, Zenefits would not administer the employer's insurance and could not offer insurance-related services (e.g., COBRA benefits, HSAs) as it would not have the necessary information to do so. The employer would continue to administer its insurance benefits as before with its existing broker of record.

Ex. 5, p.11 (underlines added).

In another response dated September 17, 2015, Zenefits counsel stated:

Here is how it works. Zenefits makes accounts available to everyone, for free. After the customer creates an account, the customer has immediate access to the Zenefits online HR platform and dashboard. Zenefits' platform offers an a la carte variety of services.... Because services are offered a la carte, an employer chooses only the services it wants. Access to the platform and its free services is **not conditioned in any way on the purchase of insurance** or any other fee-based service from Zenefits. Services that are offered for free are offered free to everyone. There are also no discounts on fee-based services or special benefits if the employer does purchase insurance.

...

In sum, Zenefits offers employers a menu of a la carte employee benefits services. Customers choose the services they want with no obligation or even incentive to use Zenefits for insurance.

Ex. 19, p.3 (underlines added); Ex. AR, pp. 3,7.

- 4.25. During this time, other states issued opinions regarding whether Zenefits violated their particular anti-rebating and anti-inducement statutes. Montana, North Carolina, Arizona, and Maryland issued opinions that Zenefits' practice of offering free software did not violate their state anti-rebating statutes, in important part because the software could be used for free with or without the purchase of insurance through Zenefits. See Exs. AG, AR p.26-27, AW.

4.26. Meanwhile, DC Hamje continued to respond to questions and concerns about Zenefits from the IIABW. DC Hamje also researched past attorney general opinions in Washington and other states regarding anti-inducement and anti-rebating statutes. In particular, DC Hamje was influenced by an April 1996 advisory letter written by an assistant attorney general for the state of Alaska, regarding the constitutionality of Alaska's anti-rebate statute, which set out several policy reasons in favor of anti-rebate laws. Ex. B. These policy reasons included the following:

- Unrestricted rebating keeps prices hidden and unavailable to government monitoring for discrimination.
- Rebating will jeopardize the livelihood of a small town producer, opening the door to concentration of business by the big players and monopolistic practices.
- Rebates will result in undue consumer emphasis on price over quality of products.
- Even well-intentioned deregulation in this area will result in unanticipated negative consequences for the general public, including, at minimum, a torrent of sharp business practices by producers.

Ex. B, pp. 9-10.

4.27. In December 2015, and again in February 2016, DC Hamje met with Zenefits representatives to determine whether the anti-inducement and anti-rebate statutes applied, and if so, whether Zenefits qualified for exception. With regard to the exception set out in RCW 48.30.157 for reduced charges for unrelated services, DC Hamje reviewed a bulletin prepared by former Insurance Commissioner Dick Marquardt which stated the purpose behind RCW 48.30.157. See Ex. 11. This bulletin stated in relevant part:

*Are there special precautions to be observed when an insurance licensee acts in a dual capacity part of which is non-insurance related? Yes, discounts or reductions in charges or the giving of other benefits or inducements to an insured, directly or indirectly, as a result of an insurance purchase may constitute rebating or a violation of the illegal inducement statute.*

*Id.* After quoting a 1978 state attorney general opinion illustrating these circumstances in the context of an insurance brokerage specializing in pension and profit-sharing plans, the bulletin went on to state the purpose of RCW 48.30.157:

As is evident, the statute permits a licensee who provides additional services to come up with an arrangement whereby the combined services may be considered in connection with the total fee. If insurance is part of the client's program, the agent could apply part of the commission against the overall charge because part of what he does as an estate planner, for example, would also have been done as an insurance agent. The statute permits a plan to avoid, in effect, a double charge for certain of the services involved in the overall transaction.

*Id.*; Ex. 11.

- 4.28. Ultimately, DC Hamje determined that Zenefits did not qualify for exception under RCW 48.30.157 because Zenefits offered HR services at no charge whatsoever, and turned his findings back over to DC Gellerman and Legal Affairs. On or around August 1, 2016, Investigator Calhoun issued her Final Investigative Report, which found in part: "The allegation that Your People Inc. – DbA: Zenefits FTW Insurance Services' (Zenefits) business model violates Washington's illegal inducement laws by offering a free online cloud-based human resource platform to Washington insurance clients is substantiated." Ex. AZ, p.2.
- 4.29. On November 21, 2016, OIC and Zenefits executed a Consent Order which stated that the Insurance Commissioner found that Zenefits offers core HR apps free, and certain premium non-insurance apps for a fee, to customers regardless of whether they designate Zenefits as BOR. Ex. CR, p.2. The Consent Order also stated that the Insurance Commissioner found that "for certain insurance-related features centered on insurance enrollment and administration, Zenefits requires a client to designate Zenefits as its broker of record. Once designated as broker of record, Zenefits imports the insurance information into its system and collects the insurance commissions related to those insurance products." *Id.* Under the Consent Order, Zenefits agreed these findings were accurate. *Id.*, pp.3-4.
- 4.30. The Consent Order stated the Insurance Commissioner concluded that "RCW 48.30.140 and RCW 48.30.150 prohibit a licensee like Zenefits, acting directly or through affiliates, from offering valuable software functions or other valuable benefits for free or at less than fair market value to the public." *Id.*, p.3. Under the Consent Order, the parties agreed that Zenefits disputed OIC's legal interpretation and could challenge it through the administrative process. The parties also agreed that Zenefits would stop providing "free use of its online, cloud-based, software-as-a-service platform that integrates the administration of human resources, payroll, and employee benefits; or (2) engage in conduct that violates RCW 48.30.140 or RCW 48.30.150 or both" until the administrative or judicial process was complete or a legislative act clarified the legality of Zenefits' conduct at issue. *Id.*, pp. 4-5.

4.31. At the evidentiary hearing, Zenefits submitted into evidence the supporting declarations of certain customers unhappy with the Consent Order. One such unhappy customer decided to designate Zenefits as BOR "because I was frustrated with the experience I had had with the slow and unwieldy process of administering benefits through our previous insurance broker. They made the process of evaluating and selecting plans very time consuming and confusing, paper-based, and not integrated into any of our HR systems...." Ex. BQ, p.3. Another unhappy customer made Zenefits its BOR in part because Zenefits was "able to electronically feed premium information for any insurance plan into our existing QuickBooks accounting and payroll software for correctly calculating payroll contributions and deductions." Ex. BR, p.3.

## 5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions by a preponderance of the evidence<sup>2</sup>:

### *Jurisdiction*

5.1. I have jurisdiction over the parties and subject matter under Chapters 34.05, 34.12 and 48.04 RCW.

5.2. The burden of proof in an administrative hearing is on the party seeking relief, in this case Zenefits. See *Schaffer v. Weast*, 546 U.S. 49 (2005).

### *Washington Anti-Rebating and Anti-Inducement Statutes*

5.3. Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, insurance producer, or title insurance agent shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy. RCW 48.30.140.

5.4. No insurer, insurance producer, title insurance agent, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise,

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<sup>2</sup> Zenefits argues that a heightened, "clear and convincing" standard applies, and that OIC bears the burden of proof in this matter. However, Zenefits cites only to an unpublished, unpersuasive opinion from the state Court of Appeals, Division II (*Len v. Office of the Superintendent of Public Instruction*, 188 Wn.App. 1040 (2015)). Unless a statute or due process requires differently, the preponderance of the evidence standard applies to resolve disputes in administrative proceedings. *Fox v. State*, 154 Wn.App. 517, 525, citing *Thompson v. Dept. of Licensing*, 138 Wn.2d 783, 797 (1999).

or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever any prizes, goods, wares, gift cards, gift certificates, or merchandise of an aggregate value in excess of one hundred dollars per person in the aggregate in any consecutive twelve-month period. RCW 48.30.150(1)(c).

- 5.5. We give words in a statute their plain and ordinary meaning unless a contrary intent is evidenced in the statute. *C.J.C. v. Corporation of Catholic Bishop of Yakima*, 138 Wn.2d 699, 708 (1998), citing *Erection Co. v. Dept. of Labor and Industries*, 121 Wn.2d 513, 518 (1993). Substantial weight and deference should be given to an agency's interpretation of the statutes and regulations it administers. *Seatoma Convalescent Ctr. v. DSHS*, 82 Wn.App. 495, 518 (1996).
- 5.6. It is well-established by both Zenefits and OIC that, prior to the November 21, 2016 Consent Order, any Washingtonian could access Zenefits' website, create an account, and have access to a limited array of core online HR services Zenefits offers, regardless of whether he or she bought insurance from Zenefits or otherwise made Zenefits BOR. Although (1) Zenefits may hope, if not intend, that such free HR service use will at some point lead users to purchase insurance services through Zenefits, and (2) Zenefits' viability as a company may depend on a number of such free HR service users and non-insurance service users ultimately purchasing insurance, Zenefits does not require these customers, directly or indirectly, to purchase insurance to use the free core HR services, and in fact the majority of Washington customers do not. Because Zenefits' free core HR services are available to all, regardless of whether insurance is purchased, such services do not violate RCW 48.30.140 and RCW 48.30.150 as an inducement to purchase insurance or as a rebate for purchasing insurance.
- 5.7. OIC argues that an inducement to insurance does not require a *quid pro quo*, and that the free HR services available to everyone are sufficiently connected with the purchase of insurance, even after insurance has been purchased, to satisfy RCW 48.30.140 and RCW 48.30.150. In fact, Zenefits markets itself as an insurance company when introducing customers to the free HR services. However, for the majority of Zenefits' Washington customers, the free core HR services are, in and of themselves, a significant value without the insurance offering, and the option to purchase insurance benefits through Zenefits or name Zenefits BOR is something possibly to consider sometime in the future. In addition, Zenefits' free core HR services promote innovation and help small businesses grow, which is good for Washington. The policy concerns for insureds that DC Hamje identified are outweighed by the value that free, mobile HR applications provide to Washington businesses. Because the connection between Zenefits' free core HR services to the public, and the purchase of insurance, is tenuous, Zenefits does not violate

RCW 48.30.140 and RCW 48.30.150 in offering and providing them to Washingtonians.

5.8. Zenefits' position vis-à-vis RCW 48.30.140 and RCW 48.30.150 falters, however, at the time customers purchase insurance through Zenefits, or make Zenefits their BOR. At that point, Zenefits makes available to its customers the full integration of their employees' insurance information with payroll and other HR services which (a) goes beyond the terms of the insurance contract, (b) goes beyond mere management of insureds' policies, and (c) is not available to those who do not purchase insurance through Zenefits or make Zenefits BOR. As Zenefits marketing materials proclaim and demonstrate, once customers use Zenefits for insurance, customers can authorize Zenefits to take and move employee information into payroll and other apps, fully integrating employees' insurance information into all relevant aspects of customers' HR services. As Zenefits admits, this full integration, marketed heavily as not just highly convenient, but valued at hundreds of dollars per employee per year, is not available to customers who do not use Zenefits as BOR.

5.9. Zenefits' references to other free benefits administration services provided by other Washington insurance brokers to their insurance customers, such as education seminars, a benefits helpline, secure 24/7 online access to employee benefits information and a client portal to an online service center, fall short of the full HR integration Zenefits freely offers only to its insurance customers. Nor has Zenefits persuasively shown that any statutory exceptions apply.

5.10. Zenefits argues that it is no different than Expedia, banks, Regence and others that allegedly integrate insurance products with other non-insurance offerings. However, these organizations' insurance offerings are not at issue in this matter, and no determination is made by this tribunal regarding these organizations' compliance with the anti-inducement and anti-rebating statutes of the state insurance code.

5.11. Contrary to Zenefits' counsel's representations, such full HR integration is a significant, heavily-promoted, special benefit, offered and freely given only after insurance through Zenefits has been effected, and thus amounts to an improper rebate under RCW 48.30.140. In addition, such full integration offered and freely given only in connection with the purchase of insurance through Zenefits, amounts to an improper inducement under RCW 48.30.150.

## 6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

6.1. The Office of the Insurance Commissioner action is MODIFIED.

6.2. RCW 48.30.140 and RCW 48.30.150 do not prohibit Zenefits, acting directly or through affiliates, from offering valuable software functions or other valuable benefits free or at less than fair market value to the general public, regardless of whether insurance is purchased, as discussed in the Consent Order entered into by the parties in November 2016 and the Demand for Hearing Filed by Zenefits on February 16, 2017.

6.3. RCW 48.30.140 and RCW 48.30.150 prohibit Zenefits, acting directly or through affiliates, from offering valuable software functions or other valuable benefits free or at less than fair market value to those who purchase insurance through Zenefits or otherwise designate Zenefits as Broker of Record, as discussed in the Consent Order entered into by the parties in November 2016 and the Demand for Hearing Filed by Zenefits on February 16, 2017.

Issued from Tacoma, Washington on the date of mailing.



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Lisa N. W. Dublin  
Administrative Law Judge  
Office of Administrative Hearings

CERTIFICATE OF SERVICE ATTACHED

## APPEAL RIGHTS

### FINAL ORDER:

An initial order does not become a final order until the Insurance Commissioner reviews it.<sup>3</sup> The Insurance Commissioner's Chief Hearing Officer will automatically review this matter and issue a final order.

### PETITION FOR REVIEW:

In addition to the automatic review, any party may file a Petition for Review.<sup>4</sup> If you file a Petition for Review, the Chief Hearing Officer will consider your specific objections to the Initial Order and your arguments for a different result.

You must file your Petition for Review with the Office of the Insurance Commissioner (OIC) within twenty (20) days of the date OAH mailed the Initial Order.<sup>5</sup> "File" means served on all other parties and delivered during business hours.<sup>6</sup> Mail a copy to the other parties at the addresses in the Certificate of Mailing below.

The Petition for Review must specify all parts of the Initial Order that you dispute and the evidence that supports the Petition.<sup>7</sup> Other parties may file a reply to the Petition within 10 days after the petitioner serves the Petition.<sup>8</sup>

Deliver the Petition for Review and Reply to the following address:

Office of Insurance Commissioner  
Chief Hearing Officer  
Hearings Unit, OIC  
PO Box 40255  
Olympia, WA 98504-0255

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<sup>3</sup> WAC 284-02-070(2)(c)(i).

<sup>4</sup> RCW 34.05.464; WAC 10-08-211.

<sup>5</sup> WAC 10-08-211.

<sup>6</sup> WAC 10-08-110.

<sup>7</sup> WAC 10-08-211(3).

<sup>8</sup> WAC 10-08-211(4).

# CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 02-2017-INS-00009

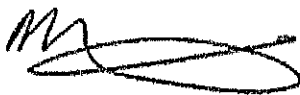
I certify that true copies of this document were served from Tacoma, Washington via Consolidated Mail Services upon the following as indicated:

Joshua Stein, CCO and VP Legal Your People Inc. dba Zenefits FTW Insurance Services North Tower, 303 Second Street #401 San Francisco, CA 94107 <b>Appellant</b>	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Peter Walsh Hogan Lovells US LLP 80 South Eighth Street, Suite 1225 Minneapolis, MN 55402 <b>Appellant Representative</b>	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Jennifer Fleury Hogan Lovells US LLP 555 Thirteenth Street, N.W. Washington, DC, 20004 <b>Appellant Representative</b>	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Robert McKenna Orrick Herrington & Sutcliffe LLP 701 5 <sup>th</sup> Avenue, Suite 5600 Seattle, WA 98104 <b>Appellant Representative</b>	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Thomas Welsh Orrick Herrington & Sutcliffe LLP 400 Capital Mall Suite 3000 Sacramento, CA 95814 <b>Appellant Representative</b>	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail

Darryl Colman Insurance enforcement Specialist MS: 40255 PO Box 40255 Olympia, WA 98504 <b>Agency Representative</b>	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Dorothy Seabourne-Taylor Office of Insurance Commissioner MS: 40255 PO Box 40255 Olympia, WA 98504 <b>Agency Contact</b>	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Chief Hearing Officer Hearings Unit, OIC MS:40255 PO Box 40255 Olympia, WA 98504 <b>Agency Contact</b>	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail

Date: Wednesday, October 25, 2017

OFFICE OF ADMINISTRATIVE HEARINGS



Melanie Barnhill  
Legal Assistant