

STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of:

Docket Nos. 20-0257 & 20-0457

**ARMED CITIZENS’ LEGAL
DEFENSE NETWORK, INC.**

OIC’S RESPONSE IN OPPOSITION
TO APPELLANT’S MOTION TO
STAY CEASE AND DESIST

Appellant.

I. RELIEF REQUESTED

The Insurance Commissioner of the state of Washington (“OIC” or “Insurance Commissioner”) hereby responds to Appellant’s Motion to Stay Cease and Desist Order (“Motion to Stay”). The Insurance Commissioner respectfully requests that the Presiding Officer deny the Motion to Stay. The Insurance Code, Title 48 RCW, vests the authority to regulate all insurance transactions in this state in the Insurance Commissioner. Here, the Insurance Commissioner conducted a diligent investigation of Armed Citizens’ Legal Defense Network, Inc. (“Armed Citizens” or “Appellant”) and found that the corporation is acting as an unauthorized insurer in Washington.

Upon determining that Armed Citizens was transacting insurance as an insurer in Washington without a Certificate of Authority, the Insurance Commissioner issued Cease and Desist Order No. 20-0257 (“Order”). The Insurance Commissioner was authorized to issue the Order pursuant to RCW 48.02.080 and RCW 48.15.023. OIC respectfully asks that the Presiding Officer deny the Motion to Stay. This response is based on all the documents in the record of this matter, including the Declaration of Jessica Bullington, and Exhibits 1-10, filed concurrently with this response.

II. INTRODUCTION

A. Overview of OIC’s Regulation of Unauthorized Insurers

The Insurance Commissioner acts to protect the public interest. RCW 48.01.030 provides:

1 The business of insurance is one affected by the public interest, requiring
2 that all persons be actuated by good faith, abstain from deception, and
3 practice honesty and equity in all insurance matters. Upon the insurer, the
4 insured, their providers and their representatives rests the duty of preserving
5 inviolate the integrity of insurance.

6 The Insurance Commissioner must also execute his duties and enforce the
7 provisions of the Insurance Code. *See* RCW 48.02.060(2). To protect the public in
8 insurance matters, "the legislature created the office of Insurance Commissioner and
9 conferred upon that office the duty of enforcing the provisions of the code." *Ins. Co. of N*
10 *Am. v. Kueckelhan*, 70 Wn.2d 822, 831, 425 (1967). To fulfill its mandate, the Insurance
11 Code vests the Insurance Commissioner with broad authority. *Nat'l Fed'n of Retired*
12 *Persons, Inc. v. Ins'r Comm'r*, 120 Wn.2d 101, 109 (1992). The Insurance Commissioner
13 "has the authority expressly conferred upon him by or reasonably implied from the
14 provisions of the [Insurance Code]." *See* RCW 48.02.060(1); *Nat'l Fed'n of Retired*
15 *Persons*, 120 Wn.2d at 109.

16 Unauthorized insurance strikes at the heart of insurance regulation. The Insurance
17 Code prohibits an insurer that is not authorized by the Insurance Commissioner from
18 soliciting insurance business or transacting insurance business in Washington. *See*
19 RCW 48.15.020(1). The Insurance Commissioner has the duty to protect consumers and
20 the public from being harmed by companies who are not properly authorized by the
21 Insurance Commissioner to transact insurance in Washington.

22 For this type of misconduct, Legislators provided the Insurance Commissioner
23 with broad fining authority, up to \$25,000 per violation, RCW 48.15.023(5)(a)(ii),
24 designated such knowing misconduct as a felony, RCW 48.15.023(3), and did not grant
25 unauthorized insurers an automatic stay, RCW 48.15.023(5)(a)(i). From a policy
26 standpoint, these statutory penalties are stiff and warranted because unauthorized insurers
cause substantial harm to consumers and the insurance industry, relative to other Insurance
Code violations. Among many requirements, unauthorized insurers do not comply with
the Insurance Code's rate and form filing requirements, capital and surplus requirements,
and prohibitions on unfair trade practices. Unauthorized insurers also avoid paying
premium taxes, another important requirement of Washington insurers. Moreover,

1 insurers that avoid regulation have an unfair advantage over insurers that comply with the
2 Insurance Code and regulations.

3 **B. OIC’s Investigation and Procedural Background**

4 Armed Citizens’ Legal Defense Network, Inc. (“Armed Citizens”) was formed on
5 June 6, 2011 as a Washington Profit Corporation with a principal office located in
6 Onalaska, Washington. *Bullington Decl.*, Ex. 1. Marty Hayes is the President, Registered
7 Agent and Governor of Armed Citizens. *Id.*

8 Armed Citizens’ Educational Foundation (“Educational Foundation”) was formed
9 on September 25, 2012 as a Washington Non-Profit Corporation. *Bullington Decl.*, Ex. 2.
10 The Educational Foundation shares the same principal office street address, principal
11 office mailing address and governors as Armed Citizens’ Legal Defense Network, Inc.
Bullington Decl., Ex. 1; Ex. 2.

12 The Insurance Commissioner opened an investigation into Armed Citizens after
13 OIC reviewed Armed Citizens’ website. *Bullington Decl.*, para. 5. According to this
14 website, Armed Citizens was founded in 2008 with insurance as part of its mission:

15 “To help members in the legal fight after they justifiably use force in self
16 defense by paying for the services of attorneys, expert witnesses, private
investigators and other professionals essential to mounting a vigorous legal
defense of self defense on behalf of our members.”

17 *Bullington Decl.*, Ex. 9, p. 16. Armed Citizens does not possess a Certificate of Authority
18 authorizing it to act as an insurer in Washington State. *Bullington Decl.*, para. 7.
19 OIC Investigator (“INV”) Jessica Bullington was assigned to this matter. *Id.* at para. 6.

20 On April 15, 2019, INV Bullington sent a Notice of Investigation (“NOI”) to
21 Armed Citizens and requested a response by May 6, 2020. *Bullington Decl.*, Ex. 3. After
22 receiving additional time from INV Bullington to respond, Armed Citizens submitted a
23 response to the NOI on May 20, 2019. *Bullington Decl.*, Ex. 4. INV Bullington informed
24 Armed Citizens that the response was unresponsive. *Id.* at 1-2. As Armed Citizens was
25 uncooperative and did not provide an adequate response to the NOI, the Insurance
26 Commissioner issued a subpoena duces tecum (“OIC’s Subpoena”) upon Armed Citizens
on June 26, 2019. *Bullington Decl.*, Ex. 5. *See also Bullington Decl.*, paras. 9-13.

1 Armed Citizens did not make any objections to OIC’s Subpoena. *Bullington Decl.*,
2 para. 14. On July 26, 2019, Mr. Hayes visited OIC’s Olympia office and hand delivered
3 the requested records to INV Bullington. *Id.* at para. 15; *Bullington Decl.*, Ex. 6. Armed
4 Citizens only addressed concerns with the confidentiality of specific records provided to
5 OIC. *Bullington Decl.*, Ex. 6, p. 2.

6 One of the materials that Armed Citizens provided, the Membership Application
7 Brochure (“Brochure”), shows that Armed Citizens is acting as an unauthorized insurer.
8 *Bullington Decl.*, Ex. 7. Armed Citizens makes offers of insurance in exchange for
9 membership fees. For example, the Brochure advertises the following “membership
10 benefits”:

11 Immediate funding: When a member uses force in self defense, the Network
12 immediately sends up to \$25,000 to the member’s attorney and can provide
13 up to \$25,000 in bail assistance. This assistance is extended after any legal
14 self-defense incident whether you use a firearm or other defense option.

15 *Id.* at 2; *See also Bullington Decl.*, Ex. 8. In addition to this coverage, Armed Citizens
16 offers further membership benefits:

- 17 • “a free hand to tailor post-incident legal assistance to meet the varying needs each
18 situation dictates”
- 19 • “paying the expenses to assure a vigorous legal defense if the case goes to trial”
- 20 • “the expertise of an additional attorney or attorneys to contribute much needed
21 experience to the trial team, as well as pay for expert witnesses, private
22 investigators and other expenses to defend the member’s self-defense actions”
- 23 • “legal funding to defend against civil law suit”
- 24 • “Additional assistance can be extended if a retrial or appeal is needed, too.”

25 *Bullington Decl.*, Ex. 7, p. 2.

26 To become a member and receive these benefits, consumers must attest to a clear
criminal history and pay the following membership fees:

Single membership: \$135 - 1 year; \$295 - 3 year; \$795 - 10 year

Couple membership: \$195 - 1 year; \$474- 3 year; \$1390 - 10 year

Bullington Decl., Ex. 7, p. 2; Ex. 9, p. 8. Once enrolled, Members receive an Explanation
of Membership Benefits (“Explanation”) from Armed Citizens and a Membership Card.

1 *Bullington Decl.*, Ex. 8. Armed Citizens allocates twenty-five percent (25%) of collected
2 membership fees to its Legal Defense Fund. *Bullington Decl.*, Ex. 9, p. 4. This fund has
3 grown to over two (2) million dollars. *Id.* Armed Citizens consists of over 17,000 members
4 nationwide. *Bullington Decl.*, Ex. 9, p. 18. Since 2008, 2,559 Washington consumers have
5 purchased memberships from Armed Citizens. *Bullington Decl.*, para. 16.

6 Armed Citizens provided a list of 25 members across the country that sought
7 coverage for incidents. *Bullington Decl.*, Ex. 10. Armed Citizens made payments related
8 to 22 memberships. *Id.* Of the 25 claims, two (2) incidents occurred in Washington. *Id.* at
9 3. For the first one, Armed Citizens paid a member \$2,000. *Id.* The member was a victim
10 of road rage and displayed a firearm to stop the incident; no criminal charges were
11 brought. *Id.* For the second one, a member “arrived home, found neighbor’s dog in yard,
12 went inside for a gun, went back outside and fired shots to scare dog.” *Id.* Armed Citizens
13 did not pay anything in regards to this member’s claim, as Armed Citizens found the
14 member's incident was not self-defense. *Id.* Armed Citizens has paid claims related to
15 incidents in Washington and other states, ranging from \$400 to \$75,000. *Id.*

16 Armed Citizens has made claims that the membership at issue does not constitute
17 insurance. The Brochure, for example, states: “Armed Citizens’ Legal Defense Network
18 membership benefits are not insurance reimbursements. That’s a good thing!” *Bullington
19 Decl.*, Ex. 7, p. 2; Ex. 9, pp. 11, 19. However, OIC determined that the substance of the
20 transaction in fact did constitute insurance.

21 Based in part on the evidence summarized above, OIC determined that Armed
22 Citizens was acting as an unauthorized insurer. Accordingly, on March 26, 2020, the
23 Insurance Commissioner issued the Order, detailing Armed Citizens’ conduct which
24 violated RCW 48.05.030 and RCW 48.15.020. The present appeal followed.

25 **III. AUTHORITY**

26 “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.” RCW 48.01.020. The Insurance Commissioner has
broad authority to issue a cease and desist order against an unauthorized insurer without

1 providing advance warning or an automatic stay should the entity file a hearing demand.
2 If the Insurance Commissioner has cause to believe that any person is violating or is about
3 to violate any provision of this code, or any regulation or order of the Commissioner, he
4 or she may issue a cease and desist order. RCW 48.02.080(3)(a). Chapter 48.15 RCW
5 specifically authorizes the Insurance Commissioner to order unauthorized insurers to
6 cease and desist. RCW 48.15.023(5)(a)(i). The Insurance Code also grants the Insurance
7 Commissioner the discretionary authority to grant a stay of an action taken by him. *See*
8 RCW 48.04.020(2). The Insurance Commissioner has delegated this authority to the
9 Presiding Officer. *See* WAC 284-02-070(2)(d)(i).

10 IV. LEGAL STANDARD

11 A stay is not a matter of right, but an exercise of judicial discretion. *Virginian R.*
12 *Co. v. United States*, 272 U.S. 658, 672 (1926). The original purpose of a stay was pending
13 appeals, and specifically “maintaining the status quo and preserving the fruits of the appeal
14 should it prove successful.” *In re Koome*, 82 Wn.2d 816, 818 (1973). Where a court is
15 “sufficiently convinced that a stay is necessary to avoid undue prejudice to a party’s
16 prosecution [or defense] of a matter,” a discretionary stay may be warranted. *In re*
17 *Marriage of Herridge*, 169 Wn. App. 290 (2012) (Emphasis added). Furthermore, “[t]he
18 party requesting a stay must make out a clear case of hardship or inequity in being required
19 to go forward.” *State v. Longo*, 185 Wn. App. 804, 812 (2015), *rev. den.*, 183 Wn.2d 1012
20 (2015). The Presiding Officer recently considered these standards, and found that “an
21 equitable weighing of the interests at stake seems the most prudent approach.” *In the*
22 *matter of OneShare Health, LLC*, OIC Docket No. 20-0250, Order on Motion for
23 Discretionary Stay, pp. 2-3.

24 Here, OIC’s interests in preventing unlawful and unregulated activity outweighs
25 the asserted harm to Armed Citizens. Such harm is also an expected consequence of
26 Armed Citizens acting unlawfully in Washington and being told to cease and desist.
Armed Citizens is “not entitled to reprieve from any alleged harm if it is acting
unlawfully.” *Id.* at 3. On the other hand, OIC has established prima facie evidence and
ample authority to show that Armed Citizens is acting unlawfully by transacting insurance

1 in Washington and therefore, subject to OIC’s regulatory authority. Accordingly, the
2 Presiding Officer should deny the Motion to Stay.

3 **V. ANALYSIS AND ARGUMENT**

4 OIC’s interest in preventing Armed Citizens from committing unlawful and
5 unregulated activity outweighs any consequences that have occurred, or are speculated to
6 occur, from OIC ordering Armed Citizens to cease such misconduct. The Order is justified
7 entirely by OIC’s finding that Armed Citizens transacted unauthorized insurance and
8 OIC’s clear statutory authority. RCW 48.02.080(3)(a); RCW 48.15.023(5)(a)(i). Further,
9 Armed Citizens is not prevented from administering the existing memberships of
10 Washington members and providing Washington consumers and members any of the non-
11 insurance benefits (Motion to Stay, p. 1, (1)-(4)) offered in memberships, reducing any
12 potential harm to Armed Citizens while this matter is litigated.

12 *i. OIC’s Subpoena*

13 In the Motion to Stay, Armed Citizens asserts OIC’s Subpoena was unlawful.
14 *Motion to Stay*, pp. 3-4, 8-9. Armed Citizens was represented by counsel when the
15 subpoena was served and counsel assisted Armed Citizens in its response. *Bullington*
16 *Decl.*, Exs. 4-6. Furthermore, OIC informed Armed Citizens of the applicable authority
17 and explained Armed Citizens’ rights under CR 45 to timely file a motion requesting the
18 subpoena to be quashed or modified. *Bullington Decl.*, Ex. 5, pp. 3, 5. Instead, Armed
19 Citizens did not make any objections, provided the requested records and asserted certain
20 records were confidential. *Bullington Decl.*, paras. 14-15; Ex. 6. For these reasons, Armed
21 Citizens waived its right to contest the subpoena. RCW 48.04.010(3). *See also Estate of*
22 *Dempsey v. Spokane Wash. Hosp. Co.*, 1 Wn. App. 2d 628, 637 (2017)(discussing the
23 doctrine of waiver). The matter in front of the Presiding Officer is OIC’s authority to issue
24 the Order. Armed Citizens’ untimely assertions regarding OIC’s Subpoena are more
25 importantly, immaterial to whether OIC was authorized to issue the Order.
26

1 ii. *OIC is authorized to issue the Order, effective immediately, and Armed*
2 *Citizens has been afforded Due Process to contest the Order.*

3 The Insurance Commissioner has the authority to order unauthorized insurers to
4 cease and desist. RCW 48.15.023(5)(a)(i). Contrary to Armed Citizens’ assertions, OIC
5 did not “circumvent” Armed Citizens’ ability to obtain an automatic stay. A Cease and
6 Desist Order under these circumstances may be issued effective immediately, whereas
7 other orders have a statutorily required notice period that is required prior to effectiveness.
8 *See, e.g.,* RCW 48.17.540 (revocation of license) and RCW 48.05.150 (suspension of
9 certificate of authority). It must also be noted that the notice periods found in Title 48
10 pertain to authorized entities. The Legislature decided to provide advance notice to
11 authorized entities, and decided not to provide advance notice to unauthorized entities,
12 such as Armed Citizens. That same statutory scheme does not provide for an automatic
13 stay when received on or after the effective date of an order on appeal. RCW 48.04.020.
14 These statutes, read in harmony, demonstrate that the Legislature did not intend for
15 unlawful activities to receive a stay as a matter of right.

16 OIC issued the Order to prevent any future harm by Armed Citizens’ unlawful and
17 unregulated conduct. Under these circumstances and the applicable statutory framework,
18 Armed Citizens was provided the required notice, an opportunity to contest the Order by
19 exercising its rights to an administrative hearing and the opportunity to request a
20 discretionary stay pursuant to RCW 48.04.020. OIC’s Order does not deprive Armed
21 Citizens of liberty or property interests; it simply orders Armed Citizens to cease and
22 desist from the specified unlawful conduct in violation the Insurance Code. Armed
23 Citizens is permitted to conduct any of the other activities Armed Citizens provides to
24 members. *Motion to Stay*, p. 1. To the extent solicitation of new business of unauthorized
25 insurance is a protected property interest, Armed Citizens has been afforded what due
26 process requires: the ability to contest the decision in the present hearing. Due process
27 does not include a stay as a matter of right. *Virginian*, 272 U.S. at 672.

28 Lastly, OIC would like to make clear that the Order provides:

29 ***IT IS FURTHER ORDERED*** *that nothing herein shall prevent the Respondent*
30 *from fulfilling the terms of contracts formed prior to the effective date of this Order*
31 *pursuant to RCW 48.15.020(2)(b).*

1 Order, p. 3. The Order does not prevent Armed Citizens from honoring its existing
2 memberships in Washington. Armed Citizens' Washington members that purchased their
3 memberships before the effective date of the Order have the option to renew their
4 memberships. The Order only prohibits Armed Citizens from soliciting and selling new
5 memberships that include insurance.

6 *iii. Armed Citizens transacted insurance business in Washington.*

7 The Insurance Commissioner had cause to find that the Armed Citizens insured
8 members in Washington State without authorization. "Insurance is a contract whereby one
9 undertakes to indemnify another or pay a specified amount upon determinable
10 contingencies." RCW 48.01.040. "Words in a statute are given their ordinary meaning and
11 common meaning absent a contrary statutory definition." *John H Sellen Constr. Co. v.*
Dep't of Revenue, 87 Wn.2d 878, 882 (1976).

12 In an effort to circumvent OIC's regulatory authority, Armed Citizens explains the
13 memberships at issue provide "access to *potential* assistance with legal fees should a
14 member be involved in a lawful use of force situation." *Motion to Stay*, pp. 2-3. This
15 assertion is at odds with Armed Citizens' representations of the membership benefits. As
16 to the existence of an insurance contract, it is irrelevant that a contract asserts that it is not
17 one of insurance. *McCarty v. King County Medical Serv. Corp.*, 26 Wn.2d 660, 684 (1946)
18 (citations omitted). Instead, courts must examine "[t]he real character of this promise, or
19 of the act to be performed, cannot be concealed or changed by the use or absence of words
20 in the contract itself; and it is wholly immaterial that on its face this contract does not
21 expressly purport to be one of insurance, and that this word nowhere appears in it." *Id.*
22 (quotation omitted). "No one can change the nature of insurance business by declaring in
23 the contract that it is not insurance." *Id.*, at 684. Specifically, the nature of the contract,
24 and "the examination of its contents," aside from the terms used or omitted, determine
25 whether a contract is one of insurance. *Id.*

26 Armed Citizens offers Washington consumers coverage based upon determinable
contingencies. See RCW 48.01.040. For example, Armed Citizens offers to pay specified
amounts, representing "[w]hen a member uses force in self defense, the Network

1 immediately sends up to \$25,000 to the member’s attorney and can provide up to \$25,000
2 in bail assistance.” *Bullington Decl.*, Ex. 7, p. 2. The Explanation states when a member
3 is involved in a self-defense incident, Armed Citizens “sends an initial fee deposit to [the
4 member’s] attorney so he or she immediately has funding to represent [the member]
5 during any questioning and can initiate an independent investigation of the incident for
6 [the member’s] protection.” *Bullington Decl.*, Ex. 8, p. 1. The Explanation also states: “In
7 the event a Network member is arrested and held in jail AND the court sets a bail that the
8 member must post before he or she is released, the Network will assist the member in
9 making that bail.” *Id.* at 2. Under RCW 48.01.040, the described immediate coverage for
10 legal representation and bail when a member uses force in a self-defense incident, clearly
11 constitutes insurance. Armed Citizens also offers to cover additional expenses:

- 12 • “a free hand to tailor post-incident legal assistance to meet the varying needs each
13 situation dictates”
- 14 • “paying the expenses to assure a vigorous legal defense if the case goes to trial”
- 15 • “the expertise of an additional attorney or attorneys to contribute much needed
16 experience to the trial team, as well as pay for expert witnesses, private
17 investigators and other expenses to defend the member’s self-defense actions”
- 18 • “legal funding to defend against civil law suit”
- 19 • “Additional assistance can be extended if a retrial or appeal is needed, too.”

20 *Id.* at 2. Here, Armed Citizens offers to indemnify¹ its members against a variety of
21 additional legal expenses. *See* RCW 48.01.040.

22 In order to accept the offers, and become eligible to receive the insurance benefits
23 discussed above, Washington consumers fill out an application and pay membership fees.
24 *Id.* at 1. Armed Citizens then provides members with the Explanation and a Membership
25 Card. *Bullington Decl.*, Ex. 8. These materials act similarly to a traditional insurance
26 policy. Additionally, Armed Citizens enters into a contractual arrangement with
Washington consumers. In exchange for consumers becoming members and paying

¹ “Indemnify” is defined as “1a: to secure or protect against hurt or loss or damage... b: to exempt from incurred penalties or liabilities”. *Webster’s Third New International Dictionary of the English Language* 1147 (2002).

1 recurring fees, Armed Citizens agrees to provide coverage for specific events.²
2 Specifically, if a member is involved in a self-defense incident, Armed Citizens agrees to
3 pay many different types of legal and bail expenses. *Bullington Decl.*, Ex. 7; Ex. 8; Ex. 9.
4 In communications and documents provided to members, these contractual terms are
5 framed as promises, not optional decisions that Armed Citizens may make on a
6 discretionary basis. The Explanation further explains the process a member should follow
7 for his or her attorney to receive the initial fee deposit, bail bond assistance and additional
8 legal related expenses. *Bullington Decl.*, Ex. 8. Similar to an authorized insurer that
9 reviews a claim and decides whether an incident is covered under an insurance policy,
10 Armed Citizens has established a review process of members' claims; the review process
11 functions to determine whether a member acted in self-defense and is therefore, covered
12 under the membership:

11 The Network's Advisory Board will review the facts of the case and advise the
12 Network leadership on specific issues of legal self defense on which decisions to
13 grant financial support rest. This review is never undertaken to deny assistance to
14 a member who acted in legitimate self defense, but rather to prevent accusations
15 that the Network supports or encourages use of force without justification.

15 *Id.* at 2. Under RCW 48.01.040, Armed Citizens' membership acts and functions as
16 insurance.

17 The membership agreement also constitutes a contract of insurance. Armed
18 Citizens, in an attempt to avoid regulation, states there is "no contractual obligation for
19 ACLDN to provide any member with funds to assist with legal fees." *Motion to Stay*, p. 2.
20 The assertion clearly contradicts Armed Citizens' numerous representations of the types
21 of coverage offered. In its FAQ webpage for example, Armed Citizens explains:

21 What does my membership fee buy me? An initial fee deposit of up to \$25,000
22 paid to the member's attorney by the Network if the member has been involved in
23 a self-defense incident... The Network will pay a bail bond agent up to \$25,000 to
24 post bail on behalf of a member who has used force in self defense.

25 ² See e.g. *Love v. Money Tree, Inc.*, 279 Ga. 476, 478-479 (2006) (finding an automobile membership which,
26 in exchange for a monthly fee, paid for 'moving traffic violations up to \$200...up to \$100 in attorney fees
to collect damages for personal injuries sustained in an auto accident or to defend a member in traffic court;
and up to \$ 750 in attorney fees if prosecuted for criminal manslaughter' constitutes insurance.").

1 (Emphasis added.) *Bullington Decl.*, Ex. 9, p. 2. Despite making clear representations
2 about the insurance coverage members have paid for, Armed Citizens denies any
3 obligation to provide members with such coverage. Such deceptive conduct is one of the
4 reasons why the Order is necessary. The Order is necessary to prevent further unlawful
and unregulated insurance activity.

5 OIC has established prima facie evidence that Armed Citizens is transacting
6 insurance in Washington.

7 iv. *Armed Citizens acted as an unauthorized insurer and solicited*
8 *unauthorized insurance in Washington.*

9 Based on Armed Citizens' offer of insurance to Washington consumers, the
10 corporation is in violation of the Insurance Code, specifically RCW 48.05.030(1) and
11 RCW 48.15.020(1). RCW 48.05.030(1) states that no person shall act as an insurer and no
12 insurer shall transact insurance in this state other than as authorized by a certificate of
13 authority issued to it by the Insurance Commissioner and then in force; and
14 RCW 48.15.020(1) states that an insurer that is not authorized by the Insurance
15 Commissioner may not solicit or transact insurance business in this state. *See also*
16 RCW 48.01.050; RCW 48.01.060. The Insurance Code defines "[i]nsurer" as used
including every person engaged in the business of making contracts of insurance. *See*
17 RCW 48.01.050.

18 Armed Citizens has solicited and insured members in Washington. *Bullington*
19 *Decl.*, Exs. 7-10. Armed Citizens provided records showing since it provided records
20 showing that since 2008, 2,559 Washington consumers have purchased the memberships
21 at issue. *Bullington Decl.*, para. 16. OIC has submitted prima facie evidence showing the
22 memberships at issue are insurance under RCW 48.01.040. Further, Armed Citizens
23 Brochure and membership materials show the corporation is engaged in the business of
making contracts of insurance and therefore acting as an insurer under RCW 48.01.050.
24 Armed Citizens is not authorized to transact insurance as an insurer in Washington.
Bullington Decl., para. 7.

25 In order to prevent Armed Citizens from conducting further business as an
26 unauthorized insurer, the Insurance Commissioner was authorized to issue a Cease and

1 Desist Order against Armed Citizens pursuant to RCW 48.02.080(3)(a) and
2 RCW 48.15.023(5)(a)(i). Weighing the interests of Armed Citizens, an unauthorized
3 insurer, against the interests of the Insurance Commissioner, as well as OIC's statutory
4 interest in protecting consumers and the public from unauthorized insurers, should result
5 in the Presiding Officer denying the Motion to Stay. The Insurance Commissioner has
6 established prima facie evidence of Armed Citizens' unlawful and unregulated conduct
and has a strong interest to prevent such conduct.

7 The business harm that Armed Citizens, as an unauthorized insurer, has allegedly
8 suffered is conversely the precise harm that Legislators contemplated and condoned for
9 unauthorized insurers. *See* RCW 48.17.540(2), providing for an automatic stay for
10 producer revocations, but not for unauthorized insurance under RCW 48.15.023. Lastly,
11 the Insurance Commissioner has acted within his authority to prevent Armed Citizens
12 from continuing to transact insurance as an unauthorized insurer. For these reasons, the
Motion to Stay should be denied.

13 V. CONCLUSION

14 Based on the evidence, authority, and arguments made above, the Insurance
15 Commissioner has the authority to issue the Order. OIC has presented prima facie
16 evidence showing Armed Citizens has transacted insurance without a Certificate of
17 Authority. OIC's interests in preventing unlawful and unregulated activity outweighs the
18 asserted harm to Armed Citizens. Further, the Order only prevents Armed Citizens from
19 transacting the conduct OIC has established is unlawful. Therefore, the OIC respectfully
20 requests that the Presiding Officer deny the Motion to Stay.

21 SIGNED this 5th day of June, 2020.

22 /s/: Sofia Pasarow
23 SOFIA PASAROW
24 Insurance Enforcement Specialist
25 Legal Affairs Division
26

CERTIFICATE OF MAILING

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 served the foregoing OIC'S RESPONSE IN OPPOSITION TO APPELLANT'S MOTION TO STAY CEASE AND DESIST, DECLARATION OF JESSICA BULLINGTON, and CORRESPONDING EXHIBITS 1-10 on the following individuals in the manner indicated:

Julia Eisentrout, Presiding Officer Office of the Insurance Commissioner 5000 Capitol Boulevard SE Tumwater, WA 98501 hearingsu@oic.wa.gov juliae@oic.wa.gov	Spencer D. Freeman Attorney at Law Freeman Law Firm, Inc. 1107-½ Tacoma Avenue South Tacoma, WA 98402 sfreeman@freemanlawfirm.org sierra@freemanlawfirm.org
<i>By email.</i>	<i>By email per electronic service agreement between the parties.</i>

SIGNED this 5th day of June, 2020, at Tumwater, Washington.

/s/ Kimberly Shoblom

Kimberly Shoblom
Paralegal