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**STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER**

In the Matter of

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

Appellant.

Docket No. 20-0257 & 20-0457

**ARMED CITIZENS’ LEGAL DEFENSE
NETWORK, INC.’S OPPOSITION TO
OIC’S MOTION FOR SUMMARY
JUDGMENT**

Armed Citizens’ Legal Defense Network, Inc. (hereinafter “ACLDN”), by and through its undersigned counsel, hereby file this Opposition to OIC’s Motion for Summary Judgment.

I. INTRODUCTION

ACLDN has challenged (1) the Office of Insurance Commissioner (“OIC”) Cease and Desist Order (“Order”) dated March 26, 2020 (Order No. 20-0257) wherein OIC asserts ACLDN violated state insurance statutes; and (2) OIC’s Order Imposing Fine (Order No. 20-0457) dated May 29, 2020 wherein OIC fines ACLDN \$200,000 for the alleged violations. Now, OIC wrongfully asserts that summary judgment should be granted affirming OIC’s assertions of statutory violations and corresponding fines. OIC mistakenly interprets ACLDN’s memberships as “insurance” and “insurance contracts” while Washington law and the definition of insurance distinguishes ACLDN’s funds available for members in assistance of legal costs

1 from insurance.

2 ACLDN has filed its own summary judgment motion asking the Presiding Officer to
3 determine as a matter of law that ACLDN memberships are not insurance and the sale of the
4 memberships are not insurance transactions. As rebuttal to much of OIC's Motion for Summary
5 Judgment is inherently contained in ACLDN's Motion for Summary Judgment, it is ACLDN's
6 intent here to only summarize and/or refer to ACLDN's Motion for Summary Judgment, rather
7 than simply repeat the same verbiage. To the extent there is repetition, such is only for purpose
8 of congruent reading here.
9

10 **II. REQUEST TO STRIKE PORTIONS OF DECLARATION**

11 OIC submits the Declaration of Jessica Bullington in support of its Motion for Summary
12 Judgment. However, several paragraphs and exhibits attached to the declaration should be
13 stricken from these proceedings as irrelevant. Specifically, paragraphs 9-15 and Exhibits 3-6
14 have no relevance here.

15 Relevance is defined as evidence having any tendency to make the existence of any fact
16 that is of consequence to the determination of the action more probable or less probable than it
17 would be without the evidence. ER 402. Only relevant evidence should be deemed admissible.

18 Here, the sole issue before the Presiding Officer is whether ACLDN memberships are
19 insurance/insurance transactions. Thus, admissible evidence must have a tendency to make the
20 determination of insurance either more probable or less probable.

21 Paragraphs 9-15 and Exhibits 3-6 of the Bullington Declaration explain the manner in
22 which OIC conducted its investigation and ACLDN's response to the investigation. None of
23 these things have *anything* to do with whether ACLDN's memberships are insurance. There is
24 no logical or reasonable argument otherwise.

25 OIC may attempt to argue that ACLDN's response to the investigation (deemed by OIC
26 as "uncooperative," which ACLDN vehemently disagrees with) is relevant to the issue of

1 calculation of a fine. However, OIC fails to present any authority or examples of where the
2 perceived lack of cooperation is a variable relevant to a fine for past conduct. It is not, and it
3 should not be.¹

4 The enumerated paragraphs and exhibits of the Bullington Declaration are simply not
5 relevant and should be stricken from consideration.

6 III. FACTUAL BACKGROUND

7 ACLDN here reasserts and refers to all facts presented in its Motion for Summary
8 Judgment. In addition, ACLDN must point out some deficiencies and inaccuracies in OIC's
9 factual presentation in OIC's Motion for Summary Judgment.

10 First, OIC presents several aspects of ACLDN's website and membership benefits notice
11 in support of the assertion that ACLDN promises access to the Funds.² OIC fails, however, to
12 present language from the ACLDN website which contradicts OIC's wrongful conclusion. For
13 instance, the President's letter in October 2015 states:
14

15 "Granting assistance is subject to the same requirement as awarding Legal
16 Defense Funds. In other words, there must be sufficient evidence to make
17 a reasonable argument that the use of force incident was self defense. Just
18 as we would not agree to fund the legal defense of someone who actually
19 committed a murder, we would also not assist that person in gaining his or
20 her freedom from jail. *We will need to be convinced* that your use of force
21 was a self-defense incident."

22 *Declaration of Marty Hayes In Support of Motion for Summary Judgment*, p 8, ¶¶ 41-42, Ex. E.
23 (Filed August 12, 2020).

24 Further, ACLDN Explanation of Membership Benefits states:

25 ¹ Noteworthy that illustrated by OIC's own exhibits, ACLDN's response to the Notice of Investigation was to
26 present its legal analysis supporting the proper and legal nature of ACLDN's memberships. There is no authority
that required ACLDN to respond to the specific questions presented by OIC. That ACLDN presented its own
analysis should not be deemed "uncooperative" for purposes of punishment/fine calculation, especially when OIC
cannot cite to any statute or regulation offended by ACLDN's response.

² That a promise to pay is determined here is tantamount. If there is no promise to pay, there is no transfer of risk
and no contract for insurance.

1 “The Network’s Advisory Board will review the facts of the case and
2 advise the Network leadership on specific issues of legal self defense on
3 which decisions to grant the financial support rest. This step is in place to
4 assure the Network that the Legal Defense Fund is not wasted defending a
5 criminal act and that the member’s actions were indeed justifiable. The
6 review is never undertaken to deny assistance to a member who acted in
7 legitimate self defense, but rather to prevent accusations that the Network
8 supports or encourages use of force without justification. The Advisory
9 Board is made up of Massad Ayoob, John Farnam, James Flemming, Tom
10 Givens, Emanuel Kapelsohn, and Dennis Tueller.”

11 *Bullington Declaration*, Ex. 8, p 2. That OIC ignores these material passages from ACLDN is
12 intentional and manipulative.

13 Second, OIC wrongfully accuses ACLDN of deceiving its members by purportedly
14 implying that ACLDN accepted an obligation to pay “claims” while taking the position that
15 there is no such obligation. OIC makes such an allegation without *any* complaints from
16 members or consumers that there has been such deception AND without even contacting or
17 interviewing members to make such an inquiry.

18 IN FACT, no such deception has occurred. ACLDN members are well aware that
19 access to the Funds is at complete discretion of ACLDN and there is no contractual obligation
20 to provide the funds. See *Declaration of Alani Selvey In Support of Opposition to Motion for*
21 *Summary Judgment; Declaration of Clara Silvey In Support of Opposition to Motion for*
22 *Summary Judgment; Declaration of Raymond Bressler In Support of Opposition to Motion for*
23 *Summary Judgment; Declaration of Allen C. Shallbetter In Support of Opposition to Motion for*
24 *Summary Judgment; Declaration of M. Sandra Shallbetter In Support of Opposition to Motion*
25 *for Summary Judgment; Declaration of Christopher Clarke In Support of Opposition to Motion*
26 *for Summary Judgment; Declaration of Bruce Rawlinson In Support of Opposition to Motion*
for Summary Judgment; Declaration of Mike Georgoulis In Support of Opposition to Motion for

1 *Summary Judgment; Declaration of Christian Swanson In Support of Opposition to Motion for*
2 *Summary Judgment; Declaration of Doug Larson In Support of Opposition to Motion for*
3 *Summary Judgment; Declaration of Jon Kvernmo In Support of Opposition to Motion for*
4 *Summary Judgment; Declaration of Robin Hamilton; and Declaration of Lavonne Hamilton.*

5 Third, OIC fails to inform the Presiding Officer that ACLDN Funds are comprised of
6 more than just contribution from members. As outlined in ACLDN’s Motion for Summary
7 Judgment, ACLDN Fund receives contributions from other sources.

8
9 In support of its assertion regarding imposition of a fine, OIC refers to a fine for United
10 States Concealed Carry Association, Inc. (“USCCA”) and that between December 1, 2019 and
11 January 30, 2019 USCCA obtained 1,675 memberships and collected \$241,003.15. During that
12 same time period, ACLDN obtained 16 memberships and collected \$3,975. *Declaration of Gila*
13 *Hayes ISO Opposition to OIC Motion for Summary Judgment*, p 1, ¶¶ 2-3. OIC implies that
14 ACLDN has been significantly more active than USCCA but fails to note that ACLDN’s
15 activities are inclusive since 2008.
16

17 IV. LAW AND ARGUMENT

18 Standards for summary judgment were asserted in ACLDN’s Motion for Summary
19 Judgment and will not be repeated here (though parties are generally in agreement).

20 The crux of OIC’s position, and of this case, hinges on the definition of insurance and
21 whether ACLDN memberships qualify as insurance. Such is true for the alleged violations of
22 both RCW 48.05.030(1) and RCW 48.15.020(1), thus there is no need for distinct analysis for
23 the two statutes or whether OIC had authority to issue the Cease and Desist Order and Order
24 Imposing Fine. If the ACLDN memberships do not satisfy the definition of insurance there is
25 no violation of either statute and OIC did not have authority to issue either the Cease and Desist
26

1 Order or the Order Imposing Fine.

2 OIC also seeks summary judgment regarding the imposition of a \$200,000 fine.
3 Contrary to the legal issue of “insurance,” there are material issues of fact relevant to the issue
4 of a fine. Therefore, even if ACLDN memberships were deemed insurance as a matter of law
5 (they are not), there should be denial of OIC’s Motion for Summary Judgment pertaining to the
6 fine.
7

8 **A. ACLDN Memberships Are Not Insurance.**

9 In Washington, the legislature has defined insurance as:

10 Insurance is a contract whereby one undertakes to indemnify another or
11 pay a specified amount upon determinable contingencies.

12 RCW 48.01.040. OIC’s Motion for Summary judgment fails to present any actual analysis of
13 either type of insurance contract in relation to the ACLDN memberships, but rather OIC merely
14 makes the blanket unsupported assertion that the memberships qualify as both. (On its face,
15 OIC position is blatantly incorrect; the memberships are one or the other – indemnification or
16 payment of a specified amount upon determinable contingencies. They cannot be both.)

17 As outlined in ACLDN’s Motion for Summary Judgment, the definition of insurance is
18 not a simple issue. See 1 Appleman on Insurance Law & Practice §. 1.3; *Sinrom v.*
19 *Pennsylvania R.R.*, 61 F.2d 767, 771 (2nd Cir. 1932). Questions remain: what does it mean to
20 indemnify, what is a specified amount, what is a determinable contingency, and what truly
21 qualifies as insurance?

22 If applied literally, statutory definitions of insurance would cause many relationships not
23 normally understood as insurance contracts to be subject to state insurance regulations.
24 Therefore, courts are called upon to interpret and apply the statutes. Robert H. Jerry, II, 1 New
25 Appleman on Insurance Law Library Edition § 1.03[3][b].
26

1 Courts have defined insurance to be a contract to include elements of an insurer,
2 consideration, a beneficiary, and a hazard or peril insured against. *Physicians' Def. Co. v.*
3 *Cooper*, 199 F. 576, 579-80 (9th Cir. 1912); *Babcock v. ING Life Ins. & Annuity Co.*, No. 12-
4 CV-5093-TOR, 2013 U.S. Dist. LEXIS 1035, at 25 (E.D. Wash. Jan. 2, 2013), citing *State v.*
5 *Universal Service Agency*, 87 Wash. 413, 424, 151 P. 768 (1915). Such contracts require both a
6 transfer of risk and a distribution of risk. Without both, the contract is not of insurance. *In re*
7 *Estate of Smiley*, 35 Wash. 2d 863, 867, 216 P.2d 212, 214 (1950), citing *Helvering v. Le*
8 *Gierse*, 312 U.S. 531 (other citations omitted); *Amerco, Inc. v. Comm'r IRS*, 979 F.2d 162, 165
9 (9th Cir. 1992), citing *Beech Aircraft Corp. v. United States*, 797 F.2d 920, 922 (10th Cir.
10 1986); *see also* Robert E. Keeton and Alan I. Widiss, *Insurance Law* § 1.3(b)(2) (1988)

11
12 There is no one right line test to determine insurance, but consistently, three concepts are
13 central to an insurance contract: risk, risk transference, and risk distribution. Robert H. Jerry,
14 II, 1 New Appleman on Insurance Law Library Edition § 1.03[1], [2], citing Robert E. Keeton,
15 *Insurance Law* 2 (1971).

16
17 As outlined in ACLDN's Motion for Summary Judgment, The Substantial Control Test
18 was one adopted earliest by the Courts, which conforms to the classical definition of insurance:
19 the transfer and distribution of a risk of loss upon the happening of a fortuitous event. A
20 fortuitous event is defined as an event or occurrence which is beyond the substantial control of
21 the insured. Eric Mills Homes, *Appleman On Insurance Law & Practice* § 1.4[A].

22
23 ACLDN memberships are not insurance as (1) there is no promise to pay by ACLDN,
24 thus no transfer of risk; (2) There is no specified amount payable upon determinable
25 contingencies; (3) The event is within the substantial control of the member; and, (4) the
26 memberships are clearly not indemnification. Finally, to the extent that there is an insurance

1 element determined in the ACLDN membership, such is self-insurance which inherently is not
2 insurance.

3 **1. There can be No Contract for Insurance because there is No Obligation**
4 **for ACLDN to Grant Access to the Fund, and thus No Assumption or**
5 **Transfer of a Risk.**

6 Any insurance requires *a promise to pay*. It is this promise that is the sole basis of the
7 transfer or shift of a risk from one to another. Here, ACLDN makes no such promise upon the
8 sale of an ACLDN membership. Access to the Funds is not based upon a promise but rather
9 based upon full and complete discretion by ACLDN to determine whether a particular case or
10 situation is worthy of the Funds. Essentially, the Fund is a charitable fund established from
11 contributions of ACLDN, ACLDN members, corporations, and other donations. There is no
12 obligation for ACLDN to provide funds to any member.

13 ACLDN presented analysis on this issue in its Motion for Summary Judgment and will
14 not repeat the analysis in full here. The reality is that the ACLDN Fund is a political statement,
15 fighting against unmeritorious prosecutions when ACLDN deems it to be appropriate. There
16 are two points that must be emphasized here, in addition to ACLDN's position in its motion.

17 First, OIC asserts ACLDN's explicit statement that memberships are not insurance is
18 irrelevant to the issue at hand, citing *McCarty v. King County Medical Serv. Corp.*, 26 Wn.2d
19 660, 684 (1946). However, this is a misinterpretation of the ruling. The Washington State
20 Supreme Court stated that such language does not alone render a contract to not be insurance
21 but that the contract and context must be viewed as a whole to make such determination. Here,
22 that ACLDN, in at least two places, informs the members that a membership is not insurance is
23 *explicit* information to the member that *no promise to access to the Fund is made*. Thus, these
24 statements are quite relevant in determining whether there is a promise made to pay from the
25
26

1 Fund.

2 Second, ACLDN's message to its members that there is no promise to pay is quite
3 effective (and not deceptive as recklessly alleged by OIC). ACLDN members are well aware
4 that there is neither promise nor obligation to pay. They know and understand that access to the
5 Fund is fully discretionary by ACLDN.
6

7 As there is no promise to pay, there is no transfer of risk to ACLDN via a membership.
8 The sale of memberships is not insurance.

9 **2. There can be No Contract for Insurance because Access to the Fund**
10 **Does Not Pay a Specified Amount Upon Determinable Contingencies.**

11 OIC baldly asserts that ACLDN "offers Washington consumers coverage based upon
12 determinable contingencies." However, OIC fails to provide *any* definition or analysis of
13 "determinable contingency."

14 There is no statutory definition of "determinable contingency." Hence, one must turn to
15 the common meaning of these words. Websters Online Dictionary defines "determinable" as:

16 "capable of being determined, definitely ascertained, or decided upon."

17 Black' Law Dictionary defines contingency as:

18 "An event that may or may not occur; a possibility. 2. The condition of being
19 dependent upon chance, uncertainty."

20 That "contingency" is dependent upon chance has been affirmed by the Washington
21 Courts, See *Mendoza v. Rivera-Chavez*, 140 Wn.2d 659, 99 P.2d 29 (2000), and is absolutely
22 consistent with the concept of fortuity as a requirement for insurance. See Appleman on
23 Insurance Law & Practice § 1.4[A]; New Appleman on Insurance Law Library Edition §
24 1.05[2], citing *Westfield Ins. Co. v. Chico*, 2016 U.S. Dist. LEXIS 117175 (N.D.W. Va 2016);
25 *Delgado v. Interinsurance Exch. Of Auto. Club*, 211 P.3d 1083 (Cal. 2009); and *Waller v. Truck*
26

1 *Ins. Exch.*, 900 P.2d 619, 626 (Cal. 1995).

2 Self-defense is NOT a contingent act, but an intentional act.³ ACLDN'S willingness to
3 pay the upfront attorneys' fees for a member is not conditioned upon the occurrence of an
4 uncertain, fortuitous event, that is, a chance event, or an event that may or may not occur. It is a
5 request from a dues paying member after they *voluntarily and intentionally* used force in self-
6 defense and are requesting ACLDN assistance with legal expenses to justify the act in court.
7 That an act is intentional and voluntary means that it is not contingent.
8

9 In a footnote, OIC passively refers to *Love v. Money Tree, Inc.*, 279 Ga. 476, 478-79
10 (2006) as support that ALCDN provides coverage for certain events.⁴ However, *Love* illustrates
11 exactly why ACLDN memberships are not insurance. In *Love*, the Court was presented with the
12 question of whether auto club memberships sold with car loans were insurance. The auto club
13 memberships, in exchange for a monthly fee, provided payment of 50% moving traffic violation
14 fines, \$50 for roadside services, \$75 for ambulance service, \$200 emergency travel service if car
15 disabled more than 100 miles from home, \$100 attorney fees to collect personal injury damages
16 or defend traffic ticket, and \$750 if prosecuted for manslaughter. *Id.*
17

18 Each of these acts is clearly contingent acts as *none* are intentional acts.⁵ Each is based
19 in fortuity. They are unequivocally distinguished from the intentional act of self-defense.
20

21 The Court in *Love* reviewed the Georgia state statute defining insurance (which is
22 substantially the same as Washington), determined that the acts were determinable
23

24 ³ That self-defense is an intentional act is also confirmed by Washington statutes. See RCW 9A.16.10, RCW
25 9A.16.020, RCW 9A.16.050, and the Washington State Supreme Court in authorized jury instruction, See WPIC
16.02.

26 ⁴ It is unclear whether OIC intends this as support for the memberships being "indemnification" or "pay specified
amount upon determinable contingencies." There is a significant difference between the two. *Love* clearly analyzes
"determinable contingencies."

⁵ Manslaughter is based upon causing the death of another without intent to do so.

1 contingencies and that the auto club memberships agreed to a specified payment upon these
2 contingencies. *Id.* (The Court did NOT find the auto club memberships to be indemnification).
3 Since, these acts are clearly based in fortuity, the Court’s analysis illustrates why ACLDN
4 memberships are not determinable contingencies.

5 OIC asserts that ACLDN offers to pay a specified amount when stating payment may be
6 made “up to \$25,000” to the member’s attorney and for bail assistance. However, this phrase is
7 misunderstood and the concept of “specified amount” is misapplied.

8 “Specified amount” means exactly that – *specified*. This means that the *exact* amount is
9 expressed or stated, such as the facts in *Love* but not the case here. There is no limit of amount
10 that ACLDN may be willing to offer to assist for attorneys’ fees. The “up to \$25,000” refers
11 specifically to funds that could be offered immediately, with more to come if needed and
12 approved. “Up to \$25,000” in this context completely contradicts the term “specified amount.”
13 More importantly, with no limit of the amount ACLDN may offer to pay, there can be no
14 “specified amount.”
15

16 Here, there is no specified amount to be paid and there is no determinable contingency.
17 As such, ACLDN memberships are not insurance.
18

19 **3. The “Risk” Here is in Substantial Control of the Member, Thus There is**
20 **No Insurance.**

21 As outlined in ACLDN’s Motion for Summary Judgment, pursuant to the Substantial
22 Control Test, ACLDN memberships are not insurance because the member is in substantial
23 (absolute) control of the act of self-defense.

24 **4. Indemnification**

25 OIC makes reference to indemnification in one short passage in its Motion for Summary
26

1 Judgment Motion, flatly asserting ACLDN offers to indemnify members against a variety of
2 legal bills and expenses and citing a definition of indemnify in a footnote. OIC Motion p 9.
3 ACLDN’s Motion for Summary Judgment squarely addresses indemnification and OIC’s
4 written position fails to defeat ACLDN’s position. OIC’s definitions are similar to those
5 presented by ACLDN in its Motion for Summary Judgment, each referring to reimbursement of
6 a loss.
7

8 However, OIC fails to present any analysis of how attorneys’ fees or legal fees are a
9 “loss” to an ACLDN member. The *choice* to engage an attorney and incur legal fees is not a
10 “loss.” As explained in ACLDN’s Motion for Summary Judgment, a member could choose to
11 represent themselves or qualify for a public defender. The purchase of private counsel or
12 private assistance in the legal process is not a loss – thus there can be no indemnification.
13

14 The Court’s analysis in *Love* is instructive on this issue. Faced with virtually the same
15 statutory language and an auto club membership that agreed to pay for enumerated items, the
16 Court did not determine that the auto club memberships were indemnification, but rather
17 “determinable contingencies.” There is no difference in this respect here – there is no
18 indemnification.
19

20 OIC’s blanket conclusion that the ACLDN membership provides for indemnification
21 without any analysis explaining the conclusion is troubling. It should not be accepted here, and
22 the conclusion is wrong on its face.
23

24 **5. To Extent Any Insurance Element, Such is Self-Insurance.**

25 As outlined in ACLDN’s Motion for Summary Judgment, to the extent memberships
26 are deemed to have insurance elements, such is properly defined as self-insurance.

1 **B. Summary Judgment Should Be Denied Regarding OIC’s Fine.**

2 RCW 48.15.023(5)(a)(ii) allows for a civil penalty “of not more than \$25,000 for each
3 violation, *after* providing notice and opportunity for a hearing.” (Emphasis added.) Inherent in
4 this language is that the fine cannot be imposed until ACLDN has had the opportunity for a
5 hearing. OIC’s request for summary judgment on the issue of the fine is tantamount to denying
6 ACLDN the opportunity for hearing. Quite simply, summary judgment is not appropriate on
7 this issue.

8 The language of the statute permits a fine of up to \$25,000 per violation, which means
9 that any amount lower than that could be imposed. This type of discretion requires the
10 Presiding Officer to hear live testimony from witnesses on the issue and make a determination
11 based upon that testimony. In making a determination, it is not enough to determine *that* a
12 violation occurred, but the circumstance of the violation must also be considered.

13 On May 29, 2020, after the Cease and Desist Order *and* after ACLDN’s demand for a
14 hearing regarding the Cease and Desist Order, OIC served an Order Imposing Fine and request
15 a hearing on the fine to be consolidated with the current action. Discovery on the fine issue is
16 open until September 9, 2020. Discovery is outstanding on the issue of the fine, including
17 review of all other fines imposed on cases where unauthorized insurance transactions have been
18 imposed and the manner in which OIC calculates fines. This information is paramount to a
19 determination here. *Declaration of Spencer Freeman ISO Opposition to OIC Motion for*
20 *Summary Judgment*, p 1-2, ¶¶ 2-5.

21 CR56(f) states:

22 Should it appear from the affidavits of a party opposing the motion
23 that for reasons stated, the party cannot present by affidavit facts
24 essential to justify the party’s opposition, the court may refuse the
25 application for judgment or may order a continuance to permit
 affidavits to be obtained or depositions to be taken or discovery to
 be had or may make such other order as is just.

26 Here, ACLDN cannot comment on or present argument regarding OIC’s assertion of the

1 fine amount until discovery has been produced. Therefore, pursuant to CR56(f), OIC's motion
2 for summary judgment on this issue should be denied, or at least continued until proper
3 discovery has been produced.

4 OIC asserts that ACLDN has over 2,000 violations in Washington extending back to
5 2008. However, OIC presents no authority for being able to prosecute purported violations that
6 are more than a decade old.

7
8 OIC's assertion that there are over 2,000 violations must also be further analyzed
9 through testimony. OIC provides no authority that *each* membership sale is a separate violation
10 versus the sales through a web site being one continuous act.

11 OIC argues that ACLDN's purported lack of cooperation in the investigation should be
12 taken into account in determining the fine. Such is without *any* authority at all, as the statute
13 provides for a fine specific to a violation and not specific to acts during investigation. Further,
14 the assertion that ACLDN was uncooperative is wrong and unfair. In response to the Notice of
15 Investigation and questions, ACLDN provided OIC a written document asserting why
16 ACLDN's actions were not insurance, were lawful, and not subject to OIC oversight or
17 regulation. ACLDN asserted its rights, and that is now being deemed "uncooperative."
18

19 As outlined in ACLDN's Motion for Summary Judgment, ACLDN did research on the
20 issue of insurance before selling memberships intending to conduct activity as other than
21 insurance and to comply with state statutes. These efforts and intention have not been
22 considered by OIC in its fine determination. As such, there is a dispute of material issues of
23 fact, which require denial of OIC's summary judgment motion on this issue.
24

25 OIC further attempts to justify the fine of \$200,000 by comparing this matter to that of
26 United States Concealed Carry Association ("USCCA"), where a fine of \$100,000 was

1 imposed. OIC asserts that ACLDN collected \$345,465 from Washington members since 2008,
2 compared to USCCA collecting \$241,003.15 from Washington residents. However, USCCA
3 collected those funds in *two* months, from December 2018 to January 2019. During those same
4 two months, ACLDN collected \$3,975. USCCA was far more prolific in Washington, yet
5 ACLDN has been assessed a fine double the amount.

7 OIC asserts that a \$200,000 is *appropriate*. However, what is “appropriate” is not the
8 subject of a summary judgment motion. The subject of a summary judgment motion is *what is*
9 *mandatory as a matter of law*. The amount of the fine is simply not the proper subject of a
10 summary judgment motion

11 III. CONCLUSION

12 ACLDN did not promise its members access to the Fund, but rather expressly retained
13 full and complete discretion for such access, a fact well known by ACLDN members. As such,
14 there is no transfer of risk and there can be no finding of insurance. Moreover, ACLDN does
15 not provide specified payments for determinable contingencies. Rather, ACLDN may provide
16 unlimited funds for defense of the intentional act of self-defense. ACLDN memberships are, on
17 their face, not indemnification. As such, the memberships do not meet statutory definition of
18 insurance.

20 As ACLDN assists members in justifying an intentional act of self-defense, the
21 memberships do not satisfy a key base element of all insurance – that of fortuity. An intentional
22 act is within to total control of the actor and cannot be deemed fortuitous.

24 OIC’s request for summary judgment on the imposition of a fine is inappropriate.

25 Accordingly, ACLDN requests that OIC’s Motion for Summary Judgment be denied.

1 Dated this 26th day of August 2020.

2 **FREEMAN LAW FIRM, INC.**

3
4 s/ Spencer Freeman

5 Spencer D. Freeman

6 WSBA No. 25069

7 FREEMAN LAW FIRM, INC.

8 *Attorney for ACLDN*

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