

STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

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*In the Matter of:*

Docket Nos. 20-0257 & 20-0457

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

**OIC'S REPLY TO APPELLANT'S  
RESPONSE TO OIC'S MOTION  
FOR SUMMARY JUDGMENT**

Appellant.

**I. RELIEF REQUESTED**

The Office of the Insurance Commissioner ("OIC" or "Insurance Commissioner") respectfully requests that Your Honor grant OIC's Motion for Summary Judgment ("OIC's Motion") and deny Appellant's<sup>1</sup> Motion for Summary Judgment ("Appellant's Motion"). OIC's Motion is supplemented by this Reply, which addresses specific assertions and arguments in Appellant's Opposition to OIC's Motion ("Appellant's Response"). On August 26, 2020, OIC also filed a Response to Appellant's Motion ("OIC's Response"). The Response, incorporated by reference herein, addresses specific statements and arguments in Appellant's Motion, and further explains OIC's regulatory authority in this matter.

Undisputed material facts form the basis for OIC's finding that Armed Citizens violated the Insurance Code, specifically RCW 48.05.030(1) and RCW 48.15.020(1). Since 2008, Armed Citizens unlawfully offered and sold memberships, insuring members' risk for legal defense costs, and in doing so, violated unauthorized insurer provisions over 2,000 times. Accordingly, the Insurance Commissioner was authorized to issue the Cease

<sup>1</sup> In this Reply, Armed Citizens' Legal Defense Network, Inc. is referred to as Armed Citizens and Appellant.

OIC'S REPLY TO APPELLANT'S  
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1 and Desist Order pursuant to RCW 48.02.080(3)(a) and RCW 48.15.023(5)(a)(i). The  
2 Insurance Commissioner was also authorized to issue the Order Imposing a Fine pursuant  
3 to RCW 48.02.060 and RCW 48.15.023(5)(a)(ii).

4 OIC has established it is entitled to summary judgement as a matter of law. As a  
5 result, the Presiding Officer should grant OIC's Motion, deny Appellant's Motion, and  
6 uphold both the Cease and Desist Order No. 20-0257 ("Cease and Desist Order") and  
7 Order Imposing a Fine No. 20-0457 ("Order Imposing a Fine").

## 8 II. ARGUMENT

### 9 A. The memberships constitute insurance contracts under the Insurance Code.

10 OIC has established that Armed Citizens' memberships are insurance contracts  
11 under the Insurance Code. *See OIC's Motion*, pp. 7-10; *OIC's Response*, pp. 2-9. Armed  
12 Citizens has entered into insurance contracts wherein it has undertaken to pay a specified  
13 amount upon determinable contingencies. *See OIC's Motion*, pp. 3-4, 8-9 and *OIC's*  
14 *Response*, pp. 6-8. Additionally, Armed Citizens has entered into insurance contracts  
15 wherein it has undertaken to indemnify Washington consumers' additional legal expenses.  
16 *See OIC's Motion*, pp. 3-4, 9 and *OIC's Response*, pp. 8-9. Appellant, without any specific  
17 reasoning, states that, under RCW 48.01.040, its memberships must constitute either the  
18 payment of a specified amount upon determinable contingencies *or* indemnification, but  
19 cannot be both. *Appellant's Response*, p. 6. RCW 48.01.040 defines insurance as including  
20 either type of conduct, but does not suggest that they are mutually exclusive. Without  
21 belaboring the point, many authorized insurance products include both payment of a  
22 specific amount and also indemnification of expenses in general. An obvious example is  
23 found in health insurance plans where, through co-pays or co-insurance, a specified  
24 amount is paid for certain conditions, and for other conditions, all health expenses are  
25 covered (complete indemnification). In the present matter, OIC has established that  
26 Armed Citizens' conduct involves both the payment of specified amounts upon  
determinable contingencies and indemnification.

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1           i. *Armed Citizens continues to mischaracterize its conduct, despite the*  
2           *express language of its website and membership materials.*

3           In its briefing, OIC provided direct quotes from Armed Citizens' website and  
4 membership materials which show that Appellant offers to provide insurance coverage to  
5 members and the memberships are insurance contracts under the Insurance Code. *OIC's*  
6 *Motion*, pp. 2-3. For example, the President's 2015 letter<sup>2</sup> shows that as far back as 2015,  
7 Armed Citizens insured members' bail expenses by offering to pay a specified amount  
8 upon a determinable contingency<sup>3</sup> (members' bail expenses of up to \$25,000 arising from  
9 a "lawful self-defense incident").

10           Moreover, Armed Citizens has made several self-serving statements in its  
11 pleadings that conflict with the actual language of its website and membership materials.  
12 Armed Citizens states, without citing to any factual support:

13           Here, ACLDN makes no such promise upon the sale of an ACLDN membership.  
14 Access to the Funds is not based upon a promise but rather based upon full and  
15 complete discretion by ACLDN to determine whether a particular case or situation is  
16 worthy of the funds.

17           *Appellant's Response*, p. 8. This statement is contradicted by OIC's many examples of  
18 Armed Citizens' offers to cover Washington consumers' legal and bail expenses. *See*  
19 *Bullington Decl.*, Ex. 7, p. 2; Ex. 8, pp. 1-2. Ex. 9, pp. 1, 6-7, 11-12, 16. Armed Citizens  
20 has in fact, covered members' legal expenses. *Bullington Decl.*, Ex. 10.

21           ii. *Under McCarty v. King County Medical Serv. Corp.*, 26 Wn.2d 660 (1946),  
22 *Appellant has transacted insurance in Washington.*

23           Appellant states the disclaimer OIC identified in two places of its membership  
24 materials is "explicit information to the member that no promise to access to the Fund is  
25 made." *Appellant's Response*, p. 8. It is noteworthy that these allegedly explicit  
26 disclaimers do not include any variation of the words, "no promise to access to the Fund

<sup>2</sup> *Appellant's Motion*, Hayes Decl., Ex. E.

<sup>3</sup> *See* RCW 48.01.040.

1 is made.” Instead, they are blanket disclaimers that the products are not insurance, exactly  
2 the kind of disclaimers that were found ineffective in *McCarty v. King County Medical*  
3 *Serv. Corp.*, 26 Wn.2d 660 (1946). Moreover, even truly explicit disclaimers do not  
4 prevent the formation of an insurance contract, especially when such disclaimers are  
5 explicitly contradicted by other explicit contractual language that includes promises to pay  
6 legal expenses. *Id.*, at 684. In *McCarty*, the Washington Supreme Court states:

6 It is suggested in brief for appellee that the contract shows, on its face, and so states,  
7 that it is not an insurance policy. **But that is wholly beside the question. No one can**  
8 **change the nature of insurance business by declaring in the contract that it is not**  
9 **insurance.** As was said in the case of *State v. Beardsley*, 88 Minn. 20, 92 N. W. 472,  
10 474: **'The real character of this promise, or of the act to be performed, cannot be**  
11 **concealed or changed by the use or absence of words in the contract itself; and it**  
12 **is wholly immaterial that on its face this contract does not expressly purport to be**  
13 **one of insurance, and that this word nowhere appears in it. Its nature is to be**  
14 **determined by an examination of its contents, and not by the terms used.'**

12 *Id.* (emphasis added.) Under *McCarty*, Armed Citizens’ disclaimer used in two places, is  
13 irrelevant to whether Armed Citizens transacted insurance in Washington under the  
14 Insurance Code. A review of Armed Citizens’ brochure and website (advertising offers to  
15 cover bail and legal expenses arising from a self-defense incident), as well as the  
16 Explanation of Benefits (further explaining Armed Citizens’ coverage of bail and legal  
17 expenses arising from a self-defense incident), shows the true nature of Armed Citizens’  
18 conduct. In applying *McCarty*, the Presiding Officer should find Armed Citizens  
19 undoubtedly transacted insurance in Washington.

19 *iii. Under Love v. Money Tree, Inc.*, 279 Ga. 476, 478-479 (2006), Appellant  
20 has undertaken to pay a specified amount upon determinable contingencies  
21 and therefore, transacted insurance under RCW 48.01.040.

21 In Appellant’s discussion of the membership benefits analyzed in *Love v. Money*  
22 *Tree* (Appellant’s Response, p. 10), it leaves out the noteworthy “up to language:”

23 The auto memberships provide that, in exchange for a monthly fee, the club will,  
24 among other things, pay 50% of moving traffic violations up to \$ 200; \$50 for

1 emergency road service; \$ 75 for an emergency ambulance service; \$200 for an  
2 emergency travel service if a member's car became disabled more than 100 miles from  
3 her home; up to \$100 in attorney fees to collect damages for personal injuries sustained  
4 in an auto accident or to defend a member in traffic court; and up to \$750 in attorney  
5 fees if prosecuted for criminal manslaughter.

6 (emphasis added.) *Love v. Money Tree Inc.*, 279 Ga. at 478. The language in this case is  
7 similar to Armed Citizens' language offering to cover "up to \$25,000" in immediate  
8 funding for legal expenses and bail expenses. *Bullington Decl.*, Ex. 7, p. 2; *Bullington*  
9 *Decl.*, Ex. 9, p. 11.

10 Next, Appellant states the acts covered by the membership in *Love v. Money Tree*  
11 are "clearly contingent acts as none are intentional acts." *Appellant's Response*, p. 8. The  
12 Washington courts have clearly stated that legitimate self-defense is potentially insurable.  
13 *Grange Ins. Co. v. Brosseau*, 113 Wn.2d 91, 99-100 (1989); *see also Mass. Bay Ins. Co.*  
14 *v. Waljlor Indus., Inc.*, 383 F. Supp.3d 1148, 1167-1169 (W.D. Wash. 2019). In an attempt  
15 to distinguish *Love v. Money* from the present matter, Armed Citizens' improperly places  
16 the focus solely on a member's act of self-defense and not the noteworthy events which  
17 may or may not occur before or after the act of self-defense. Self-defense by definition<sup>4</sup> is  
18 in response to an aggressor, which is entirely outside of the insured's control. Under RCW  
19 48.01.040, the determinable contingencies in this matter are properly framed as the legal  
20 and bail expenses arising from a member's act of self-defense. *See also Order on Motion*  
21 *for Stay*, p. 8 (holding "Regarding the definition of insurance, there is prima facie evidence  
22 that ACLDN is paying a specified amount - up to \$25,000 - upon a determinable  
23 contingency - a self-defense incident that requires legal representation.")

24 These bail and legal expenses, which Armed Citizens offers and agrees to cover,  
25 are contingent as they may or may not happen. If a member uses force in self-defense,  
26 they may face a variety of events, such as police contact, an arrest, criminal charges, trial,  
retrial, civil lawsuit, and/or appeal. Armed Citizens has made offers to pay the member's

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<sup>4</sup> See RCW 9A.16.110.

1 legal and bail expenses arising from these events. Armed Citizens' claims history  
2 summarizes circumstances, for example, which result in legal expenses no longer being  
3 necessary: grand jury decided not to indict, grand jury found no true bill, prosecutor  
4 decided to dismiss the case, and no charges filed. *Bullington Decl.*, Ex. 10. Accordingly,  
5 the legal and bail expenses are contingent events and determinable contingencies under  
6 RCW 48.01.040.

7 Lastly, *Love v. Money Tree* does not support Armed Citizens' position that its  
8 conduct does not involve indemnification. *Appellant's Response*, pp. 11-12. Unlike in  
9 *Love v. Money Tree*, Armed Citizens offered to pay the specified amounts upon  
10 determinable contingencies, *as well as offered to indemnify additional legal expenses*. See  
11 *OIC's Motion*, pp. 9-10 and *OIC's Response*, pp. 8-9. Appellant places significance on a  
12 member's "choice to engage an attorney and incur legal fees" to assert indemnification is  
13 not present. *Appellant's Response*, p. 12. When a determinable contingency occurs under  
14 an insured's policy, the insured may have a choice to seek coverage. For example, an  
15 insured may choose to seek coverage or not to seek coverage for minor damages resulting  
16 from an auto-accident. This ability to decide whether to use one's insurance does not  
17 change the nature of the product; it is still insurance under the Insurance Code.

18 **B. The Presiding Officer should reject the irrelevant conclusory**  
19 **statements and opinions provided by Armed Citizens.**

20 Appellant's Response to OIC's Motion included declarations by thirteen members.  
21 These declarations include repeated boilerplate language such as the following:

22 When I became a member of ACLDN, I was aware of ACLDN's Fund that may be  
23 available to assist members if they were involved in a legitimate act of self-defense  
24 and desired financial assistance to defend the action in court if need be.

25 When I became a member, I was fully aware that ACLDN retains full discretion to  
26 provide a member access to and receive financial assistance from ACLDN's Fund.

At no time did I think or believe that ACLDN was providing me, as a member,  
insurance or contractual obligation to have access to the ACLDN fund.

1 The Insurance Commissioner objects to the portions of the members' declarations  
2 that state, without any factual evidence, conclusory statements and opinions. "Ultimate  
3 facts, conclusions of fact or conclusory statements of fact are insufficient to raise a  
4 question of fact." *Curran v. City of Marysville*, 53 Wn. App. 358, rev. den., 112 Wn.2d  
5 924 (1989); see also *See Lane v. Harborview Med. Ctr.*, 154 Wn. App. 279, 287 (2010)  
6 ("A declaration that contains only conclusory statements without adequate factual support  
7 does not create an issue of material fact that defeats a motion for summary judgment.")  
8 The members' declarations include bare statements that are conclusory and lack factual  
9 support of why the members have reached such conclusions. As a result, the Presiding  
10 Officer should not consider the conclusory statements in these declarations. See, e.g.,  
11 *F.P.H. Contr., Inc. v. Shahrezaei*, 2017 Wash. App. LEXIS 50, 11 (2017).

12 Furthermore, the tribunal is presented with the issue of *whether the memberships*  
13 *constitute insurance under the Insurance Code*. Bare assertions by a small portion of  
14 Armed Citizens' 2,559 overall Washington members, without any specific factual  
15 foundation, are not material to the Presiding Officer's decision of *whether the*  
16 *memberships constitute insurance under the Insurance Code*. The declarations are  
17 contrary to the language of Armed Citizens' membership materials and website, wherein  
18 Armed Citizens made specific offers and agreed to cover members' legal and bail  
19 expenses arising from a member's act of self-defense. The contents of Armed Citizens'  
20 membership materials, website, and claims history (Bullington Decl., Exs. 6-10) show the  
21 memberships constitute insurance contracts and Armed Citizens transacted insurance  
22 under the Insurance Code.

23 **C. The Presiding Officer should find OIC has ample undisputed authority to**  
24 **levy a fine of \$200,000 upon Armed Citizens and uphold the Order Imposing**  
25 **a Fine.**

- 26 *i. OIC has established ample authority to order Armed Citizens to pay a fine*  
*of \$200,000 for transacting insurance in Washington, and thereby*  
*violating RCW 48.05.030(1) and RCW 48.15.020(1) more than 2,000*  
*times.*

1 Since 2008, Armed Citizens sold the memberships at issue to over 2,000  
2 Washington consumers. *Bullington Decl.*, para. 16. Armed Citizens was founded in 2008  
3 with insurance as part of its mission:

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

7 *Bullington Decl.*, Ex. 9, p. 16. Armed Citizens does not possess a Certificate of Authority,  
8 authorizing it to act as an insurer in Washington State. *Bullington Decl.*, para. 7.

9 As a result, OIC clearly has undisputed authority to levy a fine of \$200,000 upon  
10 Armed Citizens for transacting insurance unlawfully in Washington. The Presiding  
11 Officer should find the Insurance Commissioner is authorized to issue a \$200,000 fine  
12 under RCW 48.15.020(1) and RCW 48.15.023(5)(a)(ii). If the Insurance Commissioner  
has cause to believe that any person has violated RCW 48.15.020(1), he may:

13 Assess a civil penalty of not more than twenty-five thousand dollars for each  
14 violation, after providing notice and an opportunity for a hearing in accordance  
with chapters 34.05 and 48.04 RCW.

15 RCW 48.15.023(5)(a)(ii). The Legislature has afforded the Insurance Commissioner with  
16 the authority to levy a fine of \$25,000 upon an entity for *each violation of RCW*  
*48.15.020(1)*.

17 Armed Citizens misconstrues the Insurance Commissioner's fining authority, by  
18 stating:

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

21 *Appellant's Response*, p. 14. Contrary to Armed Citizens' statement, OIC has pointed to  
22 authority, RCW 48.15.023(5)(a)(ii), which specifically provides authority to fine \$25,000  
23 per each membership sale and each insurance transaction. Under the Insurance Code, each  
24



1 membership sale and each insurance transaction is a violation of RCW 48.15.020(1).  
2 RCW 48.15.020(1) states:

3 An insurer that is not authorized by the commissioner may not solicit insurance  
4 business in this state or transact insurance business in this state, except as provided  
5 in this chapter.

6 (emphasis added). RCW 48.01.060 defines “insurance transaction” as including any of the  
7 following:

- 8 (1) Solicitation.<sup>5</sup>
- 9 (2) Negotiations preliminary to execution.
- 10 (3) Execution of an insurance contract.
- 11 (4) Transaction of matters subsequent to execution of the contract and arising out  
12 of it.
- 13 (5) Insuring.

14 OIC has established that the memberships are insurance contracts. Each  
15 membership sale is an insurance transaction under RCW 48.01.060(3). OIC has also  
16 established that Armed Citizens has insured members’ legal expenses since 2008.<sup>6</sup>  
17 Insuring is an insurance transaction under RCW 48.01.060(5). Armed Citizens also  
18 provides members with a document called the “Explanation of Membership Benefits” and  
19 a member ID card. *Bullington Decl.*, Ex. 8. Armed Citizens’ conduct of sending the  
20 Explanation, member ID, and collecting recurring membership fees fall under RCW  
21 48.01.060(4) as the “transaction of matters subsequent to execution of the contract and  
22 arising out of it.”

23 <sup>5</sup> RCW 48.17(14) "Solicit" means attempting to sell insurance or asking or urging a person to apply for  
24 a particular kind of insurance from a particular insurer. Armed Citizens’ website is only part of it  
25 transacting insurance unlawfully in Washington. Armed Citizens’ Membership Brochure, which  
26 includes an application, is also a solicitation.

<sup>6</sup> According to Armed Citizens’ recently filed exhibit, it began offering insurance coverage of  
members’ bail expenses in 2015. *Appellant’s Motion*, Hayes Decl., Ex. E.

1 Armed Citizens has transacted insurance under RCW 48.15.020(1) and RCW  
2 48.01.060 and therefore violated RCW 48.15.020(1) over a many year period. Further  
3 testimony of the violations is not necessary as according to the plain language of RCW  
4 48.15.020(1), and the undisputed material facts in the record, the Insurance Commissioner  
5 has ample authority to fine Armed Citizens \$200,000 for violating RCW 48.15.020(1)  
6 more than 2,000 times since 2008.

7 Lastly, Appellant states OIC has not presented authority for being able to levy a  
8 penalty for violations that have taken place since 2008. *Appellant's Response*, p. 14. RCW  
9 4.16.100(2) provides a two-year statutory of limitations for an "action upon a statute for a  
10 forfeiture or penalty to the state." However, the two-year statute of limitations begins once  
11 the Insurance Commissioner *discovers* the violations and ends with the Insurance  
12 Commissioner's proposed enforcement action. *See U.S. Oil & Ref. Co. v. State*, 96 Wn.2d  
13 85, 92; *1000 Va. Ltd. P'ship v. Vertecs*, 158 Wn.2d 566, 575-576 (2006); *Kittinger v.*  
14 *Boeing Co.*, 21 Wn. App. 484, 488 (1978). Here, OIC did not discover Appellant's  
15 misconduct until 2019, and proceeded with the enforcement action in March, 2020. As a  
16 result, the Insurance Commissioner does have the authority to seek a penalty in this matter  
17 for violations which occurred over many years, but were not discovered until 2019.

18 *ii. Armed Citizens is not entitled to an evidentiary hearing regarding the fine*  
19 *issue when no material facts are in dispute.*

20 Appellant discusses RCW 48.15.020(1), but leaves out important statutory  
21 language. Appellant states "[i]nherent in this language is that the fine cannot be imposed  
22 until ACLDN has had the opportunity for hearing." *Appellant's Response to OIC's*  
23 *Motion*, p. 13. The Insurance Commissioner has established that Armed Citizens has  
24 violated RCW 48.15.020(1) and therefore, may "[a]ssess a civil penalty of not more than  
25 twenty-five thousand dollars for each violation, after providing notice and an opportunity  
26 for a hearing in accordance with chapters 34.05 and 48.04 RCW." RCW  
48.15.023(5)(a)(ii).

1 Appellant errs by concluding summary judgment is not “appropriate” regarding  
2 the fine issue. The Appellant has been afforded an opportunity for a hearing in accordance  
3 with chapters 34.05 and 48.04 RCW. Armed Citizens is incorrect by stating the language  
4 of this statute referring to a “hearing” makes it so a fine cannot be imposed unless the  
5 Presiding Officer holds an evidentiary hearing and hears live testimony from witnesses.  
6 Armed Citizens has been afforded the opportunity for a hearing in accordance with  
7 chapters 34.05 and 48.04 RCW. RCW 48.15.023(5)(a)(ii) should not be interpreted in a  
8 manner that takes away the parties’ ability to resolve cases at the summary judgment stage  
9 if there are not any material facts in dispute and one of the parties is entitled to summary  
10 judgment as a matter of law. *See* OIC’s Motion, pp. 5-6 (discussing the legal standard for  
11 summary judgment). Such process is essential to preserve the parties’ resources and  
agency resources and avoid unnecessary hearings where there are not any material issues  
in dispute. *See LaPlante v. State*, 85 Wn.2d 154, 158 (1975).

12 Armed Citizens states the Presiding Officer should not decide on the fine issue as  
13 it has not completed discovery regarding such issue. However, Armed Citizens, many  
14 months ago, asked for and agreed to the current case schedule. Armed Citizens did not  
15 serve OIC with discovery requests until August 7, 2020, five days before the parties’  
16 August 12, 2020 initial summary judgment motion deadline. Armed Citizens should not  
17 now delay resolution of the fine issue, which is amply supported by the undisputed facts  
18 and applicable law. Further, it is unlikely at best that further discovery would add anything  
19 to analysis of the fine. OIC has established ample authority to order the fine, and therefore,  
testimony is not necessary for the Presiding Officer to rule on the Order Imposing a Fine.

20 Lastly, Armed Citizens discusses the Insurance Commissioner’s enforcement  
21 action against United States Concealed Carry Association, Inc. (“USCCA”)(Bullington  
22 Decl., Ex. 12) and claims “USCAA was far more prolific in Washington, yet ACLDN has  
23 been assessed a fine double the amount.” *Appellant’s Response*, p. 15. Armed Citizens  
24 ignores that USCAA’s plan was sold during a two-month period, versus Armed Citizens’  
membership which was sold since 2008 to over 2,000 members. *Bullington Decl.*, Ex. 12,

1 para. 25. In addition, OIC was unable to determine the extent of Armed Citizens' sales  
2 because of Armed Citizens' record keeping. *OIC's Motion*, pp. 13-14. Lastly, Armed  
3 Citizens does not discuss the Insurance Commissioner's enforcement action against  
4 Firearms Legal Protection, LLC. *Bullington Decl.*, Ex. 11. In this matter, the entity sold  
5 112 Contracts to Washington residents and collected total membership fees of \$28,805 of  
6 which has been collected. *Id.*, at para. 8. The Insurance Commissioner fined Firearms  
7 Legal Protection, LLC \$25,000. *Id.*, at p. 8. As Armed Citizens' conduct took place for  
8 many more years than the entities in these other enforcement actions and was  
9 uncooperative during the investigation, a higher fine in this matter is lawful under RCW  
10 48.15.023(5)(a)(ii), as well as appropriate given the circumstances.

11 *iii. Paragraphs 9-15 and Exhibits 3-6 are relevant to whether the fine in this*  
12 *matter was appropriate given the circumstances.*

13 The Bullington Declaration and Exhibits 3-6 are admissible as evidence under the  
14 Administrative Procedures Act ("APA") evidentiary standard set forth by RCW  
15 34.05.452(1).<sup>7</sup> OIC Investigator Jessica Bullington sent Armed Citizens a Notice of  
16 Investigation (*Bullington Decl.*, Ex. 3), as OIC's Regulatory Investigations Unit generally  
17 does with investigations of companies and individuals. The information and documents  
18 as a result are "the kind of evidence on which reasonably prudent persons are accustomed  
19 to rely in the conduct of their affairs" that is explicitly admissible under the APA. RCW  
20 34.05.452(1).

21 Appellant states "the sole issue before the Presiding Officer is whether ACLDN  
22 memberships are insurance/insurance transactions." *Appellant's Response*, p. 2. Appellant  
23 points out one of the central issues. Another central issue of the matter is whether the

24 <sup>7</sup> "Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is  
25 the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of  
26 their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or  
statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The  
presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious." RCW  
34.05.452(1).

1 Insurance Commissioner had the authority to issue the Cease and Desist Order and Order  
2 Imposing a Fine. Paragraphs 9-15 and Exhibits 3-6 are relevant to this issue as they  
3 provide additional details regarding the circumstances of the enforcement action and why  
4 the Insurance Commissioner ordered the Appellants to pay the specific amount of the fine.

5 Armed Citizens' uncooperativeness in responding to OIC's questions and  
6 providing requested documentation was taken into account when OIC levied a fine against  
7 Armed Citizens. For example, some of the factors considered by the OIC were that Armed  
8 Citizens transacted insurance unlawfully since 2008, the misconduct was not self-reported  
9 or remediated by Armed Citizens upon OIC's contact and investigation, Armed Citizens  
10 did not respond adequately and properly to OIC's Notice of Investigation, and Armed  
11 Citizens was unable to provide the total amount of membership fees it collected from the  
12 2,559 Washington members. The fine levied is clearly lawful under RCW  
13 48.15.023(5)(a)(ii). If the Presiding Officer conducts further analysis regarding the fine,  
14 the tribunal should consider the discussed portions of the Bullington Declaration and  
15 Exhibits. These materials are admissible and relevant in showing that the fine is the proper  
16 and appropriate remedy in this enforcement action.

17 The Presiding Officer should find OIC undisputedly has ample authority under  
18 RCW 48.15.020(1) and RCW 48.15.023(5)(a)(ii) to issue the Order Imposing a Fine.  
19 Moreover, if the Presiding Officer decides to conduct further analysis of the circumstances  
20 of this enforcement action, the Presiding Officer should also find a \$200,000 fine is lawful,  
21 as well as appropriate, under the circumstances.


## 22 V. CONCLUSION

23 Based on the evidence, authority, and arguments presented by the Insurance  
24 Commissioner in this matter, the Insurance Commissioner has the authority and  
25 undisputed factual basis to issue the Cease and Desist Order and Order Imposing a Fine.  
26 Armed Citizens has not disputed the material facts set in these orders. OIC on the other  
hand has demonstrated that there is no genuine issue of material fact and that, as a matter

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of law, summary judgment in favor of OIC is the proper remedy in this matter. Therefore, OIC respectfully requests Your Honor grant OIC's Motion for Summary Judgment and deny Appellant's Motion for Summary Judgment.

DATED this 4<sup>th</sup> day of September, 2020.

  
Sofia Pasarow  
Insurance Enforcement Specialist  
Legal Affairs Division

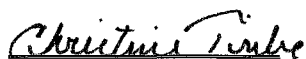
CERTIFICATE OF MAILING

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 REPLY TO RESPONDENTS' RESPONSE TO OIC'S MOTION FOR SUMMARY JUDGMENT on the following individuals in the manner indicated:

<p>Julia Eisentrout, Presiding Officer Office of the Insurance Commissioner 5000 Capitol Boulevard SE Tumwater, WA 98501 <a href="mailto:hearingsu@oic.wa.gov">hearingsu@oic.wa.gov</a> <a href="mailto:juliae@oic.wa.gov">juliae@oic.wa.gov</a></p> <p><i>By email per the tribunal's instructions.</i></p>	<p>Spencer D. Freeman Attorney at Law Freeman Law Firm, Inc. 1107-½ Tacoma Avenue South Tacoma, WA 98402 <a href="mailto:sfreeman@freemanlawfirm.org">sfreeman@freemanlawfirm.org</a> <a href="mailto:sierra@freemanlawfirm.org">sierra@freemanlawfirm.org</a></p> <p><i>By email per electronic service agreement between the parties.</i></p>
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SIGNED this 4<sup>th</sup> day of September, 2020, at Tumwater, Washington.

  
Christine Tribe  
Paralegal

OIC'S REPLY TO APPELLANT'S  
RESPONSE TO OIC'S MOTION FOR  
SUMMARY JUDGMENT

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State of Washington  
Office of Insurance Commissioner  
Insurance 5000 Building  
PO Box 40255  
Olympia, WA 98504-0255