

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

RENT-A-CENTER WEST, INC. a
Delaware Corporation,

Plaintiff,

v.

THE STATE OF WASHINGTON,
JAMES T. SUGARMAN, in his official
capacity as Assistant Attorney General
in the Consumer Protection Division,
Office of the Attorney General, State of
Washington,

Defendants.

NO. 08-2-05194-7

STATE OF WASHINGTON AND
JAMES T. SUGARMAN'S AMENDED
ANSWER, AFFIRMATIVE
DEFENSES, AND COUNTERCLAIMS

The State of Washington and James T. Sugarman, Assistant Attorney General, (hereinafter collectively referred to as "the State"), in answer to the Petition to Modify Civil Investigative Demand and Complaint for Declaratory Relief, admit, deny and allege as follows:

I. GENERAL DENIALS

1.1 The State generally denies each allegation of fact in Plaintiff Rent-A-Center West, Inc's (hereinafter Rent-A-Center) Complaint unless the allegation of fact is expressly admitted. The State will not respond to legal arguments contained in Rent-A-Center's Complaint and will deny them if it is unclear if Rent-A-Center is asserting a factual or legal claim.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

II. ANSWER

2.1 The State admits Rent-A-Center is a foreign corporation incorporated in Delaware. The State is without information as to whether it is authorized to do business in Clark County, admits Rent-A-Center is authorized to do business in the State of Washington, and admits Rent-A-Center is doing business in the State of Washington. The State admits that a portion of Rent-A-Center's business involves leasing furniture, electronics, and appliances to consumers but states that Rent-A-Center is primarily selling these items through a Lease Purchase Agreement.

2.2 The State admits the allegations contained in paragraph 2.

2.3 Paragraph 3 contains legal contentions to which a response is not required, and the State admits that venue in King County is proper.

2.4 The State denies the allegations contained in the final sentence of paragraph 4 and admit that paragraph's remaining allegations.

2.5 The State admits it has extended the time for Rent-A-Center to respond to the CID several times and denies the remaining allegations contained in paragraph 5.

2.6 The State admits it issued the quoted interrogatory, is without knowledge as to the number of employees, and otherwise denies the allegations contained in paragraph 6, to the extent they are not legal contentions to which a reply is not required.

2.7 The State admits it issued the quoted interrogatory, admits it voluntarily reduced the scope of the interrogatory in response to Rent-A-Center's objections, is without knowledge as to the number of pages Rent-A-Center would have to produce, and otherwise denies the allegations contained in paragraph 7, to the extent they are not legal contentions to which a reply is not required.

2.8 The State denies the allegations contained in paragraph 8, to the extent they are not legal contentions to which a reply is not required.

2.9 The remaining allegations are legal conclusions to which no answer is required. To the extent an answer is required, the State denies the remaining allegations.

1 **III. AFFIRMATIVE DEFENSES**

2 3.1 By way of further answer and affirmative defense, Rent-A-Center fails to state a
3 claim upon which relief can be granted.

4 3.2 By way of further answer and affirmative defense, the State's actions manifest a
5 reasonable exercise of judgment and discretion by authorized public officials made in the proper
6 exercise of governmental authority entrusted to them by law, did not violate any clearly
7 established right or duty, and are neither tortuous nor actionable.

8 3.3 By way of further answer and affirmative defense the State is entitled to immunity,
9 either absolute or qualified, from suit for the matters charged.

10 3.4 By way of further answer and affirmative defense, the State acted pursuant to
11 statutes, and did not clearly violate established constitutional or statutory rights of which a
12 reasonable person would have known.

13 3.5 By way of further answer and affirmative defense, to the extent Rent-A-Center
14 seeks damages for tortuous conduct it failed to file a claim against the State of Washington as
15 required by RCW 4.92.100-110.

16 **COUNTERCLAIM FOR ORDER ENFORCING**
17 **CIVIL INVESTIGATIVE DEMAND**

18 **IV. INTRODUCTION**

19 4.1 **COMES NOW** Respondent State of Washington, by and through its attorney,
20 Robert M. McKenna, Attorney General, and James T. Sugarman, Assistant Attorney General,
21 and brings this counterclaim for enforcement of a Civil Investigative Demand pursuant to
22 RCW 19.86.110 of the Consumer Protection Act.

23 **V. JURISDICTION AND VENUE**

24 5.1 This petition is initiated under the provisions of RCW 19.86, the Consumer
25 Protection Act.

26 5.2 This Court has jurisdiction over this counterclaim and venue is proper.

1 7.2 Rent-A-Center is a company with over 3,000 stores nationally and 50 in the
2 State of Washington. It sells furniture, televisions, and other consumer items using a rent-to-
3 own business model.

4 7.3 Consumers make weekly, and sometimes biweekly or monthly payments until
5 they have paid off whatever amount Rent-A-Center has determined is the total due.

6 7.4 Through these payments, consumers ultimately pay far larger prices for items
7 than charged in traditional stores. As an example, through weekly payments Rent-A-Center
8 charged a total of \$3,585.21 for a refrigerator, \$4,073.25 for a laptop computer and \$6,594 for
9 a used television. Ex. B.

10 7.5 Generally consumers' payments must be taken to the store each week in person.

11 7.6 According to Rent-A-Center only 25% of its consumers actually complete this
12 payment schedule.¹

13 7.7 Rent-A-Center's contracts include a right to repossess the property without legal
14 process and to charge for repossessions. Ex. B.

15 7.8 The State requested, through a civil investigative demand, information
16 regarding the following acts and practices by Rent-A-Center: (1) abusive conduct during
17 attempts to collect payments and/or property; (2) contractual provisions that unlawfully deny
18 Washington residents the use of class actions, consolidated claims and the use of private
19 attorney general actions; (3) concealment of the cash price of each item it sells, which cost
20 must be disclosed in writing as mandated by the Lease Purchase Act. RCW 63.19.040(f); and
21 (4) inclusion of fees for services which may be without value, inappropriate or unknown to the
22 consumer.

23
24
25 ¹ As stated in Rent-A-Center's March 1, 2007 10-K report filed with the Securities Exchange
26 Commission.

1 7.9 The State issued its Civil Investigative Demand (CID) on January 29, 2008.
2 The CID contained ten interrogatory questions and seven requests for production of
3 documents. The CID instructed Rent-A-Center to respond by March 4, 2008.

4 7.10 Rent-A-Center did not respond within the time required by the CID. Instead,
5 Rent-A-Center submitted what it stated was “not a formal response” but a “show of good
6 faith.” This response included some self-selected documents and partial answers for some of
7 the interrogatories.

8 7.11 Despite three extensions over a six-month period, Rent-A-Center has neither
9 fully, nor formally responded. It has not responded at all to several of the requests, has never
10 sworn to or affirmed any of the responses it informally provided, and has only partially
11 responded to most of the remaining requests.

12 7.12 Rent-A-Center now seeks a Court order denying the State its use of the civil
13 investigative process set forth in RCW 19.86.110 because Rent-A-Center contends that the
14 legal theories the State may rely upon are not tenable. *Petition 3-5*.

15 **VIII. ADDITIONAL FACTS ALLEGED UPON AMENDMENT**

16 8.1 This counter-complaint is filed under the provisions of Chapter 19.86 RCW, the
17 Unfair Business Practices -- Consumer Protection Act.

18 8.2 The violations hereinafter alleged have been committed in whole or in part
19 within King County and elsewhere within the State of Washington by the
20 Plaintiff/Counterclaim Defendant (“Plaintiff”).

21 8.3 The Attorney General's standing to commence this action is conferred by
22 RCW 19.86.080.

23 8.4 Jurisdiction over the Plaintiff is vested in the Court because Plaintiff has
24 committed the acts alleged below in the state of Washington. Jurisdiction over the subject
25 matter of this counter-complaint is conferred by the above-referenced statute.
26

1 **IX. UNFAIR AND DECEPTIVE COLLECTION TACTICS**

2 9.1 In the context of collecting payments from consumers, Rent-A-Center uses
3 unfair and deceptive collection practices including, but not limited to, the following:

- 4 a. Harassing consumers with repeated telephone calls at home and at work,
5 including calling consumers at work after being told not to, calling
6 consumers at home after being told not to, and, filling a consumer's
7 answering service to capacity with collection messages;
- 8 b. Repeated collection calls to third parties such as family members or
9 friends of the consumers demanding that the account be paid, and
10 disclosing the existence of the purported debt to third parties, and
11 continuing such calls after being told not to;
- 12 c. Revealing consumer's personal information to third parties in the course
13 of attempting to collect debts;
- 14 d. Using profanity and other abusive, threatening or humiliating language,
15 including calling consumers "deadbeat," "liar," "thief," and "ghetto
16 trash";
- 17 e. Using false threats of criminal arrest or other legal action, including
18 telling children who are home alone that their parents will face legal
19 action;
- 20 f. Pounding aggressively on the doors of consumers homes even when the
21 consumer clearly does not want to answer or has asked them to leave,
22 shouting at consumers from outside of their homes, walking around the
23 house and peering in windows when consumers refuse to answer the
24 door;
- 25 g. Claiming to have a court order to serve when they do not;
- 26 h. Making payment demands to babysitters or other third parties when the
 consumer is not in the home; and
- i. Going to consumers' place of employment to demand payments and
 remaining even when asked to leave.

 9.2 Rent-A-Center's collection practices and training material presume that there
22 are no legal limits to the number of times it may contact a consumer or third party. When
23 consumers challenge Rent-A-Center's abusive collection practices, Rent-A-Center's
24 employees tell consumers that their tactics are legal because collection laws do not apply to
25 them.

1 9.3 Rent-A-Center employees continue contacting delinquent consumers until the
2 consumer arranges to make payments or return the merchandise.

3 9.4 Rent-A-Center places no limitation on the number of contacts its employees
4 may initiate.

5 9.5 Rent-A-Center continues to contact consumers demanding payments after
6 consumers have asked them to stop.

7 9.6 Rent-A-Center's training material does not instruct its employees to stop
8 contacting consumers after consumers have asked them to stop, except in circumstances where
9 a consumer tells it to stop calling a workplace.

10 9.7 Despite Rent-A-Center's training material its employees regularly continue to
11 call consumer's workplace even when told not to.

12 9.8 Rent-A-Center instructs its employees to begin collection calls before the actual
13 due date of the first payment.

14 9.9 When consumers report abusive practices to Rent-A-Center's supervisors or
15 other employees those practices continue or even escalate in their level of abusiveness.

16 9.10 When consumers have questioned Rent-A-Center's calculations of payments
17 due, Rent-A-Center has refused to give consumers their account balances or payment histories.

18 9.11 Rent-A-Center's collection tactics are injurious to the public interest and are not
19 reasonable in relation to the development or preservation of business.

20 **X. VIOLATIONS OF THE WASHINGTON LEASE-PURCHASE**
21 **AGREEMENT ACT, RCW 63.19.**

22 10.1 The Washington Lease-Purchase Agreement Act (LPA) requires Rent-A-Center
23 to disclose the cash price of each piece of property it rents. RCW 63.19.040 (1) (f)

24 10.2 Rent-A-Center's lease purchase agreements give consumers a contractual right
25 to purchase property for a "cash price," as an alternative to paying the entire schedule of rent-
26 to-own payments.

1 10.3 The cost of paying the entire schedule of rent-to-own payments can be double
2 the “cash price” or more.

3 10.4 Rent-A-Center routinely conceals the individual cash price of properties by
4 aggregating several properties into one cash price.

5 10.5 This practice prevents consumers from exercising their early purchase option,
6 causes them to incur additional costs in purchasing the property or causes consumers to lose
7 their chance to purchase property.

8 10.6 Rent-A-Center’s Lease-Purchase Agreement also attempts to conceal or nullify
9 its early purchase option through contradictory contractual terms. One provision states that to
10 obtain ownership of the property consumers “must” pay every installment in the lease
11 schedule. This provision contradicts a later provision that allows consumers to exercise a
12 much cheaper early purchase option that waives the remaining payments. These contradictory
13 provisions can result in wrongful denial of a consumer’s early purchase option.

14 10.7 Rent-A-Center’s agreements contain waivers of claims and defenses in violation
15 of the Lease-Purchase Agreement Act and the public policy of the State of Washington by
16 barring ‘private attorney general’ claims under the Consumer Protection Act, by prohibiting
17 consumers from joining their claims with any other consumer, and by prohibiting consumers
18 from bringing claims as a class or participating in a class action.

19 10.8 Rent-A-Center rents damaged property without revealing the damage as
20 required by the Lease-Purchase Agreement Act, RCW 63.19.040 (1) (e).

21 10.9 Rent-A-Center’s violations of the Lease Purchase Agreement Act prevent
22 consumers from knowingly negotiating their contracts, prevent consumers from exercising
23 contractual and statutory rights, cause consumers to pay more than they otherwise would under
24 the contract terms, and frustrate fair and open competition in the marketplace.

1 10.10 Each of the allegations in this Complaint refer back to conduct that has
2 occurred. The State alleges that the described conduct is a material part of Plaintiff's business
3 practices and is continuing or will continue unless enjoined or restrained by order of the Court.

4 **XI. FIRST CAUSE OF ACTION**
5 (Deceptive Practices in Violation of RCW 19.86.020)

6 11.1 Defendants re-allege paragraphs 1.1 through 10.10, inclusive and incorporate
7 them herein by this reference.

8 11.2 In the context of conducting its business, Plaintiff made numerous
9 misrepresentations and failures to disclose material terms. Such conduct is deceptive or has
10 the capacity to deceive a substantial portion of the public in violation of RCW 19.86.020.

11 **XII. SECOND CAUSE OF ACTION**
12 (Unfair Practices in Violation of RCW 19.86.020)

13 12.1 Defendants re-allege paragraphs 1.1 through 10.10, inclusive and incorporate
14 them herein by this reference.

15 12.2 In the context of conducting its business, Plaintiff engaged in numerous unfair
16 acts and practices. Such conduct constitutes unfair or deceptive acts or practices in trade or
17 commerce, and/or unfair methods of competition in violation of RCW 19.86.020.

18 **XIII. THIRD CAUSE OF ACTION**
19 (Violations of the Lease-Purchase Agreement Act, RCW 63.19)

20 13.1 Defendants re-allege paragraphs 1.1 through 10.10.

21 13.2 In the context of conducting its business, Plaintiff created and enforced
22 agreements that violate the Lease-Purchase Agreements Act. RCW 63.19.

23 13.3 Pursuant to RCW 63.19.110, violations of the Lease-Purchase Agreement Act
24 are *per se* violations of the Consumer Protection Act, RCW 19.86.

25 13.4 Notwithstanding RCW 63.19.110, Plaintiff's conduct affects the public interest
26 and has the capacity to mislead a substantial number of consumers and constitutes unfair or

