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County of Los Angeles

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John A. Clarke, Executive Officer/Clerk  
By A. Salgado, Deputy  
ANNETTE B. DODG

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES

14 INSURANCE COMMISSIONER STEVE  
15 POIZNER,

16 Petitioner

17 v.

18 OFFICE OF ADMINISTRATIVE LAW,

19 Respondent,

20  
21 AMERICAN COUNCIL OF LIFE  
22 INSURERS; AMERICA INSURANCE  
23 ASSOCIATION; ASSOCIATION OF  
24 CALIFORNIA INSURANCE  
25 COMPANIES; ASSOCIATION OF  
26 CALIFORNIA LIFE AND HEALTH  
INSURANCE COMPANIES and  
PERSONAL INSURANCE FEDERATION  
OF CALIFORNIA,

27 Real Parties in Interest.  
28

Case No. BS129209

**BY FAX**

ANSWER TO PETITION FOR WRIT OF  
MANDATE

Department 86

Hon. Ann Jones

1 Respondent, Office of Administrative Law (OAL), answers the Petition for Writ of Mandate  
2 as follows:

3 1. In answer to paragraph 1, Respondent lacks sufficient information or belief to answer  
4 the allegations of paragraph 1 and on that ground denies said allegations.

5 2. In answer to paragraph 2, Respondent lacks sufficient information or belief to answer  
6 the allegations of paragraph 2 and on that ground denies said allegations.

7 3. In answer to paragraph 3, Respondent lacks sufficient information or belief to answer  
8 the allegations of paragraph 3 and on that ground denies said allegations.

9 4. In answer to paragraph 4, Respondent denies the allegations of paragraph 4.

10 5. The allegations of paragraph 5 contain statements of the law and the law speaks for  
11 itself. In further answer to paragraph 5, Respondent denies the allegations of paragraph 5.  
12

13 6. In answer to paragraph 6, Respondent lacks sufficient information or belief to answer  
14 the allegations of paragraph 6 and on that ground denies said allegations.  
15

16 7. In answer to paragraph 7, Respondent denies the allegations of paragraph 7. In  
17 further answer to paragraph 7, Respondent alleges that the five trade associations of  
18 insurance companies petitioned the OAL for a determination that the actions of the  
19 Commissioner were underground regulations.  
20

21 8. In answer to paragraph 8, Respondent denies the allegations of paragraph 8. In  
22 further answer to paragraph 8, Respondent alleges that it determined that the actions taken by  
23 the Commissioner were regulations not adopted in conformity with the Administrative  
24 Procedure Act and thus constituted "underground regulations."  
25

26 9. In answer to paragraph 9, Respondent admits the allegations of paragraph 9.  
27  
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1           10. In answer to paragraph 10, Respondent denies that Steve Poizner is the Insurance  
2 Commissioner of the State of California but admits that it is informed and believes that Steve  
3 Poizner was the Insurance Commissioner of the State of California at the time of filing the  
4 Petition. Respondent admits the remainder of the allegations of paragraph 10.

5           11. In answer to paragraph 11, Respondent denies the allegations of paragraph 11. In  
6 further answer to paragraph 11, the statutes speak for themselves.  
7

8           12. In answer to paragraph 12, Respondent lacks sufficient information or belief to  
9 answer the allegations of paragraph 12 and on that ground denies said allegations.

10           13. In answer to paragraph 13, Respondent lacks sufficient information or belief to  
11 answer the allegations of paragraph 13 and on that ground denies said allegations.  
12

13           14. In answer to paragraph 14, Respondent lacks sufficient information or belief to  
14 answer the allegations of paragraph 14 and on that ground denies said allegations.

15           15. In answer to paragraph 15, Respondent lacks sufficient information or belief to  
16 answer the allegations of paragraph 15 and on that ground denies said allegations.  
17

18           16. In answer to paragraph 16, Respondent lacks sufficient information or belief to  
19 answer the allegations of paragraph 16 and on that ground denies said allegations.

20           17. In answer to paragraph 17, Respondent lacks sufficient information or belief to  
21 answer the allegations of paragraph 17 and on that ground denies said allegations.  
22

23           18. In answer to paragraph 18, Respondent lacks sufficient information or belief to  
24 answer the allegations of paragraph 18 and on that ground denies said allegations.

25           19. In answer to paragraph 19, Respondent lacks sufficient information or belief to  
26 answer the allegations of paragraph 19 and on that ground denies said allegations.  
27  
28

1           20. In answer to paragraph 20, Respondent lacks sufficient information or belief to  
2 answer the allegations of paragraph 20 and on that ground denies said allegations.

3           21. In answer to paragraph 21, Respondent lacks sufficient information or belief to  
4 answer the allegations of paragraph 21 and on that ground denies said allegations.

5           22. In answer to paragraph 22, Respondent lacks sufficient information or belief to  
6 answer the allegations of paragraph 22 and on that ground denies said allegations.

7           23. In answer to paragraph 23, Respondent lacks sufficient information or belief to  
8 answer the allegations of paragraph 23 and on that ground denies said allegations.

9           24. In answer to paragraph 24, Respondent lacks sufficient information or belief to  
10 answer the allegations of paragraph 24 and on that ground denies said allegations.

11           25. In answer to paragraph 25, Respondent lacks sufficient information or belief to  
12 answer the allegations of paragraph 25 and on that ground denies said allegations.

13           26. In answer to paragraph 26, Respondent lacks sufficient information or belief to  
14 answer the allegations of paragraph 26 and on that ground denies said allegations.

15           27. In answer to paragraph 27, Respondent lacks sufficient information or belief to  
16 answer the allegations of paragraph 27 and on that ground denies said allegations.

17           28. In answer to paragraph 28, Respondent lacks sufficient information or belief to  
18 answer the allegations of paragraph 28 and on that ground denies said allegations.

19           29. In answer to paragraph 29, Respondent lacks sufficient information or belief to  
20 answer the allegations of paragraph 29 and on that ground denies said allegations.

21           30. In answer to paragraph 30, Respondent denies the allegations of paragraph 30. In  
22 further answer to paragraph 30, Respondent alleges the March 29, 2010, petition speaks for  
23 itself.  
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1           31. In answer to paragraph 31, Respondent denies the allegations of paragraph 31. In  
2 further answer to paragraph 31, Respondent alleges the May 27, 2010, letter speaks for itself.

3           32. In answer to paragraph 32, Respondent admits that the Department of Insurance  
4 submitted a response to the insurance trade association's petition herein on July 27, 2010.

5           33. In answer to paragraph 33, Respondent denies the allegations of paragraph 33. In  
6 further answer to paragraph 33, Respondent alleges that Respondent received the Reply from  
7 the insurance trade associations herein on August 10, 2010.

8           34. In answer to paragraph 34, Respondent lacks sufficient information or belief to  
9 answer the allegations of paragraph 34 and on that ground denies said allegation. In further  
10 answer to paragraph 34, Respondent alleges a public comment period was held and no  
11 comments from the public were received on the petition.  
12

13           35. In answer to paragraph 35, Respondent admits the allegations of paragraph 35.

14           36. In answer to paragraph 36, Respondent admits the allegations of paragraph 36.

15           37. In answer to paragraph 37, Respondent denies paragraph 37. In further response to  
16 paragraph 37, Respondent alleges that OAL issued 2010 OAL Determination No. 2 speaks  
17 for itself.  
18

19           38. The allegations of paragraph 38 contain statements of the law and the law speaks  
20 for itself. Paragraph 38 contains no factual allegations to admit or deny.  
21

22           39. The allegations of paragraph 39 contain statements of the law and the law speaks  
23 for itself. Paragraph 39 contains no factual allegations to admit or deny.  
24

25           40. The allegations of paragraph 40 contain statements of the law and the law speaks  
26 for itself. Paragraph 40 contains no factual allegations to admit or deny.  
27  
28

1           41. The allegations of paragraph 41 contain statements of the law and the law speaks  
2 for itself. Paragraph 41 contains no factual allegations to admit or deny.

3           42. The allegations of paragraph 42 contain statements of the law and the law speaks  
4 for itself. Paragraph 42 contains no factual allegations to admit or deny.

5           43. The allegations of paragraph 43 contain statements of the law and the law speaks  
6 for itself. Paragraph 43 contains no factual allegations to admit or deny.

7           44. The allegations of paragraph 44 contain statements of the law and the law speaks  
8 for itself. Paragraph 44 contains no factual allegations to admit or deny.

9           45. In answer to paragraph 45, Respondent denies the allegations of paragraph 45.

10          46. In answer to paragraph 46, Respondent lacks sufficient information or belief to  
11 answer the allegations of paragraph 46 and on that ground denies said allegation.  
12

13          47. In answer to paragraph 47, Respondent denies the allegations of paragraphs 47.

14          48. In answer to paragraph 48, Respondent denies the allegations of paragraphs 48.

15          49. In answer to paragraph 49, Respondent denies the allegations of paragraphs 49.

16          50. In answer to paragraph 50, Respondent denies the allegations of paragraphs 50.

17          51. In answer to paragraph 51, Respondent denies the allegations of paragraphs 51.

18          52. In answer to paragraph 52, Respondent alleges that 2010 OAL Determination No.  
19 21 speaks for itself. In further answer to paragraph 52, Respondent denies paragraph 52.  
20

21          53. In answer to paragraph 53, Respondent lacks sufficient information or belief to  
22 answer the allegations of paragraphs 53 and on that ground denies said allegations.  
23

24          54. In answer to paragraph 54, Respondent lacks sufficient information or belief to  
25 answer the allegations of paragraphs 54 and on that ground, denies said allegations.  
26

27          55. In answer to paragraph 55, Respondent denies the allegations of paragraph 55.  
28

1           56. The allegations of paragraph 56 contain statements of the law and the law speaks  
2 for itself. Paragraph 56 contains no factual allegations to admit or deny.

3           57. In answer to paragraph 57, Respondent denies paragraph 57.

4           58. In answer to paragraph 58, Respondent alleges that 2010 OAL Determination No.  
5 21 speaks for itself. In further answer to paragraph 58, Respondent denies paragraph 58.  
6

7           59. In answer to paragraph 59, Respondent denies paragraph 59.

8           60. In answer to paragraph 60, Respondent denies paragraph 60.

9           61. In answer to paragraph 61, Respondent denies paragraph 61.

10          62. In answer to paragraph 62, Respondent denies paragraph 62.

11          63. In answer to paragraph 63, Respondent denies paragraph 63.

12          64. In answer to paragraph 64, Respondent denies paragraph 64.

13          65. In answer to paragraph 65, Respondent denies paragraph 65.

14          66. In answer to paragraph 66, Respondent denies paragraph 66.

15          67. In answer to paragraph 67, Respondent denies paragraph 67.

16          68. In answer to paragraph 68, Respondent alleges that 2010 OAL Determination No.  
17 21 speaks for itself. In further answer to paragraph 68, Respondent denies paragraph 68.  
18

19          69. In answer to paragraph 69, Respondent alleges that 2010 OAL Determination No. 21  
20 speaks for itself. In further answer to paragraph 69, Respondent denies paragraph 69.  
21

22          70. In answer to paragraph 70, Respondent denies paragraph 70.

23          71. The first sentence of paragraph 71 contains statements of the law and the law  
24 speaks for itself. The first sentence contains no factual allegations to admit or deny. In  
25 further answer to paragraph 71, Respondent denies the remainder of paragraph 71.  
26  
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1 72. In answer to paragraph 72, Respondent alleges that 2010 OAL Determination No.  
2 21 speaks for itself. In further answer to paragraph 72, Respondent denies paragraph 72.

3 73. In answer to paragraph 73, Respondent denies paragraph 73.

4 AS A FIRST SEPARATE AND AFFIRMATIVE DEFENSE, Respondent alleges that  
5 the Petition fails to state facts sufficient to constitute a cause of action.

6 AS A SECOND SEPARATE AND AFFIRMATIVE DEFENSE, Respondent alleges that  
7 Petitioners have an adequate remedy at law, and thus mandate is not proper.

8 AS A THIRD SEPARATE AND AFFIRMATIVE DEFENSE, Respondent alleges that  
9 Petitioners have not exhausted their administrative remedies.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Respondent, the Office of Administrative Law, prays that this Court  
12 deny the issuance of the writ of mandate, and, further:

- 13 1. That Respondent recover its costs in this matter and Petitioner take nothing;  
14 2. That 2010 OAL Determination No. 21 be upheld; and,  
15 3. That such other and further relief be granted as the Court deems just and proper.  
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19

20 Dated: February 3, 2011

Respectfully submitted,

21 DEBRA CORNEZ,  
22 Assistant Chief Counsel/Acting Director  
23 KATHLEEN EDDY, Senior Counsel  
24 ELIZABETH HEIDIG, Staff Counsel  
25 Office of Administrative Law

26   
27 ELIZABETH HEIDIG, Staff Counsel  
28



2 **DECLARATION OF SERVICE**

3 I am a citizen of the United States, over the age of 18 years, and not a party to or  
4 interested in this action. I am employed in the County of Sacramento, State of  
5 California and my business address is 300 Capitol Mall, Ste, 1250, Sacramento,  
6 California 95814. On this day I caused to be served the following documents(s)

7 **ANSWER TO WRIT OF MANDATE**

8 By placing  the original  a true copy into sealed envelopes addressed and served  
9 as follows:

10 Susan K. Leach Attorneys for California Department of Insurance  
11 Deputy Attorney General Via U.S. Mail and E-mail  
12 Department of Justice  
300 South Spring Street, Ste. 1702  
Los Angeles, California 90013  
Susan.Leach@doj.ca.gov

13 Gene Livingston Attorneys for Real Parties in Interest  
14 Greenberg, Traurig, LLP Via U.S. Mail and E-mail  
15 1201 K Street, Ste. 1100  
Sacramento, California 95814  
livingstong@gtlaw.com

16  **BY MAIL:** I am familiar with this firm's practice whereby the mail, after  
17 being placed in a designated area, is given fully prepaid postage and is then  
18 deposited with the U.S. Postal Service at Sacramento, California, during or  
19 after the close of the day's business.

20  **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand.

21  **BY ELECTRONIC MAIL:** I caused such document(s) to be transmitted by  
22 electronic mail via the internet from Chia.Thao@oal.ca.gov the e-mail  
23 recipients and addresses shown above.

24 I declare under penalty of perjury under the laws of the State of California  
25 that the foregoing is true and correct.

26 Executed on February 03, 2011 at Sacramento, California.

27   
28 Chia Thao