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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DEC 19 2011

John A. Clarke, Executive Officer/Clerk
BY _____ Deputy
Glorietta Robinson

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ASSOCIATION OF CALIFORNIA INSURANCE COMPANIES and PERSONAL INSURANCE FEDERATION OF CALIFORNIA, Plaintiffs, v. DAVE JONES in his capacity as Commissioner of the California Department of Insurance, Defendant.	CASE NO. BC463124 **PLAINTIFFS' REPLY TO DEFENDANT'S OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS** **DATE:** January 6, 2012 **TIME:** 8:30 a.m. **DEPT:** 36 **ACTION FILED: JUNE 8, 2011** **TRIAL DATE:**

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I. INTRODUCTION

According to Defendant, an estimate of replacement cost does not have to be accurate, it just has to be calculated and communicated in accordance with regulatory section 2695.183 (Defendant's Response, page 10).[1] In other words, an inaccurate estimate calculated in accordance with the regulation is **not** misleading, but an accurate estimate is misleading if it is calculated in another way, for example, on a statement by a general contractor of what it would cost to replace completely the insured property.

The regulation prohibits a licensee (insurer, agent, or broker) from communicating an estimate of replacement cost to an applicant for insurance or an insured unless the requirements of subdivisions (a)-(e) of section 2695.183 are met. In addition, subdivision (g)(2) requires an estimate of replacement cost to itemize the projected cost for each element in subdivision (a)(1)-(4) and identify the assumptions made for each of the components and features listed in subdivision (a)(5). Subdivision (g)(1) requires all of this information to be provided in writing to an applicant or insured.

Under the regulation, the total amount of the estimated replacement cost is misleading unless a separate estimate is provided for each of the following: (1) cost of labor, building materials and supplies; (2) overhead and profit; (3) cost of demolition and debris removal; and (4) cost of permits and architect's plans; and a description of the following components and features is set out in the estimate:

(A) type of foundation;
(B) type of frame;
(C) roofing materials and type of roof;
(D) siding materials and type of siding;
(E) whether the structure is located on a slope;
(F) the square footage of the living space;
(G) geographic location of property;
(H) number of stories and any nonstandard wall heights;
(I) materials used in, and generic types of, interior features and finishes, such as, where applicable, the type of heating and air conditioning system, walls, flooring, ceiling, fireplaces, kitchen, and bath(s);
(J) age of the structure or the year it was built; and
(K) size and type of attached garage.

The regulation dictates how a licensee is to calculate an estimate of replacement cost for a property and how the licensee is to communicate the estimate, not solely as a single total amount, but as four separate estimates and with the description of 11 separate features of the property, one of which requires a description of all of the interior features and finishes of the property.

If the estimate of replacement cost communicated to an applicant or insured is complete, but the

[1] References to Defendant's Response will be cited as (DR, p. #).

written estimate provided to the applicant or insured includes overhead and profit in the cost of labor, building materials and supplies, rather than breaking it out separately, the estimate is misleading as a matter of law under the regulation. The regulation is not, as Defendant asserts repeatedly, simply a definition of replacement cost. (DR, pp. 1, 6, 8.) "When the regulation is stripped to its core, it defines a term . . .." (DR, p. 16.)

The regulation mandates how a licensee is to calculate an estimate of replacement cost and how it is to communicate that estimate in all of its facets whenever an opinion or statement is made to an applicant or insured about estimated replacement cost. This mandate is imposed under the guise of preventing misleading statements.

There is not only one way, Defendant's way, to avoid making a misleading statement about estimated replacement cost. Because Defendant does not have a monopoly on the truth, he has exceeded his statutory authority and enlarged the scope of the statute being implemented.

Further, Defendant cannot mandate a single, detailed way to communicate, to the exclusion of all others if disclaimers can be used to address a potentially misleading statement. *Pearson v. Shalala*, 164 F.3d 650 (DC Cir. 1999). Yet, that is exactly what he has done in violation of the First Amendment rights of Plaintiffs' members.

Defendant acknowledges in the regulation, subdivisions (l) and (p), that underwriting involves an insurer establishing an estimate of replacement cost, yet he denies that this regulation restricts underwriting because it does not require a licensee to communicate the estimate it uses to underwrite to an applicant or insured. (DR, pp. 11, 12.) While the regulation may not mandate the communication of replacement cost to an applicant or insured, Defendant ignores that a statute does require such a communication when an insurer makes an adverse underwriting decision. Insurance Code section 791.10.

Plaintiffs seek a declaratory judgment that regulatory section 2695.183 is invalid on three grounds, any one of which is sufficient to sustain such a declaration. Defendant contests all three of the grounds asserted by Plaintiffs, and in doing so establish the elements for a declaratory judgment. Only legal issues are in dispute, what is the legal effect of regulatory section 2695.183, and is it legally valid; accordingly, this matter is appropriate for resolution on a motion for judgment on the pleadings. *Allstate Ins. Co. v. Kim W.*, 160 Cal.App.3d 326, 330-333 (1984); *Consol Fire Prot. Dist. v. Howard Jarvis Taxpayers Ass'n.*, 63 Cal.App.4th, 211, 219 (1998).

II. ARGUMENT

A. Standard of Review.

Defendant is subject to the same restrictions in adopting regulations as any other agency head.

They must all meet the legal standards of Government Code sections 11342.1 and 11342.2 and the cases construing those provisions. The clearest and most comprehensive articulation of the standard of review is Justice Mosk's concurring opinion in *Yamaha Corp. of America v. State Board of Equalization*, 19 Cal. 4th 1 (1998), where he said, "The majority do not purport to change the well-established, if not always consistently articulated, body of law pertaining to judicial review of administrative rulings, but merely attempt to clarify that law. I write separately to further clarify the relevant legal principles and their application to the present case." *Id.* at 16.

Justice Mosk then added, "'The proper scope of the court's review is determined by the *task* before it.'" (Emphasis in the original.) (Citation omitted.) In the case of quasi-legislative regulations, the court has essentially two tasks. The first duty is 'To determine whether the [agency] exercised [its] quasi-legislative authority within the bounds of the statutory mandate.' (Citation omitted.) As the *Morris* court made clear, this is a matter for the independent judgment of the court. 'While the construction of a statute by officials charged with this administration, including their interpretation of the authority invested in them to implement and carry out its provisions, is entitled to *great weight*', nevertheless 'Whatever the force of administrative construction . . . *final responsibility for the interpretation of the law rests with the courts.*' [Citations.] Administrative regulations that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to strike down such regulations.'" *Id.* at 16.

Justice Mosk explained, "This duty derives directly from statute, citing Government Code sections 11342.1 and 11342.2. 'Each regulation adopted [by a state agency], to be effective, must be within the scope of authority conferred . . ..' Whenever a state agency is authorized by statute 'to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, *no regulation adopted is valid or effective unless consistent and not in conflict with the statute* . . ..'" (Italics in the original.) *Id.* at 16.[2]

Other cases confirm that courts must determine whether the agency "acted within the scope of its delegated authority" in reviewing agency quasi-legislative actions. *Western Oil and Gas Assoc. v. Air Resources Board,* 37 Cal. 3d 502, 509 (1984); see also *Preston v. State Board of Equalization*, 25 Cal. 4th 197, 219 (2001) ("regulation that exceeds the scope of the Board's authority is invalid"); *People ex*

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[2] The second task for the court once it determines that the regulation is authorized and consistent, that is, legally valid, is to determine whether the regulation is "reasonably necessary" to carry out the purpose of the statute. Necessity is generally based on a factual or policy determination and courts apply a deferential standard of review, arbitrary and capricious. The standards for determining reasonable necessity are not relevant to this case; no need exists to determine necessity because the regulation is legally invalid.

rel. Dept. of Alcoholic Beverage Control v. Miller Brewing Company, 104 Cal. App. 4th 1189, 1199 (2002) (administrative action that exceeds delegated authority is "void").

B. Plaintiffs' Action for Declaratory Judgment Is Appropriate for Resolution by a Motion for Judgment on the Pleadings and on the Record Before the Court.

Government Code section 11350 provides, "Any interested person may obtain a judicial declaration as to the validity of any regulation or order of repeal by bringing an action for declaratory relief in the Superior Court in accordance with the Code of Civil Procedure." An action for declaratory judgment lies when a party desires a declaration of his or her rights or duties with respect to another "in cases of actual controversy relating to the legal rights and duties of the respective parties." Code of Civil Procedure section 1060.

It is clear that an actual controversy exists with respect to the legal validity of regulatory section 2695.183. In response to Defendant's predecessor first proposing to adopt regulations relating to insurance licensees communicating estimates of replacement value, Plaintiffs submitted comments objecting to the adoption of the regulations on the grounds advanced in this litigation. (PIFC Comment Letter, May 17, 2010, P-051 - P-062; ACIC Comment Letter, May 17, 2010, P-063 - P-066.)[3] Similarly, both Plaintiffs submitted additional comments after Defendant's predecessor revised the proposed regulation. (PIFC Comment Letter, November 12, 2010, P-092 - P-100; ACIC Comment Letter, November 12, 2010, P-104 - P-108.) In addition, the Chairs of the two Legislative Insurance Committees submitted a joint letter questioning the Commissioner's legal authority, and specifically so under Insurance Code section 790.03, to adopt the regulation. (P-088 - 091.)

Defendant states that Plaintiffs did not challenge Defendant's assertion that failing to calculate an estimate of replacement value without complying with the provisions of the proposed regulation is inherently misleading. In fact, they did. Plaintiff Personal Insurance Federation of California commented as follows:

> "PIFC does not concede that providing information that assists an applicant or insured to estimate the cost of replacing the structure to be insured, is a statement about the business of insurance. Even making that assumption, it does not follow that such information is misleading if it is not calculated solely in accordance with the extensive dictates of this regulation.
>
> For example, information provided by a contractor, knowledgeable about local building costs, could form a valid basis for an estimate of replacement cost that is not misleading. Certainly, an estimate of replacement cost could be provided without setting out the factors that went into the estimate or attaching cost to separate components that make up the overall estimate.

[3] References to the portion of the rulemaking record submitted by Plaintiffs are cited as P-#.

> Also, an estimate is exactly that - - it is an estimate. An estimate does not require the mathematical precision that the Department is mandating by this amended regulation to prevent it from being misleading. An estimate provided with the explanation that it is only an estimate and that the applicant or insured is to determine the amount of insurance needed to replace the structure is, by definition, non-misleading." (P-093 - P-094.)

Despite Plaintiffs' comments challenging the legal validity of regulatory section 2695.183, Defendant's predecessor adopted it, making it effective for all licensees on June 27, 2011. Defendant's predecessor obviously disputed Plaintiffs' contentions, as set out in their comments, that the regulation is legally invalid. Defendant, in his answer to Plaintiffs' complaint in this matter, continues that position, denying every allegation that Plaintiffs made pertaining to the legal invalidity of the regulation. This case presents an actual controversy.

The disputed issues in this matter are solely legal ones. The only facts that are essential to this litigation are that Defendant's predecessor adopted regulatory section 2695.183 and that Defendant disputes Plaintiffs' contentions that the regulation is legally invalid. Plaintiffs described above that the controversy, that is, the dispute between the parties about the legal validity of the regulations, began and persisted throughout the rulemaking proceeding. That fact, while adding support to establish an actual controversy, is not essential to Plaintiffs' cause of action. Government Code section 11350 permits "any interested person" to challenge the validity of a regulation by declaratory judgment without limiting it to persons who commented during the rulemaking proceeding.

Plaintiffs lodged with the court the portions of the record of the rulemaking proceeding that were potentially relevant to the legal issues in dispute in this case. The record submitted by Plaintiffs consist of the initially proposed regulation, the initial statement of reasons, comments submitted by interested persons, the amended regulatory language, the final statement of reasons, and the final text of the regulation. Defendant chides Plaintiffs for not referencing portions of the rulemaking proceeding in its opening memorandum, suggesting that Plaintiffs want the court "to scour through an incomplete record." (DR, p. 2.)

Plaintiffs made no reference in its opening memorandum to the selected portions of the record lodged with the court because it was not necessary. The complaint and answer are sufficient for the court to resolve this case on Plaintiffs' motion. Plaintiffs, in their complaint, attached regulatory section 2695.183, set out critical provisions of that regulation, and alleged the regulation was legally invalid on three different grounds. Defendant did not deny adoption of the regulation or its content and admitted in the answer that it disputed Plaintiffs' contention that the regulation was legally invalid.

The pleadings establish the grounds for resolving Plaintiffs' action for declaratory judgment by a

motion for judgment on the pleadings. Plaintiffs submitted selected portions of the rulemaking proceeding with its opening memorandum, anticipating that Defendant would make some objection about the record or the appropriateness of Plaintiffs' motion. Plaintiffs did not know what that objection might be, but submitted portions of the rulemaking record, so they were prepared to address the objections.

This case is ripe for resolution on Plaintiffs' motion.

C. Regulatory Section 2695.183 Is Not Administration of a Statute; Rather, It Constitutes a New Unfair Business Practice In Excess of Defendant's Authority.

Insurance Code section 790.10 authorizes the Commissioner to adopt regulations necessary to administer the article on unfair practices. That section does not authorize the Defendant to adopt a regulation defining new acts of unfair competition or new acts that are unfair and deceptive. Insurance Code section 790.06 sets out a procedure for the Defendant to determine whether an act committed by an insurer and not defined in section 790.03 should be declared to be unfair or deceptive.

Defendant denies that he is establishing a new act of unfair competition or acts that are unfair and deceptive. He asserts that he is implementing a provision of Insurance Code section 790.03. The portion of Insurance Code section 790.03 that Defendant claims to be implementing is found in subdivision (b), "making or disseminating or causing to be made or disseminated before the public in this state . . . any assertion, representation or statement with respect to the business of insurance . . . which is known or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading."

Regulatory section 2695.183 provides that the expression of any opinion or statement concerning an estimate of replacement cost is misleading unless the estimate is calculated in accordance with the provisions of the regulation and includes in the communication to an applicant or insured, not only a total estimated amount, but estimates of four discreet components and a description of numerous features and components of the property to be insured. The only way in which this regulation can be construed to be merely administering a portion of Insurance Code section 790.03 is if this is the only way to prevent an estimate of replacement value from being misleading. The court would have to conclude that an estimate of what it would cost to completely replace a property is inherently misleading if it is not broken out into four itemized portions, or the court would have to conclude that such an estimate communicated without describing the specific detailed features and components of the property as required in the regulation makes the estimate inherently misleading.

Breaking out the estimate into four itemized portions and describing in detail the features and components of the property are not essential to prevent communicating a misleading estimate of

replacement cost. Rather, the regulation is an attempt by Defendant to compel insurers and their agents and brokers to provide additional information, beyond the estimate, to applicants and insureds. In fact, Defendant admits as much in his Response. He states, "He is acting in the public interest by promulgating the questioned regulation to ensure that consumers and insureds make informed decisions with respect to coverage based upon being supplied with 'adequate information.'" (DR, p. 15.) Also, he states, "Plaintiffs believe that it is the industry itself which should define 'estimate of replacement cost' and decide what information consumers and insureds should receive with respect to what is included in the definition of a communicated 'estimate of replacement cost.' It is, however, "within the power of the Commissioner of a regulated industry to determine the adequacy of the information provided to consumers and insureds . . .." (DR, p. 16.)

Regulatory section 2695.183 is, in effect, defining a new act of unfair competition, that is, the failure to make the specified disclosures is an unfair and deceptive act. If the failure to make the disclosures mandated by the regulation, when a licensee expresses an opinion or makes a statement about replacement cost, is to be declared an unfair or deceptive act, it must be done pursuant to Insurance Code section 790.06. Certainly, Insurance Code section 790.10 provides no authority to Defendant to define new unfair and deceptive acts. Defendant may believe that mandating such disclosures would benefit insurance consumers, but he lacks the authority to do so. "No matter how altruistic its motive, an administrative agency has no discretion to promulgate a regulation that is inconsistent with the governing statutes." *Terhune v. Superior Court,* 69 Cal.App.4th 864, 873 (1998).

Defendant also relies on Insurance Code section 1749.7 as authority for adopting regulatory section 2695.183. That section was amended to allow licensed appraisers, contractors, and architects to estimate replacement value of a structure. It provides in subdivision (d), "However, if the Department of Insurance, by adopting a regulation establishes standards for the calculation of estimates of replacement value of a structure **by appraisers**, then on and after the effective date of the regulation a real estate appraiser's estimate of replacement value shall be calculated in accordance with the regulation." After quoting that section, Defendant states, "The section anticipates the Department adopting regulations establishing standards for the calculation of estimates of replacement value." (DR, p. 10.) Defendant seems to imply that the statutory language constitutes legislative authorization for him to adopt regulatory section 2695.183.

Defendant, in restating the effect of the section, ignores that it refers to "standards for the calculation of estimates of replacement value of a structure **by appraisers** . . .." While the Legislature has implicitly authorized the Department to establish standards for calculating replacement cost for appraisers, nothing in that section can be construed to confer authority on the Department to adopt such

standards for insurance licensees.

D. Under the First Amendment, Disclaimers Are Preferred to Bans on Commercial Speech.

Plaintiffs, in their opening memorandum, set out that Defendant has banned all communications with applicants and insureds about estimates of replacement cost except those communications prescribed in singular detail in regulatory section 2695.183. The court, in *Pearson v. Shalala*, 164 F.3d 650 (DC Cir., 1999), a case remarkably similar to this matter, held that unless a statement is inherently misleading, disclaimers rather than bans should be used to address any statement that is potentially misleading. Plaintiffs do not concede that providing estimates of replacement cost are necessarily potentially misleading, but they certainly are not inherently misleading. Therefore, Defendant, at most, may impose disclaimers to avoid potentially misleading statements; the First Amendment prohibits him from banning all statements save one.

Plaintiffs, in their opening memorandum, suggested disclaimers that would in every instant prevent any expression of an opinion or statement about replacement cost from being misleading. Defendant, in his Response, argues that nothing in the regulation prevents licensees from communicating any information they wish and that, in fact, the suggested disclaimers are included in the text of the regulation. (DR, p.16.) While the latter assertion overstates what is actually in the regulation, Defendant ignores the significance of the restrictions in the regulation. While the regulation does not prevent licensees from providing disclaimers, disclaimers would not change the effect of the regulation. The regulation would still define any opinion or statement concerning an estimate of replacement cost to be misleading unless it is calculated and communicated in accordance with the regulation. That is what makes the regulation inconsistent with the holding in *Pearson* and renders the regulation invalid under the First Amendment.

Defendant seeks to distinguish *Pearson* from the current case by relying on the court remanding the case to the FDA for an explanation of what is meant by "significant scientific agreement." Defendant's attempt to shift the emphasis of *Pearson* to a procedural ruling rather than its First Amendment holding should be non-availing. *Pearson* stands for the principle that if a statement is potentially misleading, disclaimers rather than bans are preferred under the First Amendment. *Pearson, supra*, at 657.

E. The Regulation Unlawfully Restricts Underwriting.

Plaintiffs, in their opening memorandum, described how insurers, in underwriting proposed risks, calculate an estimate of replacement cost. Plaintiffs cited *Smith v. State Farm*, 93 Cal.App.4th 700 (2001), in which the court said, "'Underwriting' is a label commonly applied to the process, fundamental to the concept of insurance, of deciding which risk to insure and which to reject in order to

spread losses over risk in an economically feasible way. [Citations omitted.] Given such understanding . . . it seems to us that an underwriting rule is properly characterized as a rule followed by or adopted by an insurer or rating organization which either (1) *limits* the conditions under which a policy will be issued or (2) *impacts* the rates that will charged for that policy." *Id.*, at 726. Defendant also cites *Smith* but tellingly omits the second sentence of the court's discussion of the meaning of "underwriting."

An insurer may decline to insure a property if the owner proposes a coverage amount that is too low, or it may condition acceptance of a risk on the owner agreeing to buy a certain coverage amount. Both actions are underwriting within the *Smith* definition of underwriting and within the statutory definition of an adverse underwriting decision. Insurance Code sections 791.02(a)(1) and 791.10.

Defendant claims that the regulation has no impact on underwriting. In doing so, he relies on two assertions. First, Defendant contends that the regulation does not seek to control the underwriting decision an insurer may make, and since an insurer is not obligated to communicate an estimate of replacement cost to an applicant or insured, the regulation would have no impact on underwriting.

Defendant seems to posit the circumstance where an insurer would establish an estimate of replacement cost and make an underwriting decision on the basis of its estimate without ever communicating an opinion or statement to the applicant or insured. In fact, subdivision (l) of the regulation confirms that is Defendant's position. It provides that the regulatory section "applies to all communications by a licensee, verbal or written, with the sole exception of internal communications within an insurer, or confidential communications, between an insurer and its contractor, that concern that insurer's underwriting **and that never come to the attention of an applicant or insured.**" (Emphasis added.)

Defendant's position, that an insurer can establish an estimate of replacement cost to underwrite a risk without ever communicating it to the applicant or insured ignores the explicit mandate of Insurance Code section 791.10. That section requires a licensee to provide the specific reasons for an adverse underwriting decision. Declining a risk or conditioning acceptance of a risk on the owner agreeing to a higher coverage amount and having to pay a higher premium are both adverse underwriting decisions. Insurance Code section 791.02 and 791.10. Defendant's "make believe" circumstance where a licensee is never required to communicate an estimate of replacement cost is dashed by Insurance Code section 791.10, a section that he is obligated by law to enforce. Defendant ignored Plaintiffs' argument and the effect of section 791.10 in his Response.

Second, Defendant asserts that the regulation permits an insurer to establish a "minimum amount of insurance" and communicate that amount to an applicant or insured without having to comply with the specific detailed provisions of regulatory section 2695.183. Defendant's argument appears to be that

an insurer may underwrite and even communicate the basis for its adverse underwriting decision without being impacted by the regulation. That argument is also dashed by specific provisions in subdivision (p) of the regulation and by Insurance Code section 10102.

Subdivision (p) of the regulation provides that, "An insurer may communicate to an applicant or insured that an applicant or insured must purchase a minimum amount of insurance that does not comport with subdivisions (a) through (e) of this Section 2695.183, however, if the minimum amount of insurance that is communicated is based in whole or in part on an estimate of replacement value, the estimate of replacement value shall also be provided to the applicant or insured and shall comply with all applicable provisions of this article." The condition contained in subdivision (p) of the regulation is illusory because virtually every policy of homeowners insurance is one based on replacement cost. Insurance Code section 10102 sets out the coverages that insurers may offer:

- Guaranteed replacement cost with full code upgrades;
- Guaranteed replacement cost with limited or no code upgrades;
- Limited replacement cost with extended coverage, that is, a percentage amount over the policy limits;
- Limited replacement cost up to the policy limits with no extended coverage;
- Actual cash value that pays the fair market value of the dwelling, or the cost to repair, to rebuild, or to replace the dwelling.

It defies logic to contemplate establishing a minimum amount of insurance to underwrite a risk in which the coverage is based on replacement cost and establish that minimum amount of insurance on something other than an estimate of replacement cost. The only rational basis for establishing a minimum amount of insurance is what it would cost to provide the coverage that is offered by the insurer, and that coverage in virtually every circumstance is predicated on paying replacement cost. Defendant also ignored this argument, the illusory effect of the condition in subdivision (p), and the reality of coverage types in his Response.

The regulation does not exempt underwriting. The effect of the regulation is that insurers, in conducting underwriting, that is, determining whether to accept the risk or to condition the risk on a higher coverage amount, must establish its underwriting standard, that is, the amount of insurance appropriate for the particular property, in accordance with the requirements of the regulation. It has to in the event it makes an adverse underwriting decision and becomes obligated to communicate the reasons for its decisions. Controlling how an insurer establishes the underwriting amount and how it communicates that amount to an applicant or insured restricts underwriting.

As noted in Plaintiffs' opening memorandum, Defendant has no authority to control underwriting in the fashion in which he seeks to do so in this regulation. Defendant said nothing in his

Response to assert that he has any authority to regulate the underwriting of homeowners insurance in this fashion. His sole defense is that the regulation does not restrict underwriting.

III. CONCLUSION

For the reasons set out above, Plaintiffs urge the court to grant its motion for judgment on the pleadings and declare that regulatory section 2695.183 is legally invalid on one or more of the grounds that Defendant lacks authority to adopt the regulation, the regulation impermissibly restricts underwriting, and the regulation impinges on the First Amendment rights of Plaintiffs' members.

DATED: December 19, 2011

GREENBERG TRAURIG, LLP

By: _____
GENE LIVINGSTON
Attorneys for Plaintiffs Association of California Insurance Companies and Personal Insurance Federation of California

Association of California Insurance Companies, et al. v. Dave Jones
Los Angeles County Superior Court Case No. BC463124

DECLARATION OF SERVICE

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in this action. I am employed in the County of Sacramento, State of California and my business address is Greenberg Traurig, LLP, 1201 K Street, Suite 1100, Sacramento, CA 95814. On this day I caused to be served the following document(s):

PLAINTIFFS' REPLY TO DEFENDANT'S OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS

☒ by placing ☐ the original ☒ a true copy into sealed envelopes addressed and served as follows:

Kamala Harris — Attorney for Defendant
W. Dean Freeman
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☐ **BY MAIL**: I am familiar with this firm's practice whereby the mail, after being placed in a designated area, is given fully prepaid postage and is then deposited with the U.S. Postal Service at Sacramento, California, after the close of the day's business.

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

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

Executed on December 19, 2011 at Sacramento, California.

Lynne Gomes
LYNNE GOMES

SAC 442,133,356v1 12-19-11