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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 15 FOR THE COUNTY OF SACRAMENTO

16 **MERCURY CASUALTY COMPANY,**  
 17  
 18 Petitioner and Plaintiff,  
 19  
 20 v.  
 21 **DAVE JONES IN HIS OFFICIAL**  
**CAPACITY AS THE INSURANCE**  
**COMMISSIONER OF THE STATE OF**  
**CALIFORNIA,**  
 22 Respondents and Defendants.  
 23 **CONSUMER WATCHDOG,**  
 24  
 25 Intervenor.  
 26 **PERSONAL INSURANCE**  
**FEDERATION OF**  
**CALIFORNIA et al.,**  
 27  
 28 Intervenor.

Case No. 34-2013-80001426-CU-WM-GDS  
 Assigned to Judge Shelleyanne W.L. Chang,  
 Dept. 24  
**RESPONDENT INSURANCE**  
**COMMISSIONER'S OBJECTIONS TO**  
**REQUESTS FOR JUDICIAL NOTICE**  
**IN SUPPORT OF PETITIONS FOR**  
**WRIT OF MANDATE**  
 Date: May 2, 2014  
 Time: 11:00 A.M.  
 Dept: 24  
 Writ Hearing Date: May 2, 2014  
 Action Filed: March 1, 2013

1       **RESPONDENT COMMISSIONER'S OBJECTIONS TO REQUESTS FOR JUDICIAL**  
2               **NOTICE BY PETITIONER MERCURY AND INTERVENOR TRADES**

3               Respondent Dave Jones, in his capacity as the Insurance Commissioner for the State of  
4 California (the "Commissioner") hereby objects to the requests for judicial notice submitted by  
5 Petitioner Mercury Casualty Company ("Mercury") and the Intervenor Trade Groups, as follows.

6       **I.     Objections to All the Proposed Exhibits, Except Trade Groups' Proposed Exhibit 1,**  
7       **Based on the Hearsay Rule: Taking Judicial Notice Is Not A Means To Avoid The Hearsay**  
8       **Rule**

9               As s threshold issue, the Commissioner objects to all of Mercury's and the Trade Groups'  
10 requests for judicial notice -- except for Mercury's proposed Exhibit 1 and the Trade Groups'  
11 proposed Exhibit 1 -- to the extent they seek to violate the hearsay rule. The principle underlying  
12 "judicial notice is that the matter being judicially noticed is a law or fact *not reasonably subject to*  
13 *dispute.*" (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91  
14 Cal.App.4th 875, 882 [emphasis by the court].) Thus, even though a court may take judicial  
15 notice of the *existence* of records in a court or administrative file, "[w]e will not, however,  
16 assume the truth of contentions, deductions or conclusions of fact or law (citation), and may  
17 disregard allegations that are contrary to the law or to a fact of which judicial notice may be  
18 taken." (*Wolfe v. State Farm Fire & Casualty Ins. Co.* (1996) 46 Cal.App.4th 554, 560 [citations  
19 omitted].)

20               Accordingly, taking judicial notice of the "official acts" of a governmental entity does not  
21 require the court to accept the truth of any underlying factual or legal matters. Here, Mercury and  
22 the Trade Groups seek judicial notice of multiple prior decisions by the Commissioner, claiming  
23 that these are "official acts" of the Commissioner and therefore judicially noticeable. But, even if  
24 the Court grants the request for judicial notice as to any of the proposed exhibits, it should not  
25 accept as true any or all of the facts or law within those exhibits; in other words, judicial notice is  
26 limited to the *existence* of the report, decision, or other type of exhibit, not the contents. (*Ragland*  
27 *v. U.S. Bank Nat'l Ass'n* (2012) 209 Cal.App.4th 182, 193–194.) "[T]he taking of judicial notice  
28 of the official acts of a governmental entity does not in and of itself require acceptance of the

1 truth of factual matters which might be deduced therefrom, since in many instances what is being  
2 noticed, and thereby established, is no more than the existence of such acts and not, without  
3 supporting evidence, what might factually be associated with or flow therefrom.” (*Id.* at p. 194  
4 [citation omitted].)

5 Accordingly, even if the Court grants any or all of the requests for judicial notice, this  
6 does not mean that the facts or legal propositions contained in these prior decisions must be  
7 accepted as true in this forum.

8 **II. Objections to Mercury’s Proposed Exhibits 2-5 (Prior Orders in Unrelated Cases):**  
9 **Non-Precedential Administrative Decisions And Orders Are Irrelevant And Inadmissible**

10 The Commissioner further objects to Mercury’s proposed Exhibits 2-5 because these are  
11 all non-precedential decisions previously issued by the office of the Commissioner in his role as  
12 head of a state agency, the Department of Insurance. Government Code section 11425.10(a)(7)  
13 provides: “A decision *may not be relied on as precedent* unless the agency designates and  
14 indexes the decision as precedent as provided in Section 11425.60.” (Emphasis added.)

15 Here, the Department has neither designated nor indexed any of these decisions as  
16 precedential. But despite the fact that these are non-precedential decisions, Mercury and the  
17 Trade Groups have repeatedly cited to the “law” set forth within them. This is erroneous.  
18 Accordingly, the Commissioner objects to admission of these Exhibits because they are non-  
19 precedential and may not be relied upon in these proceedings, and are therefore irrelevant.

20 **III. Further Objections to Mercury’s Proposed Exhibits 2-4 (Prior Orders in Rollback**  
21 **Cases): Mercury and the Trade Groups Inconsistently Represent To This Court That**  
22 **Administrative Decisions Concerning Rollback Cases Are Irrelevant And Inadmissible, Yet**  
23 **Seek Judicial Notice Of Multiple Decisions Resulting From Rollback Cases**

24 The Commissioner further objects to Mercury’s proposed Exhibits 2-4 because these are  
25 orders adopting decisions that occurred following hearings in insurance rate rollback cases.  
26 According to the Trade Groups, rollback cases are irrelevant and inapplicable to the underlying  
27 rate proceeding here. (See Opening Brief by the Trade Groups at pp. 16-17.) At the same time,  
28 Mercury seeks judicial notice of the Commissioners prior decisions in three rollback cases.

1 Should the Court accept the Trade Groups' contention that rollback law is inapplicable here (a  
2 contention which the Commissioner disputes), then Mercury's proposed rollback Exhibits 2-4 are  
3 likewise irrelevant and inapplicable.

4 Dated: April 7, 2014

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13 *Dave Jones, Insurance Commissioner of*  
14 *the State of California*

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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Mercury Casualty Company v. Dave Jones, et al.**  
No.: **34-2013-80001426**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On April 7, 2014, I served the attached ***RESPONDENT INSURANCE COMMISSIONER'S OBJECTIONS TO REQUESTS FOR JUDICIAL NOTICE IN SUPPORT OF PETITIONS FOR WRIT OF MANDATE*** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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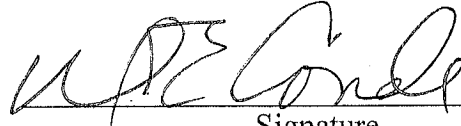
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 7, 2014, at Sacramento, California.

Maria Conde  
Declarant



Signature

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