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John A. Clarke, Executive Officer/Clerk
By A.E. LaFleur-Clayton Deputy
A.E. LaFLEUR-CLAYTON

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

BS129209

11 INSURANCE COMMISSIONER STEVE
12 POIZNER,
13
14 Petitioner,
15 v.
16 OFFICE OF ADMINISTRATIVE LAW,
17 Respondent,
18 AMERICAN COUNCIL OF LIFE
19 INSURERS; AMERICAN INSURANCE
20 ASSOCIATION; ASSOCIATION OF
21 CALIFORNIA INSURANCE
COMPANIES; ASSOCIATION OF
CALIFORNIA LIFE AND HEALTH
INSURANCE COMPANIES and
PERSONAL INSURANCE FEDERATION
OF CALIFORNIA
22 Real Parties In Interest.

Case No.
PETITION FOR WRIT OF MANDATE
Dore Ann Jones

23 Petitioner Insurance Commissioner Steve Poizner alleges:

24 INTRODUCTION

25 1) The Insurance Commissioner of California is required to ensure that assets in
26 insurance companies' portfolios are financially sound. Financial soundness is essential for
27 policyholders, ensuring that insurance companies will be able to pay their customers' claims. In
28 recognition of this critical function, California law gives the Insurance Commissioner broad

1 discretion to act quickly and flexibly to safeguard insurer assets and the interests of policyholders.

2 2) In this matter, the Insurance Commissioner took decisive and quick action to
3 safeguard insurers' portfolios from risk arising out of investments in companies doing business
4 with the Iranian nuclear, defense, and energy sectors. Iran's pursuit of nuclear weapons, its
5 support of international terrorism, and its despotic rule not only render it unstable politically and
6 economically, but put at risk any company that does business with the Iranian nuclear, defense,
7 and energy sectors.

8 3) With assistance from experts in the field, the Commissioner evaluated thousands of
9 investments on a security-by-security basis. After months of study, the Commissioner issued a
10 list of 51 companies that are doing business with the Iranian nuclear, defense, and energy sectors,
11 and are subject to financial risk as a result of those dealings.

12 4) The Commissioner requested that all insurers doing business in California indicate
13 whether they will voluntarily agree not to invest in companies on the list in the future. The
14 Commissioner prepared a form for insurers to fill out and return indicating their willingness to
15 forgo investing in these companies in the future.

16 5) Pursuant to the Insurance Code and his direct authority to act, the Commissioner also
17 directed insurers to submit financial statements identifying their Iran-related holdings, and
18 directed that these holdings would be considered "non-admitted." Insurers may continue to hold
19 those investments in their portfolios, but for purposes of California financial statements, the assets
20 will not count toward the insurers' surplus. The action taken by the Commissioner is similar to
21 statutes passed by the California legislature and Congress to force companies to divest in Iranian
22 companies.

23 6) Almost all the 1,300 insurers admitted to do business in California responded to the
24 Commissioner's request for a response about future investments. The Commissioner has not
25 entered orders against any insurers in connection with Iran Investment matters.

26 7) Nonetheless, five trade associations of insurance companies petitioned the Office of
27 Administrative Law ("OAL") to declare the Commissioner's actions impermissible "underground
28 regulations."

1 8) Notwithstanding the fact that the actions taken by the Commissioner do not meet the
2 definition of a "regulation," and were simply actions taken by him in his authority to act pursuant
3 to the Insurance Code, OAL determined that the actions were invalid.

4 9) The Commissioner now challenges that decision by OAL.

5 PARTIES

6 10) Petitioner is the Insurance Commissioner of the State of California. As Insurance
7 Commissioner, he is the chief officer of the California Department of Insurance ("Department")
8 and controls and directs the Department.

9 11) Respondent Office of Administrative Law is an agency of the government of the
10 State of California charged with ensuring the state's regulations are clear, necessary, legally valid,
11 and available to the public. Among other responsibilities, OAL receives petitions challenging
12 agency actions as alleged underground regulations.

13 12) Petitioner is informed and believes that real party in interest the American Council of
14 Life Insurers is an insurance-industry trade organization.

15 13) Petitioner is informed and believes that real party in interest the American Insurance
16 Association is an insurance-industry trade organization.

17 14) Petitioner is informed and believes that real party in interest the Association of
18 California Insurance Companies is an insurance-industry trade organization.

19 15) Petitioner is informed and believes that real party in interest the Association of
20 California Life and Health Insurance Companies is an insurance-industry trade organization.

21 16) Petitioner is informed and believes that real party in interest the Personal Insurance
22 Federation is an insurance-industry trade organization.

23 HISTORY OF COMMISSIONER POIZNER'S EFFORTS TO LIMIT RISKY
24 INVESTMENTS IN IRAN BY INSURANCE COMPANIES DOING BUSINESS IN
25 CALIFORNIA

26 A. Data Call

27 17) In April 2009 or shortly thereafter, Commissioner Poizner commenced an effort to
28 monitor, evaluate, and take action with respect to insurance company investments in companies

1 doing business with Iran.

2 18) In June 2009, the Department announced that it was launching an effort to probe
3 insurance company investments for ties to Iran through a data call. In July 2009, the Department
4 issued the data call to approximately 1,300 insurers licensed to do business in California. The
5 data call requested information about insurer investments in the Government of Iran, in securities
6 denominated in the currency of Iran, and in companies doing business with the defense, nuclear,
7 energy, and banking sectors of the Iranian economy. The data call stated that the Department
8 would use the requested information to evaluate the magnitude of the insurer's Iran-related
9 holdings and whether those investments are sound. The due date for responses was
10 September 30, 2009.

11 19) Insurers began submitting responses as early as July 2009. By December 31, 2009,
12 virtually all of the 1,300 insurers licensed to do business in California had filed responses.

13 **B. The List of Companies Doing Business in Iran**

14 20) Based on information from the data call and input from outside consultants, on
15 December 2, 2009, the Commissioner announced he was creating a list of companies doing
16 business in the Iranian energy, nuclear, banking, and defense sectors.

17 21) Based on a company by company analysis, consultation with experts in the area of
18 Iranian investments by multinational companies, and a review of lists prepared by California,
19 Florida, and New York pension funds,¹ the Department developed a list of 50 companies doing
20 business with the Iranian nuclear, defense, and energy sectors.² The Department also determined
21 that companies on the list are subject to financial risk (referred to as "asymmetric risk") because
22 of their involvement with the Iranian nuclear, defense, and energy sectors. The asymmetric risk
23

24 ¹ The States of California, Florida, and New York have directed their public employees'
25 pension funds to divest from holdings in companies doing business with various sectors of the
Iranian economy. (See Cal. Gov. Code, § 7513.7; Fla. Stats., § 215.473; Office of N.Y. State
Comptroller, Nov. 14, 2007 press release.)

26 ² At the request of insurers, and given the difficulty of researching the issue, the
27 Department agreed not to include on the list companies doing business with the Iranian banking
sector and multinational banks doing business in Iran.
28

1 is particularly acute in Iran because of the massive instability in its economic sectors caused by
2 the political situation.

3 22) In response to insurers' requests that the list be made public, on February 10, 2010,
4 the Department released the list of 50 companies doing business with the Iranian nuclear, defense,
5 and energy sectors. After further consideration and study, one additional company was added to
6 the list on April 16, 2010.

7 23) Following are three examples of companies on the list:

- 8 • Ulan-Ude Aviation Plant JSC is a Russian company that provides equipment to the
9 Iranian military. Ulan-Ude's military support of a terrorist regime with nuclear
10 weapons ambitions subjects Ulan-Ude to reputational and financial risk. If Iran fires
11 a weapon at another country and parts of the weapons are found that bear the label
12 "Ulan-Ude," the financial condition of Ulan-Ude could collapse.
- 13 • Royal Dutch Shell has worked with the Iranian regime in developing oil and gas
14 projects in the Persian Gulf. With the increased opprobrium Iran is coming under as a
15 result of sanctions legislation such as the Comprehensive Iran Sanctions,
16 Accountability, and Divestment Act of 2010 (22 U.S.C. §§ 8501 *et seq.*), companies
17 such as Royal Dutch Shell face reputational harm and financial risk for continued
18 support of the Iranian energy sector.
- 19 • ZiO-Podol'sk OAO is a Russian company that manufactures power machinery for
20 power plants, including nuclear power plants. Among the products developed by
21 ZiO-Podol'sk are heat-recovery steam generators for a nuclear power plant in Iran.
22 The ability of Iran to develop nuclear power is a substantial global threat. ZiO-
23 Podol'sk's collaboration with Iran to develop nuclear power plants presents financial
24 and reputational risk to ZiO-Podol'sk.

25 **C. The Department's Request that Insurers Voluntarily Agree Not to Make**
26 **Iran-Related Investments in the Future**

27 24) Given the acute financial risk from investments in companies on the list, the
28 Department requested that insurers licensed to do business in California voluntarily agree not to

1 invest in companies on the list in the future.

2 25) The Department directed that insurers notify the Department by April 2, 2010
3 whether they would agree to refrain from making future investments in companies on the list until
4 either (a) Iran is removed from the United States State Department's list of state sponsors of
5 terrorism or (b) the company and its affiliates cease doing business with Iran's nuclear, defense,
6 and energy sectors and the Department removes the company from the list.

7 26) The Department provided a form for insurers to fill out and send to the Department
8 indicating whether they agree to the requested moratorium.

9 27) More than 1,250 of the 1,300 insurers licensed in California returned the form or
10 responded with personalized letters. More than 1,000 insurers stated that they do not intend to
11 invest in listed companies in the future.

12 **D. Non-Admission of Iran-Related Assets**

13 28) To address the severe financial hazard posed by investments in companies on the list,
14 the Department directed insurers to submit financial statements identifying investments in
15 companies on the list. In addition, the Department directed insurers to report such investments in
16 "Column 2" of their Annual Statements. Insurers must file Annual Statements, in which they
17 publicly identify all investments. Column 2 is labeled "Nonadmitted Assets." The Department
18 advised that effective March 31, 2010, it will treat such investments as non-admitted. Insurers
19 may continue to hold Iran-related investments in their portfolios, but for purposes of their
20 California financial statements, the assets will not count toward the insurers' surplus.

21 29) Placement of insurers' Iran-related investments in Column 2 does not require insurers
22 to divest from those holdings. Nonetheless, some insurers voluntarily divested from companies
23 on the list. "Non-admission" of investments has not impaired any insurer's surplus to trigger any
24 action by the Department.

25 **E. The Petition and OAL Determination**

26 30) On March 29, 2010, five insurance-industry trade associations, the real parties in
27 interest here, filed with the OAL a "Petition for Determination Pursuant to California
28 Government Code Section 11340.5" ("OAL Petition"). The OAL Petition sought a determination

1 that the Commissioner's efforts to address Iran-related holdings in insurers' portfolios constitute
2 illegal "underground regulations" and are invalid.

3 31) In a letter dated May 27, 2010, OAL stated that it would consider the petition and
4 identified three specific alleged underground regulations that OAL would consider:

5 A. A statement in a letter dated February 10, 2010, which states: "Accordingly,
6 effective March 31, 2010, the Department will treat all investments by
7 insurers holding a certificate of authority to transact insurance in California
8 in companies on the List and affiliates owned 50% or more by companies on
9 the List as non-admitted on the insurer's financial statements. For all
10 financial statements filed with the Department for periods ending on or after
11 March 31, 2010, each insurer must report all of its investment holdings on
12 the List as not admitted assets."

13 B. A determination in the Department's letter of February 10, 2010, that
14 companies on the List referenced in A, above, are "subject to financial risk
15 as a result of doing business with the Iranian oil and natural gas, nuclear, and
16 defense sectors."

17 C. A document titled "Response Form" that requires insurers to agree or not to
18 agree by March 12, 2010, that they will refrain from investing in companies
19 on the List or affiliates owned 50% or more by companies on the List until
20 either (a) Iran is removed from the United States Department's list of state
21 sponsors of terrorism or (b) the company and its affiliates cease to do
22 business with Iran's oil and natural gas, nuclear, and defense sectors and is
23 removed from the List.

24 32) On July 27, 2010, the Department of Insurance filed a response to the OAL Petition.

25 33) On August 27, 2010, OAL received the insurers' Reply.

26 34) Petitioner is informed and believes that there was a public comment process
27 available, but no comments were received from the public on this matter.

28 35) OAL issued a determination regarding this matter on October 11, 2010, 2010 OAL
Determination No. 21 ("Determination").

36) In the Determination, OAL combined the three issues into two and determined that
each of the issues falls within the definition of "regulation" and should have been adopted
pursuant to the Administrative Procedure Act ("APA").

37) Specifically the two issues considered by OAL were the following:

A. The rule, expressed in a letter dated February 10, 2010, stating that effective
March 31, 2010, the Department will treat all investments by insurers
holding a certificate of authority to transact insurance in California in
companies on the List (which is incorporated by reference in the letter) and
affiliates owned 50% or more by companies on the List, as non-admitted on

1 the insurer's financial statements in that they are subject to financial risk as a
2 result of doing business with the Iranian oil and natural gas, nuclear, and
3 defense sectors. It further states that for all financial statements filed with
4 the Department for periods ending on or after March 31, 2010, each insurer
5 is required to report all of its investment holdings in companies on the List
6 as not admitted assets.

- 7 B. A document titled "Response Form" that requires insurers to agree or not to
8 agree by March 12, 2010, that they will refrain from investing in companies
9 on the List or affiliates owned 50% or more by companies on the List until
10 either: (a) Iran is removed from the United States State Department's list of
11 state sponsors of terrorism, or (b) the company and its affiliates cease to do
12 business with Iran's oil and natural gas, nuclear, and defense sectors and is
13 removed from the List.

14 **CALIFORNIA LAW GOVERNING UNDERGROUND REGULATIONS**

- 15 38) The APA defines "regulation" as:

16 "Regulation" means every rule, regulation, order, or standard of general
17 application or the amendment, supplement, or revision of any rule, regulation,
18 order, or standard adopted by any state agency to implement, interpret, or
19 make specific the law enforced or administered by it, or to govern its
20 procedure. [Gov. Code § 11342.600.]

- 21 39) As the Supreme Court elaborated in *Tidewater Marine Western, Inc. v. Bradshaw*
22 (1996) 14 Cal.4th 557, 571 [citations omitted]:

23 A regulation subject to the APA thus has two principal identifying
24 characteristics. First, the agency must intend its rule to apply generally,
25 rather than in a specific case. The rule need not, however, apply universally;
26 a rule applies generally so long as it declares how a certain class of cases will
27 be decided. Second, a rule must "implement, interpret, or make specific the
28 law enforced or administered by [the agency], or . . . govern [the agency's]
procedure."

- 39) Government Code section 11342.600 defines "regulation" as "every rule, regulation,
order, or standard of general application or the amendment, supplement, or revision of any rule,
regulation, order, or standard adopted by any state agency to implement, interpret, or make
specific the law enforced or administered by it, or to govern its procedure." Any regulation
adopted by a state agency through its exercise of quasi-legislative power delegated to it by statute
to implement, interpret, or make specific the law enforced or administered by it, or to govern its
procedure, is subject to the APA unless a statute expressly exempts the regulation from APA
review. (Gov. Code, §§ 11340.5, 11346.)

1 41) Government Code section 11340.5, subdivision (a), provides:

2 No state agency shall issue, utilize, enforce, or attempt to enforce any
3 guidelines, criterion, bulletin, manual, instruction, order, standard of general
4 application, or other rule, which is a regulation as defined in [Government
5 Code] Section 11342.600, unless the guideline, criterion, bulletin, manual,
instruction, order, standard of general application, or other rule has been
adopted as a regulation and filed with the Secretary of State pursuant to [the
APA].

6 42) Government Code section 11346, subdivision (a) states:

7 It is the purpose of this chapter to establish basic minimum procedural
8 requirements for the adoption, amendment, or repeal of administrative
9 regulations. Except as provided in Section 11346.1, the provisions of this
chapter are applicable to the exercise of any quasi-legislative power conferred
10 by any statute heretofore or hereafter enacted, but nothing in this chapter
11 repeals or diminishes additional requirements imposed by any statute. This
chapter shall not be superseded or modified by any subsequent legislation
except to the extent that the legislation shall do so expressly.

12 43) When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of
13 section 11340.5, it creates an underground regulation as defined in California Code of
14 Regulations, title 1, section 250, subdivision (a):

15 "Underground regulation" means any guideline, criterion, bulletin, manual,
16 instruction, order, standard of general application, or other rule, including a
rule governing a state agency procedure, that is a regulation as defined in
17 Section 11342.600 of the Government Code, but has not been adopted as a
18 regulation and filed with the Secretary of State pursuant to the APA and is not
subject to an express statutory exemption from adoptions pursuant to the
APA.

19 44) OAL may issue a determination as to whether or not an agency has issued, utilized,
20 enforced, or attempted to enforce a rule that meets the definition of "regulation" as defined in
21 section 11342.600 and should have been adopted pursuant to the APA. (Gov. Code, § 11340.5.)
22 An OAL determination that an agency has issued, utilized, enforced, or attempted to enforce an
23 underground regulation is entitled to "due deference" in any subsequent litigation of the issue
24 pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422.

25 CAUSES OF ACTION

26 45) Petitioner Commissioner Poizner has no other plain, speedy, or adequate remedy at
27 law.

28

1 46) Petitioner Commissioner Poizner seeks a writ of mandate on the following grounds,
2 and for the following matters:

3
4 FIRST CAUSE OF ACTION

5 Improper Determination By OAL that Creation of the List was an Underground Regulation
6 (Writ of Mandate – Code of Civil Procedure § 1085)

7 47) OAL abused its discretion when it improperly determined that the creation of the list
8 was an underground regulation.

9 48) Contrary to OAL's determination, creation of the list did not involve quasi-legislative
10 action by the Commissioner.

11 49) OAL failed to consider separately the analysis that went into creating the list. In
12 doing so, OAL failed to recognize that the list was created by the Department after a company-
13 by-company analysis of entities doing business with the Iranian nuclear, defense, and energy
14 sectors.

15 50) OAL failed to recognize that the list, as a stand-alone exercise, is not a "standard of
16 general application." The Department reviewed the characteristics of specific companies, based
17 on consultation with experts and the Department's own research. The Department made a
18 company-by-company assessment of the geopolitical risk that each company faces and
19 determined that urgent action was needed to protect policyholders. No single criterion or
20 methodology applies uniformly to each company on the list.

21 51) OAL failed to consider that the Department continually examines the circumstances
22 of individual companies, and may remove a company if, based on relevant sources of
23 information, the Department finds that the company no longer maintains a level of contact with
24 Iran presenting financial risk.

25 52) OAL failed to recognize that the list does not "implement, interpret, or make specific"
26 any particular laws.

27 53) The list was issued pursuant to the Commissioner's direct authority to act pursuant to
28 Insurance Code section 12921.5.

1 54) Additionally, the Commissioner created the list pursuant to his direct authority to act
2 with respect to examination duties pursuant to Insurance Code sections 729, 730, 733, 734, and
3 736.

4 55) In creating the list, the Commissioner was not adopting a new policy, the execution of
5 which would require the adoption and approval of regulations in compliance with the APA. He
6 was merely carrying out his responsibilities under laws and regulations already in force.

7 56) Specifically, Insurance Code section 12921.5 authorizes the Commissioner to
8 “disseminate information concerning the insurance laws of this State for the assistance and
9 information of the public.”

10 57) Additionally, OAL failed to recognize that the companies on the list are not
11 necessarily subject to the Commissioner’s or the Department’s oversight or “regulation.”

12 58) OAL failed to determine that the creation and promulgation of the list was not an
13 underground regulation.

14 SECOND CAUSE OF ACTION

15 Improper Determination by OAL that Creation and Use of a Form for Insurers to Respond to the
16 Commissioner’s Request for a Moratorium on Iran-Related Investments was an Underground
17 Regulation
18 (Writ of Mandate – Code of Civil Procedure § 1085)

19 59) OAL abused its discretion when it failed to recognize that the response form to
20 respond to the Commissioner’s request for a moratorium on Iran-related investments (the
21 “response form”) was not an improper underground regulation.

22 60) Contrary to OAL’s determination, the response form did not involve quasi-legislative
23 action by the Commissioner.

24 61) OAL failed to recognize that the response form did not apply generally, as the form
25 did not dictate how a certain class of cases will be decided. The form merely asked for
26 information from insurers doing business in California.

27 62) Contrary to OAL’s determination, the Commissioner’s action with respect to the
28 response form was done pursuant to his direct authority to act, and he was not implementing,
interpreting, or making specific any law.

1 63) Rather, pursuant to the Commissioner's direct authority to act, and pursuant to
2 Insurance Code sections 729, 730, 733, 734, and 736, the Department, at the Commissioner's
3 direction, created the response form in order to gather information regarding insurers' plans for
4 Iran-related investments.

5 64) Additionally, OAL abused its discretion when it failed to determine that the creation
6 of the response form is exempted from APA rulemaking pursuant to Government Code section
7 11340.9, subdivision (c):

8 A form prescribed by a state agency or any instructions relating to the use of the
9 form, but this provision is not a limitation on any requirement that a regulation be
10 adopted pursuant to this chapter when one is needed to implement the law under
 which the form is issued.

11 65) The Commissioner created the form as a means to gather information regarding
12 insurers' plans for Iran-related investments.

13 **THIRD CAUSE OF ACTION**

14 Improper Determination by OAL that the Directive to Insurers to File Financial Statements
15 Identifying Iran-Related Investments and the Treatment of those Investments as "Non-Admitted"
 was an Underground Regulation

16 (Writ of Mandate – Code Civil Procedure § 1085)

17 66) OAL abused its discretion when it improperly determined that the directive to
18 insurers to file financial statements identifying Iran-Related Investments and the treatment of
19 those investments as "non-admitted" was an underground regulation ("Non-Admitted
20 Determination").

21 67) Contrary to OAL's determination, the Non-Admitted Determination did not involve
22 quasi-legislative action by the Commissioner.

23 68) OAL failed to recognize that the Non-Admitted Determination did not apply
24 generally as the information included in the financial statements did not dictate how a certain
25 class of cases will be decided. The financial statements merely provide information from insurers
26 doing business in California.

27

28

1 69) OAL failed to determine that the Non-Admitted Determination by the Department is
2 done pursuant to the Commissioner's authority to act and he was not implementing, interpreting,
3 or making specific any law.

4 70) Rather, pursuant to the Commissioner's direct authority to act, and pursuant to
5 Insurance Code section 923, the Department, at the Commissioner's direction, required Iran-
6 related investments to be treated as non-admitted assets. This action by the Commissioner needed
7 to be taken quickly because of the instability in Iran, and the possible risk to policy holders.

8 71) Specifically, Insurance Code section 923 provides the Commissioner with the ability
9 to "make changes from time to time in the form of the statements and the number and method of
10 filing reports as seem to him or her best adapted to elicit from the insurers a true exhibit of their
11 condition." In this particular case, the Commissioner's quick and decisive action was needed in
12 order to ascertain the asymmetric risk posed to policy holders through insurance companies'
13 investments in companies on the list.

14 72) OAL failed to determine that in this case, the APA does not apply to the direct action
15 taken by the Commissioner pursuant to Insurance Code section 923.

16 73) Additionally, OAL abused its discretion when it failed to determine that the
17 notification about financial statement reporting is exempted from APA rulemaking pursuant to
18 Government Code section 11340.9, subdivision (c) because it involves a form prescribed by the
19 Department.

20 PRAYER FOR RELIEF

21 WHEREFORE, Petitioner Insurance Commissioner Steve Poizner prays that upon
22 submission of the verified petition by Petitioner, that this Court issue a peremptory writ of
23 mandate, under Code of Civil Procedure § 1085, commanding:

24 1. That respondent OAL, upon service of the writ, set aside its 2010 OAL Determination
25 No. 21, dated October 11, 2010 and determine that the actions taken by the Commissioner and the
26 Department, at the Commissioner's direction, did not constitute underground regulations;

27 2. That petitioner recovers his costs in this case; and
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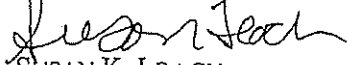
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3. That such other relief be granted as the Court considers just and proper.

Dated: November 9, 2010

Respectfully Submitted,

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Susan K. Leach, Deputy Attorney General (SBN: 231575) Office of the Attorney General 300 S. Spring Street, Suite 1702 Los Angeles, CA 90013 TELEPHONE NO.: 213-897-2105 FAX NO.: 213-897-1071 ATTORNEY FOR (Name): Petitioner, Steve Poizner as Insurance Commissioner	FOR COURT USE ONLY CONFORMED COPY OF ORIGINAL FILED Los Angeles Superior Court NOV 09 2010 John A. Clarke, Executive Officer/Clerk By <u>A. E. LaFleur-Clayton</u> , Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: 111 N. Hill Street CITY AND ZIP CODE: Los Angeles, CA 90012-3014 BRANCH NAME: Stanley Mosk Courthouse	
CASE NAME: Poizner v. Office of Administrative Law	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
CASE NUMBER: BS129209 JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/W/D (23) Non-PI/PD/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Three
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 9, 2010
 Susan K. Leach, Deputy Attorney General
(TYPE OR PRINT NAME)

Susan Leach
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? YES CLASS ACTION? YES LIMITED CASE? YES TIME ESTIMATED FOR TRIAL³ HOURS/ DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

- | | |
|---|--|
| 1. Class Actions must be filed in the County Courthouse, Central District. | 6. Location of property or permanently garaged vehicle. |
| 2. May be filed in Central (Other county, or no Bodily Injury/Property Damage). | 7. Location where petitioner resides. |
| 3. Location where cause of action arose. | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred. | 9. Location where one or more of the parties reside. |
| 5. Location where performance required or defendant resides. | 10. Location of Labor Commissioner Office. |

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	2.
		<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1., 2., 4.
<input type="checkbox"/> A7240 Other Professional Health Care Malpractice		1., 2., 4.	
Non-Personal Injury/Property Damage/Wrongful Death Tort	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 2., 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4.
		<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 2., 3.
		<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.	
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.	
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.	
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.	

Non-Personal Injury/Property Damage/
Wrongful Death Tort (Cont'd.)

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Employment

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.

Contract

Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.

Real Property

Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.

Judicial Review Unlawful Detainer

Unlawful Detainer- Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

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Judicial Review (Cont'd.)

Provisionally Complex
Litigation

Enforcement
of Judgment

Miscellaneous Civil
Complaints

Miscellaneous Civil Petitions

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input checked="" type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance(21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

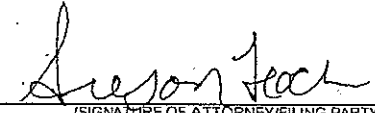
SHORT TITLE: Poizner v. Office of Administrative Law	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE		ADDRESS: Stanley Mosk Courthouse 111 North Hill	
<input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			
CITY: Los Angeles	STATE: CA	ZIP CODE: 90012	

Item IV. *Declaration of Assignment*: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: November 9, 2010


 (SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev. 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.