G056160

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION THREE

PACIFICARE LIFE AND HEALTH INSURANCE COMPANY,
Plaintiff, Appellant, and Cross-Respondent,

v.

RICARDO LARA,
Defendant, Respondent, and Cross-Appellant.

APPEAL FROM THE SUPERIOR COURT FOR ORANGE COUNTY
HON. KIM DUNNING, JUDGE • NO. 30-2014-00733375

APPLICATION TO FILE AMICI CURIAE BRIEF & BRIEF OF AMICI CURIAE THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA & THE CALIFORNIA CHAMBER OF COMMERCE IN SUPPORT OF PACIFICARE LIFE AND HEALTH INSURANCE COMPANY

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Application to File Brief of Amici Curiae the Chamber of Commerce of the United States of America and the California Chamber of Commerce in Support of PacifiCare Life and Health Insurance Company

The Chamber of Commerce of the United States of America ("U.S. Chamber") and the California Chamber of Commerce ("CalChamber") respectfully apply for leave to file the accompanying amici curiae brief in support of PacifiCare Life and Health Insurance Company pursuant to rule 8.200(c) of the California Rules of Court. Amici are familiar with the content of the parties' briefs.

The U.S. Chamber and CalChamber submit this letter in support of PacifiCare's positions on the issues raised in this appeal.

The U.S. Chamber is the world's largest business federation. It directly represents approximately 300,000

members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the executive branch, and the courts. To that end, the U.S. Chamber regularly files amicus briefs and letters in cases that raise issues of concern to the nation's business community.

CalChamber is a non-profit business association with over 13,000 members, both individual and corporate, representing virtually every economic interest in the state of California. For over 100 years, CalChamber has been the voice of California businesses. While CalChamber represents several of the largest corporations in California, 75 percent of its members have 100 or fewer employees. CalChamber acts on behalf of the business community to improve the state's economic and employment climate by representing businesses on a broad range of legislative, regulatory, and legal issues. CalChamber often advocates before federal and state courts by filing amicus briefs and letters in cases, like this one, involving issues of paramount concern to the business community.

Members of the U.S. Chamber and CalChamber include insurers doing business in California, as well as California businesses that contract for insurance and pay insurance premiums.

In this case, California's Insurance Commissioner determined that PacifiCare Life and Health Insurance Company,

a health insurer operating in California, committed nearly 900,000 unfair settlement practices in violation of Insurance Code section 790.03, subdivision (h) (section 790.03(h)), part of the Unfair Insurance Practices Act (UIPA) (Ins. Code, §§ 790. et seq.), a determination that allowed the Commissioner to assess penalties against PacifiCare of more than $173 million. The unprecedented number and extent of the penalties resulted from the Commissioner's own overly expansive interpretation and application of what, under section, constitutes an unfair insurance practice.[1]

This court, in *PacifiCare Life & Health Ins. Co. v. Jones* (2018) 27 Cal.App.5th 391, 416-417 (*PacifiCare (I)*), upheld a challenge to the regulations promulgated by the Commissioner, finding that they were not facially inconsistent with the Insurance Code. But now that the Commissioner's *application* of those regulations is added to the mix, it is increasingly clear that the Commissioner's pursuit of administrative enforcement actions against insurers in a case such as this will likely lead to results the Legislature never intended: causing insurance companies to raise costs to mitigate the risks of providing this type of insurance; raising insurance coverage prices for customers and businesses; and perhaps even driving insurance companies or offerings out of California altogether, with little or no concomitant benefit. The funds an insurer uses to avoid penalties are funds that otherwise might be used to provide

[1] Further undesignated statutory references are to the Insurance Code.

additional insurance products or reduce prices, and the funds a business uses to pay the increased cost of insurance are funds it cannot use to improve its products, lower prices, or provide additional services to consumers. No one benefits when increased costs result from penalties imposed for inadvertent conduct or mistakes, or for good faith attempts to comply with insurance laws and regulations. That is not what the Legislature enacted or intended.

Amici's members are directly affected by the cost and availability of insurance, and therefore have a substantial interest in the resolution of this case.

No party or counsel for a party authored the proposed amici brief in whole or in part, or made any monetary contribution intended to fund the preparation or submission of the brief. No person or entity other than the amici curiae, their members, or their counsel in the pending appeal funded the preparation and submission of the proposed amicus brief. (Cal. Rules of Court, rule 8.200(c)(3).)

Respectfully Submitted,

May 28, 2021

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Attorneys for Amici Curiae the Chamber of Commerce of the United States of America and the California Chamber of Commerce

Brief of Amici Curiae the Chamber of Commerce of the United States of America and the California Chamber of Commerce in Support of PacifiCare Life and Health Insurance Company

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Introduction

The California Insurance Commissioner has authority to promulgate regulations that properly implement the text of UIPA, and to pursue administrative enforcement actions against insurers that actually engage in unfair insurance practices.

But as this case demonstrates – and as the superior court correctly concluded – the Commissioner does not and should not have unlimited authority to promulgate unfettered regulations, assess penalties under section 790.03(h) for conduct not prohibited by that section or statutes that allow for penalties, or exact astronomical fines in any manner he may deem most expedient.

Here, the Commissioner seeks to punish PacifiCare to the tune of hundreds of millions of dollars for inadvertent acts and mistakes, and for PacifiCare's good-faith efforts to comply with the law and the Commissioner's demands. There is a vast gulf between the Commissioner's proper authority, however, and the approach he took in this case. The superior court accordingly found that the majority of the $173 million in penalties assessed against PacifiCare was unwarranted, and that the remainder had to be returned to the Commissioner for further consideration.

Of the many grounds on which to challenge the Commissioner's interpretation and application of his authority in

this case, amici are particularly concerned that the Commissioner has interpreted section 790.03(h) to provide him with authority to charge multiple penalties against an insurer for mistakes or errors resulting from single unintended violations about which the insurer had no actual knowledge, and also with the Commissioner's overbroad interpretation of section 790.03(h)'s descriptions of the conduct that might be deemed an unfair insurance practice, which allowed him to impose penalties on PacifiCare for conduct that is not even prohibited by that section. Amici are also concerned with the deleterious effects of the Commissioner's approach in this case on California's insurance industry, broader business community, and the employees and individuals they employ, serve, and support.

Amici thus encourage this court to affirm the superior court's judgment in favor of PacifiCare and reverse the portion of the judgment concerning the five violation categories identified in PacifiCare's opening brief.

Discussion

I. This court should reject the Commissioner's overly aggressive interpretation and application of section 790.03(h) and accompanying regulations.

A. The Commissioner's decision to penalize PacifiCare for every manifestation of an unintentional systemic error and single acts of which PacifiCare had no actual knowledge violated the scope of his punitive authority.

Insurance Code section 790.03(h) explains that an unfair insurance practice is "[k]nowingly committing or performing with such frequency as to indicate a general insurance practice any of

[16 specific] unfair claims settlement practices . . . ." The Commissioner adopted California Code of Regulations, Regulation 2695.1(a), which recites that Insurance Code section 790.03 enumerates "sixteen claims settlement practices that, when either knowingly committed on a single occasion, or performed with such frequency as to indicate a general business practice, are considered to be unfair claims settlement practices."

In evaluating PacifiCare's facial challenge to that regulation, this court, in *PacifiCare (I)*, determined that the phrase "unfair claims settlement practices" in section 790.03(h) refers to practices that exist in the insurance industry generally, as opposed to the pattern of behavior followed by a particular insurer that might then be deemed that insurer's insurance practice. (*Pacificare (I)*, *supra*, 27 Cal.App.5th at 405-406.) The court then concluded "that section 790.03(h), properly construed, defines an unfair claims settlement practice to be either an insurer's single knowing commission of the described conduct, or its performance of the conduct 'with such frequency as to indicate a general insurance practice.' " (*Id.* at pp. 416-417.)

But as has now become clear, the Commissioner's treatment in this case of single acts as unfair practices departs from the proper bounds and statutory purpose of the legislation, and thus his appropriate enforcement authority, for two interrelated reasons. First, many of the purported practices were honest mistakes that PacifiCare knew nothing about, and indeed, often were inconsistent with or even directly violated PacifiCare's actual insurance practices, yet the Commissioner adopted

tenuous logic to justify them anyway. Second, many of the penalties resulted from a single glitch within a large system, which recurred without anyone's knowledge or understanding that they were or might be deemed a violation of section 790.03(h), yet the Commissioner still charged each manifestation of a systemic mistake as a separate independent unfair insurance practice deserving of its own separate penalty.

These penalties apparently resulted in part from the Commissioner's interpretation of regulation 2695.2(*l*), which recites: " '[k]nowingly committed' means performed with actual, implied or constructive knowledge, including, but not limited to, that which is implied by operation of law." The Commissioner seemingly took a strict liability view of the concept of an insurer's knowledge, determining that because an insurer is presumed to have knowledge of its legal obligations, and also has at all times constructive or implied knowledge of the conduct of its employees and systems, it therefore acts "knowingly" any time an employee negligently or incorrectly performs a task required for the insurer to fulfill its legal obligations, or a system includes an error – even if the insurer itself required and sought to ensure that its employees and systems performed the task correctly.

For example, the Commissioner penalized PacifiCare $7.5 million for each failure to send letters acknowledging its receipt of 56,463 claims mailed between July 2006 and March 2007. (PC R-XRB 120.)[2] That failure resulted entirely from a "computer

[2] PC AOB refers to PacifiCare's Opening Brief. PC R-XRB refers to PacifiCare's Reply and Cross-Respondent's Brief.

glitch," not from any conscious decision by PacifiCare not to send the letters. (*Ibid.*) Indeed, PacifiCare's actual insurance practice was *to send* those letters. The inadvertent failure to send a letter, even if a letter was required, thus ran counter to PacifiCare's actual practice. Yet applying his interpretation of the Insurance Code, the Commissioner deemed every single one of these failures to send a letter to be a separate and independent unfair settlement practice, and thereby imposed a separate penalty for each.

Similarly, the Commissioner penalized PacifiCare $22.2 million for the small percentage of occasions on which PacifiCare was late in processing claims. But the vast majority of claims were processed on time, which was PacifiCare's intended insurance practice; the late claims apparently occurred because of a "data bridge corruption" and network software error. (PC AOB 14-18; PC R-XRB 127.) The failure to process some claims on time was thus an accidental *departure* from PacifiCare's intentional insurance practice, and it was repeated only because of a computer system error – not a choice by PacifiCare to "knowingly" delay payment. Even if this kind of unknown systemic error could be seen as creating a single unfair insurance practice, it surely cannot be that every single late claim resulting from that error was an unfair insurance practice all its own, as the Commissioner concluded.

Likewise, PacifiCare paid 95 percent of claims with within 30 days, actually exceeding the timely-claims threshold required by the Commissioner, but for a variety of reasons having nothing

to do with an institutional policy or practice, a relatively small percentage of claims were not paid within that time period. (PC AOB 29-32.) The Commissioner penalized PacifiCare for every late payment, adding $55 million to the other penalties charged against PacifiCare. The Commissioner also assessed a penalty against PacifiCare for each instance that the correct amount of interest was not paid on a "reprocessed claim," even though PacifiCare's practice was to pay the correct amount of interest and the only reason the full amount of interest was not paid every time was evidently because its examiners on occasion made human errors in their calculations of the amount of interest due. (PC R-XRB 99-101.)

The Commissioner thus concluded PacifiCare "knowingly" committed an unfair insurance practice because it "knew" it was supposed to calculate interest correctly, and it also "knew" its employees were manually calculating interest and they occasionally made mistakes – and thus he assessed a separate unfair insurance practice penalty every time one of PacifiCare's employees made a mistake calculating interest. (PC R-XRB 101.) The Commissioner did not find that any employees had *deliberately* failed to pay the interest, or that PacifiCare had a *policy* or *intent* to fail to pay the required interest, or that PacifiCare had *any idea* the correct amount of interest had not been paid. Yet the Commissioner assessed penalties for each interest error calculation anyway.

The Commissioner's interpretation of "knowingly committed" cannot be right; if the Legislature wanted a strict

liability regime, it would have so legislated. Although an insurer may be held accountable for a business decision that causes its employees to violate section 790.03(h), it should not be penalized under a statute banning unlawful practices for an employee's good-faith arithmetic mistakes or accidental failure to comply with the insurer's policies and practices, especially when the conduct is inconsistent with the insurer's actual settlement practices and policies. This court recognized the point when it agreed that "knowingly committing" means that an act was committed deliberately (*PacifiCare (I)*, *supra*, 27 Cal.App.5th at p. 417), and when it stated that it was "unpersuaded" that "the inclusion of implied or constructive knowledge within the meaning of ' "[k]nowingly committed" ' 'effectively writes out any scienter element from the statute' and allows an insurer to be penalized for inadvertent acts" (*id.* at p. 418) – signaling its understanding that "knowingly committed" does indeed include an element of scienter.

In *PacifiCare (I)*, this court was not concerned with the Commissioner's application of regulation 2695.2(*l*). It rejected PacifiCare's facial challenge to that regulation, explaining that the question of whether the Commissioner misapplied the regulation would have to be determined after the matter was remanded to the superior court. (*PacifiCare (I)*, *supra*, 27 Cal.App.5th at pp. 418-419.) The matter was remanded, and the evidence is in. It is now clear, as the superior court correctly held, that the Commissioner did indeed misapply the regulation to charge PacifiCare with a staggering number of penalties for

inadvertent conduct that was not the result of an insurance practice or some other deliberate act that violated section 790.03(h).

California's Legislature could not have intended to drive up the costs of providing and obtaining insurance by conferring authority on the Commissioner to impose hundreds of millions of dollars in strict liability penalties on insurance companies for unavoidable mistakes, inadvertent acts, or conduct that represents an unintended departure from the insurer's usual practice. It is, moreover, unfair and ultimately destructive to increase the number of penalties exponentially, as the Commissioner did here, when mistakes are repeated because of a computer glitch or some similar accidental flaw in a recurring system.

B. The Commissioner improperly charged penalties for conduct that is not even described in section 790.03(h).

In addition to charging numerous penalties against PacifiCare for conduct bearing little or no relation to an actual business practice or any intentional conduct that violates section 790.03(h), the Commissioner further penalized PacifiCare for conduct that does *not* violate section 790.03(h). The Commissioner essentially substituted his own view of what conduct amounts to an unfair settlement practice for the Legislature's view, driving the penalties up even further.

A vivid example of the Commissioner's overreach is the Commissioner's decision to penalize PacifiCare $22.75 million for its failure to include a notice of an insured's right to an

independent medical review in its explanation of benefits forms for a three-month period extending from March 23, 2007, to June 15, 2007. (PC R-XRB 82-83.) For the reasons stated by PacifiCare in its brief, that failure appears to have been excusable and harmless. PacifiCare's insureds were not actually eligible for an independent medical review at the time the explanation of benefits form was sent; they were instead informed of that right when it could be exercised, as well as in several other documents besides the explanation of benefits.

But most importantly, PacifiCare had *no statutory obligation whatsoever* to include the notice in its explanation of benefits forms. The obligation to include the notice arose only when the Commissioner notified PacifiCare that he wanted the notice included and demanded that PacifiCare develop language that would satisfy him. He then penalized PacifiCare for purported "noncompliance" during the time it spent working with him on that very language. (PC R-XRB 83-84.)

The Commissioner predicated this penalty on the theory that failing to include the notice violated section 790.03(h)(1), which prohibits "[m]isrepresenting to claimants pertinent facts or insurance policy provisions relating to any coverages issues." But the failure to include the notice in the explanation of benefits form cannot be deemed a "misrepresentation," since it does not misrepresent any facts or policy provisions. PacifiCare did not inform insureds that they had *no* right to an independent medical review, for example. To the contrary, PacifiCare *repeatedly* informed them that such a right *existed*, just did so in other

documents and when the right became exercisable. That PacifiCare did not also provide the information in the explanation of benefits form thus could not have misled an insured into believing there was no such right, nor could it have dissuaded an insured from seeking an independent examination once that right matured.

The Commissioner took the position that any failure to provide this information was an unfair insurance practice under section 790.03(h)(1), however, even though the section does not refer to omissions and the purportedly omitted notices were not required by any statute or previously existing regulation. And the Commissioner then deemed every single omission to be a *separate* misrepresentation subject to *separate* penalties, rather than a single unfair practice.

The Legislature crafted a detailed list of wrongdoing in section 790.03(h). It surely could have included the omission of particular information from certain forms at certain times if it wanted to. But it did not. Neither the text nor the intent of that section allows for the Commissioner's opposite interpretation, and the superior court's decision ought to be affirmed in that regard.

C. In light of the Commissioner's unreasonable and overly expansive penalties against PacifiCare, amici urge the court to revisit its previous determination that a single act may constitute a "practice."

The Commissioner charged nearly two hundred million dollars in penalties against PacifiCare because he interpreted section 790.03(h) to allow penalties meant to prevent unfair

"practices" to be imposed for single acts. Amici recognize, of course, that this court has already considered arguments against an interpretation of section 790.03(h) that makes a single act punishable as an unfair insurance practice and ruled otherwise. But in light of the Commissioner's demonstrated willingness to exact a staggering number of penalties from an insurer by charging it with every "act" resulting from a single flaw in a system, without considering whether that act was the result of a deliberate decision or improper business policy, amici nonetheless respectfully encourage the court to reconsider its previous conclusion.[3]

Amici will not here repeat all the arguments made in *PacifiCare (I)* supporting the conclusion that the "single-act" interpretation runs afoul of the Supreme Court's discussion and decision in *Moradi-Shalal v. Fireman's Fund Ins. Cos.* (1988) 46 Cal.3d 287. Suffice it to say, the court had originally adopted that interpretation in *Royal Globe Ins. Co. v. Superior* Court (1979) 23 Cal.3d 880 because it understood that the Legislature intended section 790.03(h) to confer a right to sue on private parties that had been injured by an unfair settlement practice. (*Moradi-Shalal*, *supra*, 46 Cal.3d at p. 303.) The court reasoned that in such cases, the plaintiffs would seldom have the ability to prove any widespread pattern of wrongful settlement practices on the part of the insurer, justifying an interpretation of section

[3] As PacifiCare explains at pages 141-142 of its Combined Reply and Cross-Respondent's Brief, the Law of the Case Doctrine does not preclude this court from reexamining its previous determination.

790.03(h) allowing a single act to subject an insurer to liability for damages. The reason for that interpretation, however, ceased to exist when the court overruled *Royal Globe*.

Thus, there is no current need for a "single-act" interpretation, and no reason for the Supreme Court to have intended for that interpretation to survive after it overruled its earlier decision. Indeed, the *Moradi-Shalal* court observed that "[a]lthough the *Royal Globe* majority believed . . . a single act will subject the insurer to liability for damages for unfair practices, it is more likely that the majority's initial premise – that a direct action is permitted under section 790.03 – was incorrect, and that the provision was instead limited to providing *administrative* sanctions by the Insurance Commissioner, once an investigation revealed such a pattern." (*Moradi-Shalal*, *supra*, 46 Cal.3d at p. 303.) In amici's view, the court thereby explained that its previous interpretation of section 790.03(h) was wrong. That the court also found that resolution of the issues surrounding the meaning of the section might better be done by the Legislature (*id.* at pp. 303-304) did not mean that the single-act interpretation remained in place; rather, the court was suggesting that if the Legislature disagreed with the court and wished to *reinstate* the problematic interpretation of section 790.03(h), it could do so and at the same time address the analytical difficulties posed by that interpretation.

But even if the single-act interpretation is still in place, the absence of individual plaintiffs in an enforcement action significantly reduces any need to exact multiple penalties from an

insurer for each violation, particularly if the violation is the result of inadvertence or mistake. The Insurance Commissioner's overly expansive enforcement of his single-act interpretation of section 790.03 takes money away from insurance companies without benefitting businesses or consumers. Indeed, it is likely to result in actual *injury* to consumers as funds are shifted away from products and services that might otherwise be left in place or developed, and insurance prices are raised to compensate. For that reason, even if the court does not reconsider its previous conclusion that the single-act interpretation survives *Moradi-Shalal*, it should not condone the Commissioner's approach to enforcement actions here.

II. Overregulation of the California insurance industry is raising premiums for California businesses and consumers and driving out competition in the insurance industry.

Due to the size of the penalty assessed against PacifiCare, the Commissioner's approach in this case – and the way the courts evaluate it – will likely have significant practical ramifications. Regulatory interpretation and enforcement by the Commissioner that so exceeds the Legislature's own balancing of costs and benefits threatens to undermine the state's ability to maintain a competitive marketplace for insurance customers. Already in California, a challenging regulatory environment has contributed to some insurers exiting from or curtailing offerings in difficult insurance markets, in turn reducing options and raising costs for businesses and consumers still reeling from the effects of the COVID pandemic. Amici are concerned that the

Commissioner's approach here, and others like it if the Commissioner's stance is condoned, will cause precisely that undesirable outcome in California's insurance market in the years ahead. The risk is especially pronounced because the Commissioner's strict liability interpretation of section 790.03's knowledge requirement, and his assessment of multiple independent penalties for single, unintentional errors in systems that repeated only because of the nature of systems, means there is very little a well-meaning insurer could do to protect itself from facing similar penalties in the future.

California's insurance industry offers a few examples of the adverse consequences of hyper-regulation. One appears in the homeowner-fire insurance area. The increased risk of destructive wildfires in California over the past decade, combined with the state's strict premium price increase regulations, has prevented insurers from raising premiums sufficiently to account for their increased risk. As a result, some insurers have reduced their offerings, and others have fled the state entirely – leaving hundreds of thousands of Californians totally uninsured against fire damage to their homes. (See Dutkowsky & Fretwell, *Fire Insurance Regs Hurt California Homeowners* (Nov. 4, 2020) Inside Sources <https://tinyurl.com/y7u9vfvh> [as of May 28, 2021]; Duffy, *The Cost of Fire Insurance Across California Is Rising at a Frightening Pace If You Can Get It At All* (Feb. 5, 2020) KXTV ABC-10 Sacramento <https://tinyurl.com/zhd7m6e9> [as of May 28, 2021].) The industry's exodus has become so challenging that for 2020, the

Commissioner imposed a yearlong outright ban prohibiting insurers from refusing to renew many homeowner fire insurance policies. (See Kasler & Sabalow, *California Bans Insurers From Dropping Customers In 2019 Wildfire Zones* (Dec. 5, 2019) Sacramento Bee <https://tinyurl.com/7b3mnn6x> [as of May 28, 2021].)

Another relevant area where California consumers are suffering adverse consequences due to the state's hyper-regulation of the insurance industry is health insurance. According to a 2020 report from the Pacific Research Institute's Center for Medical Economics and Innovation, California has seen a surprising and significant reduction in available patient services, unprecedented spikes in complaints about coverage to state officials, and a decrease in competition that has led, in other similar situations, to material increases in premium prices, which the report attributes to a statutory pricing regulation adopted in 2017. (Winegarden, *The Menace of Medical Rate Setting: The Case of California's AB 72* (August 2020) Pacific Research Institute <https://tinyurl.com/3dvm5xns> [as of May 28, 2021], p. 3).

Thus, heavy regulation of the insurance industry may cause material adverse effects to the consumers and businesses that need the products that industry offers. Unless this court affirms the judgment (or, preferably, affirms the portion of the judgment favoring PacifiCare and also agrees with PacifiCare that the five categories of violation identified at pages 10-12 of PacifiCare's opening brief should be dismissed), the

Commissioner's nine-figure penalty on PacifiCare for its good-faith effort to comply with the law risks an expansion of those negative consequences.

Conclusion

For these reasons, amici respectfully urge this court to affirm the judgment supporting PacifiCare and reverse as to the five categories of violation identified by PacifiCare in its opening brief (PC AOB 10-12), or failing that, affirm the superior court's judgment in full.

In either event, amici urge the court to make it clear that the Commissioner in this case greatly exceeded his authority to prosecute enforcement actions by imposing multiple penalties on an insurer for every single act that arises from an error in a system, finding single wrongful acts to be "knowing" practices without the insurer's actual knowledge of the acts, and assessing penalties under Insurance Code section 790.03(h) for conduct that is not listed in that section or otherwise subject to penalties.

Amici further urge this court to reconsider its conclusions in *PacifiCare Life & Health Ins. Co. v. Jones* (2018) 27 Cal.App.5th 391, which are open to considerable doubt and are not binding.

Amici urge the court to do these things because overregulation of the insurance market threatens real and lasting harm to businesses and individuals that purchase insurance in California, and any decision to change the penalty regime so dramatically should be made by the Legislature rather than the Commissioner.

Respectfully Submitted,

May 28, 2021

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Certificate of Word Count

(California Rules of Court, rule 8.204(c)(1))

The text of this brief consists of 4,574 words as counted by the Microsoft Word program used to generate this brief.

Dated: May 28, 2021

/s/ Julia Partridge
Julia Partridge