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Dave Jones

*Fee Exempt Pursuant to Gov't Code
Section 6103*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11

12 **INSURANCE COMMISSIONER DAVE**
13 **JONES,**

Case No. BS129209

14 Petitioner,

15 v.

**ANSWER OF PETITIONER
INSURANCE COMMISSIONER DAVE
JONES TO VERIFIED CROSS-
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

16 **OFFICE OF ADMINISTRATIVE LAW,**

17 Respondent,

Dept: 86
Judge: The Honorable Ann I. Jones
Trial Date:
Action Filed: November 9, 2010

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

27 Real Parties in Interest,
28

1 Petitioner and Cross-Defendant California Insurance Commissioner Dave Jones¹
2 ("Commissioner") answers Real Parties in Interest and Cross-Complainants Association of
3 California Insurance Companies and Personal Insurance Federation of California's Verified
4 Cross-Complaint for Injunctive and Declaratory Relief ("Cross-Complaint") as follows:

5 1. The Commissioner denies the allegations in paragraph 1.

6 2. The Commissioner admits that he requested that all insurers doing business in California
7 indicate whether they will voluntarily agree not to invest in companies doing business with the
8 Iranian nuclear, defense, energy sectors, and pursuant to the Insurance Code and his direct
9 authority to act, the Commissioner also directed insurers to submit financial statements
10 identifying their Iran-related holdings, and directed that these holdings would be considered "non-
11 admitted." Except as specifically admitted, the Commissioner denies the allegations of paragraph
12 2.

13 3. Notwithstanding the fact that the actions taken by the Commissioner do not meet the
14 definition of "regulation," and were actions taken in his authority to act pursuant to the Insurance
15 Code, the Commissioner admits that the Office of Administrative Law ("OAL") determined that
16 the actions were invalid. Except as specifically admitted, the Commissioner denies the
17 allegations of paragraph 3.

18 4. The Commissioner admits that the December 2, 2009 press release speaks for itself.

19 Except as specifically admitted, the Commissioner denies the allegations of Paragraph 4.

20 5. The Commissioner denies the allegations in paragraph 5.

21 6. The Commissioner lacks sufficient knowledge or information to form a belief as to the
22 truth of the allegations in paragraph 6, and on that basis denies the allegations.

23 7. The Commissioner lacks sufficient knowledge or information to form a belief as to the
24 truth of the allegations in paragraph 7, and on that basis denies the allegations.

25 8. The Commissioner admits that he became the Insurance Commissioner of the State of

26
27 ¹ Commissioner Dave Jones respectfully requests that he be substituted as petitioner in
28 this matter in place of his predecessor, Commissioner Steve Poizner. (See Code Civ. Proc., §
368.5.)

1 California on January 3, 2011, and prior to that date Steve Poizner was the California Insurance
2 Commissioner. The Commissioner is the chief officer of the California Department of Insurance
3 ("Department") and controls and directs the Department. Except as specifically admitted, the
4 Commissioner denies the allegations of paragraph 8.

5 9. The Commissioner admits that the February 10, 2010 letter from the Department's
6 General Counsel Adam Cole to insurance companies speaks for itself. Except as specifically
7 admitted, the Commissioner denies the allegations of paragraph 9.

8 10. The Commissioner admits that the April 16, 2010 letter from the Department's
9 General Counsel Adam Cole to insurance companies speaks for itself. Except as specifically
10 admitted, the Commissioner denies the allegations of paragraph 10.

11 11. The Commissioner admits that the May 12, 2010 list published by the Commissioner
12 speaks for itself. Except as specifically admitted, the Commissioner denies the allegations of
13 paragraph 11.

14 12. The Commissioner denies the allegations in paragraph 12.

15 13. The Commissioner admits that the determination issued by OAL on October 11, 2010
16 speaks for itself. Except as specifically admitted, the Commissioner denies the allegations of
17 paragraph 13.

18 14. The Commissioner admits that the December 14, 2010, press release announcing that
19 four companies were dropped from the List of Companies Doing Business in Iran speaks for
20 itself. Except as specifically admitted, the Commissioner denies the allegations of paragraph 14.

21 15. The Commissioner admits that the February 1, 2011 letter from the Department's General
22 Counsel Adam Cole to insurance companies speaks for itself. Except as specifically admitted, the
23 Commissioner denies the allegations of paragraph 15.

24 16. Responding to paragraph 16, the Commissioner incorporates herein by this reference his
25 responses to paragraphs 1 through 15, inclusive.

26 17. The Commissioner denies the allegations in paragraph 17.

27 18. The Commissioner denies the allegations in paragraph 18.

28 19. Responding to paragraph 19, the Commissioner incorporates herein by this reference his

1 responses to paragraphs 1 through 18, inclusive.

2 20. The Commissioner denies the allegations in paragraph 20.

3 21. The statement made by the Commissioner in January 2010 speaks for itself. Except as
4 specifically admitted, the Commissioner denies the allegations of paragraph 21.

5 22. The Commissioner denies the allegations in paragraph 22.

6 23. The Commissioner denies the allegations in paragraph 23.

7 24. The Commissioner denies the allegations in paragraph 24.

8 25. The Commissioner denies the allegations in paragraph 25.

9 **ADDITIONAL DEFENSES**

10 **ONE**

11 The Cross-Complaint, and each cause of action therein, fails to state facts sufficient to
12 constitute a cause of action.

13 **SECOND**

14 The Commissioner affirmatively states that any actions that he has taken with respect to
15 the issues of this case have been in good faith, have been reasonable and prudent, and have
16 been consistent with all applicable legal and constitutional standards.

17 **THIRD**

18 Cross-Complainants' claims in this action are barred in that they do not have standing
19 and/or capacity to assert them, or to obtain the relief sought.

20 **FOURTH**

21 Cross-Complainants' claims in this action are barred by the equitable doctrines of waiver,
22 laches, unclean hands, and/or estoppel.

23 **FIVE**

24 Cross-Complainants' claims in this action are uncertain, vague, ambiguous, improper, and
25 unintelligible.

26 **SIX**

27 Because the Cross-Complaint, as a whole, and each claim for relief asserted therein, is
28 couched in conclusory terms, the Commissioner cannot fully anticipate all affirmative

1 defenses that may be applicable to the instant action. Accordingly, the Commissioner
2 reserves the right to assert additional affirmative defenses as the legal and factual basis for the
3 claims become known.

4 **SEVEN**


5 The court lacks jurisdiction to hear the Cross-Complaint, or any part thereof.

6
7 ACCORDINGLY, the Commissioner prays as follows:

- 8 1. That judgment be entered in favor of the Commissioner and against cross-complainants on
9 the Cross-Complaint as a whole, and on each cause of action therein, and that cross-
10 complainants take nothing by the Cross-Complaint;
11 2. That the Cross-Complaint, and each cause of action therein, be dismissed with prejudice;
12 3. That the Commissioner be awarded the costs, expenses, and attorneys' fees incurred in
13 this action; and
14 4. That the Court grant the Commissioner such additional relief as it deems proper.

15 Dated: April 1, 2011

16 Respectfully Submitted,

17 KAMALA D. HARRIS
18 Attorney General of California
19 DOUGLAS J. WOODS
20 Acting Senior Assistant Attorney General
21 
22 SUSAN K. LEACH
23 Deputy Attorney General
24 *Attorneys for Petitioner Insurance*
25 *Commissioner Dave Jones*

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Steve Poizner v. Office of Administrative Law**

No.: **BS129209**

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; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On April 1, 2011, I served the attached

ANSWER OF PETITIONER INSURANCE COMMISSIONER DAVE JONES TO VERIFIED CROSS-COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

Debra Cornez,
Assistant Chief Counsel Acting Director
Kathleen Eddy, Senior Counsel
Elizabeth Heidig, Staff Counsel
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*Attorneys for Cross-Complainants & Real
Parties In Interest
Association of California Insurance
Companies, Personal Insurance Federation of
California American Counsel for Life Insurers,
American Insurance Association, Association
of California Life and Health Insurance
Companies*

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 1, 2011, at Los Angeles, California.

Rosa Michel
Declarant

Rosa Michel
Signature