

FILED
LOS ANGELES SUPERIOR COURT

MAY 10 2018

SHERRI A. CANTES, EXECUTIVE OFFICER/CLERK
BY Nancy Deputy
NANCY NAVARRO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DANIELLE MARRUFO, an individual,
ROBERT SCHULTZ, an individual,
Plaintiffs,
vs.
AUTOMOBILE CLUB OF SOUTHERN
CALIFORNIA, a California company; and
DOES 1 – 100, inclusive,
Defendants. } Case No.: BC597839
} ORDER GRANTING PLAINTIFFS'
} MOTION FOR SUMMARY JUDGMENT
} AND DENYING DEFENDANT'S
} MOTION FOR SUMMARY JUDGMENT
} Dept.: SSC 17

1. INTRODUCTION

Plaintiffs Danielle Marrufo and Robert Schultz (Plaintiffs) have or had homeowners' fire insurance policies issued by Defendant Interinsurance Exchange of the Automobile Club (the Exchange). The policies contain a "Wildfire Smoke Endorsement."

1 enacted after the 2009 Station Fire in Los Angeles County.¹ Plaintiffs seek a declaration
2 that this endorsement fails to meet the requirements imposed by Insurance Code §§ 2070
3 and 2071² and is thus unenforceable. (FAC, ¶¶ 2, 19.) The Exchange, in contrast, argues
4 that the endorsement is not governed by sections 2070 and 2071 because damage from
5 smoke is not covered by those sections and is permitted “extended coverage” for a peril
6 separate from fire, i.e. wildfire smoke. It further argues that even if governed by those
7 sections it is free to set policy limits for smoke damage claims that differ from policy limits
8 for claims from fire loss.

9 Having considered the undisputed facts, those limited matters which the Court may
10 judicially notice,³ the pleadings, and the oral argument of counsel on February 22, 2018,
11 and for the reasons that follow, the Court grants judgment in favor of Plaintiffs.

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15 ¹ Plaintiffs have not made any claims to the Exchange relative to the Endorsement. They
16 represent a certified class of similarly situated persons. In a related action, Plaintiff Astolfo
17 Gomez brought class action claims against Defendant on behalf of a class of persons who
18 had made claims pursuant to the Wildfire Endorsement, *Gomez v. Automobile Club of*
19 *Southern California* (BC564641). The *Gomez* action contained two theories of liability.
20 The first was that the Wildfire Smoke Endorsement is unenforceable in light of Insurance
21 Code §§ 2070 and 2071. The second was that the endorsement was inadequately disclosed
22 to policy holders. *Gomez* resulted in a class action settlement approved March 15, 2017.
23 Under the terms of the settlement the second claim in *Gomez* was settled, with the proviso
24 that the first claim would be resolved in this action, with *Gomez* class members preserving
25 the right to a potential future payment. The rulings here will necessitate further
26 proceedings in *Gomez*.

27 ² Except as otherwise noted all statutory references are to Cal. Ins. Code.
28

³ Rulings on the evidentiary objections and requests for judicial notice are appended .

II. LEGAL STANDARD

Cal. Code Civ. Pro. §437c(a)(1) provides for summary judgment where either an action has no merit or where there is no defense to the action. The parties do not have any material undisputed facts and concur that this matter should be adjudicated by way of cross motions.

The provisions of the Insurance Code applicable here are two:

Section 2070 provides that all fire policies shall be in the form prescribed by statute or, if not, must provide coverage that is “substantially equivalent to or more favorable to the insured” than what is contained in the standard statutory form.

Section 2071 contains the standard form language:

“In consideration of the provisions and stipulations herein or added hereto and of _____ dollars premium this company, for the term of _____ to _____ at location of property involved, to an amount not exceeding _____ dollars, does insure _____ and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described hereinafter while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.”

1 (Emphasis in original)

2 Section 2071 requires the insured to give written notice “without unnecessary
3 delay,” and “within sixty days after the loss.” It requires any “suit” for recovery “within
4 12 months” after inception of the loss.

5 It is well established that:

6 “In California, fire insurance policies are regulated by the Insurance Code.

7 Section 2070 provides: ‘All fire polices ... shall be on the standard form,
8 and, except as provided by this article shall not contain additions thereto.

9 No part of the standard form shall be omitted therefrom except that any
10 policy providing coverage against the peril of fire only, or in combination
11 with coverage against other perils, need not comply with the provisions of
12 the standard form of fire insurance policy ...; *provided, that coverage with*
13 *respect to the peril of fire, when viewed in its entirety, is substantially*
14 *equivalent to or more favorable to the insured than that contained in such*
15 *standard form fire insurance policy.*’ (Italics added.) Provisions of the
16 standard form fire policy are set forth in section 2071. Thus, a policy that
17 does not conform to section 2071's standard provisions must provide total
18 fire coverage that is at least ‘substantially equivalent’ to coverage provided
19 by the standard form. (§ 2070; see *Julian v. Hartford Underwriters Ins. Co.*
20 (2005) 35 Cal.4th 747, 754, 27 Cal.Rptr.3d 648, 110 P.3d 903 [policy
21 exclusions are unenforceable to the extent they conflict with the Insurance
22 Code].”

23 *Century-National Ins. Co. v. Garcia* (2011) 51 Cal.4th 564, 567.

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III. ANALYSIS

A. The Policy Terms

The policies contain the following relevant coverage language:

"Part I Property Coverages

Dwelling	Coverage A
Other Structures	Coverage B
Unscheduled Personal Property	Coverage C
Loss of Use Coverage A)	Other Coverages 1. (20% of the amount of Coverage A)
Building Code Upgrade Coverage A)	Other Coverages 5. (10% of the amount of Coverage A)

WHAT LOSSES ARE COVERED – COVERAGE A AND COVERAGE B

Except as excluded under WHAT LOSSES ARE NOT COVERED – PART I, we cover:

1. all loss from FIRE AND LIGHTNING; and
2. accidental direct physical loss from other causes of loss;
to the property described under WHAT PROPERTY IS CO
COVERAGE A and COVERAGE B.

WHAT PROPERTY IS COVERED – COVERAGE C

Except as excluded under WHAT LOSSES ARE NOT COVERED – PART I, we cover the following losses to personal property described under WHAT PROPERTY IS COVERED – COVERAGE C:

⁴ In citing to Bates page numbers, the Court is referencing the Marrufo (Trenzini) policy attached to the Declaration of Mary Vidal (Supervisor in the Exchange's Insurance Business Processing Unit).

1 1. all loss from FIRE AND LIGHTNING; and

2 2. accidental direct physical loss from...:

3 f. SUDDEN AND ACCIDENTAL DAMAGE FROM SMOKE

4 We do not cover loss caused by smoke from agricultural smudging or
5 industrial operations.

6 (Pages 025-026).

7 In the section captioned, "Your Duties After Loss," the policy provides, "You must,
8 within 60 calendar days after the loss, submit to us your signed, sworn proof of loss."

9 (Page 029).

10 Plaintiffs do not dispute that these provisions comply with the requirements of
11 Insurance Code §2071. It is also undisputed that the policy contains no definition of either
12 " FIRE" or " SMOKE."

13 The disputed Wildfire Smoke Endorsement contains the following relevant
14 language:

15 For purposes of this endorsement and subject to all the provisions of your
16 Homeowners policy, it is agreed that the coverage provided under PART I-
17 PROPERTY COVERAGES of your policy has been changed as follows:

18 A. DEFINITIONS

19 Under DEFINITIONS the following definitions are added:

20 **Wildfire** – means a fire predominantly fueled by timber, scrub, brush, grass,
21 or any other type of vegetation.

22 **Wildfire smoke** – means any smoke, soot, ash, char, odor, dust, particulate or
23 other material (all whether or not settled, airborne, wind-borne or wind-
24 driven) that is produced, discharged, emitted or released by, or otherwise
25 caused by or resulting from, a *wildfire*.

26 **Wildfire smoke loss** – means accidental direct physical loss to property
27 covered under PART I which is caused by **wildfire smoke** and the loss:

28 a. occurs; and

b. is reported to us;

no later than 90 calendar days following the start date of the *wildfire*.

B. PART I – PROPERTY COVERAGES

OTHER COVERAGES – PART I

Under OTHER COVERAGES – PART I, provision 15 is added:

15. WILDFIRE SMOKE

We will pay up to \$5,000 for the total of all loss payable under PART I as a result of accidental direct physical loss to property covered under PART I which is caused by **wildfire smoke** that is not a **wildfire smoke loss**. The amount payable under this provision includes:

- a. the cost required to repair or replace covered damaged or destroyed property;
- b. the cost of testing the air or property to confirm the absence, presence, or level of any **wildfire smoke**;
- c. any amount payable under OTHER COVERAGES – PART I, provision 1. LOSS OF USE;
- d. any amount payable under OTHER COVERAGES – PART I, provision 7.

REMOVAL OF DEBRIS AND VOLCANIC ASH.

This coverage does not increase the amount of the limit of liability applicable to the property damaged or destroyed.

(Page 014).

B. The Parties' Agreement Regarding Interpretation

At the commencement of the litigation the parties had differing understandings as to effect of the Endorsement. At oral argument, however, counsel agreed that under their respective interpretations of the Endorsement an insured whose home was damaged only by fire smoke (but not fire) and who reported that loss within 90 days of the “start of wildfire” would be entitled to coverage up to the policy’s full limits. If the insured had a loss from a wildfire itself but reported loss from wildfire smoke *after* 90 days of the start of the fire, the limits of the policy would be \$5,000. Based on that understanding, the

1 Court now considers whether the Endorsement, functioning in such a fashion, violates
2 sections 2070 and 2071 of the Insurance Code.

3 **C. Wild Fire Smoke Damage Is Covered By Sections 2070 and 2071**

4 The parties disagree as to whether Sections 2070 and 2071 apply to the
5 Endorsement. The Exchange contends that the Endorsement is “extended coverage” that is
6 not governed by section 2071 because wildfire smoke is a peril separate from the peril of
7 “FIRE” as intended by the statute and that, in any event, under the statute it may limit the
8 *amount* of coverage for a particular peril. Plaintiffs contend that smoke is a by-product of
9 fire and is a peril of fire covered by the statutory provisions. This is a question of first
10 impression on which there is little evidence of legislative intent other than the language of
11 the statutes themselves. For the reasons that follow, the Court finds the Plaintiffs’
12 arguments the more persuasive.

13 **1. The Language of the Statute**

14 Read together Insurance Code sections 2070 and 2071 provide that the policy must
15 insure against not only fire itself but the “peril” of fire. Section 2071 requires coverage for
16 “all LOSS BY FIRE.” Section 2070 states that a policy that covers: “ the *peril* of fire only,
17 or in combination with coverage against other *perils*, need not comply with the provisions
18 of the standard form of fire insurance policy … provided, that coverage with respect to the
19 *peril* of fire, when viewed in its entirety, is substantially equivalent to or more favorable to
20 the insured than that contained in such standard form fire insurance policy.” (§2070,
21 emphasis added.) The question that must thus be answered is: Is smoke from a wildfire a
22 “peril” separate from the fire itself? Or, put another way, when an insurer is required to
23 cover “all loss by fire” does the term “all” include smoke from a fire causing loss?

24 “The term ‘perils’ or ‘risks’ in traditional property insurance parlance ‘refers to
25 fortuitous, active, physical forces such as lightning, wind, and explosion, which bring
26 about the loss.’” Croskey, Heeseman, Ehrlich & Klee, CAL. PRAC. GUIDE: INSURANCE
27 LITIGATION (The Rutter Group 2017) 6:275, citing *Garvey v. State Farm Fire & Cas.*
28 Co. (1989) 48 Cal. 3d 395, 406. In some technical contexts “peril” may mean “cause of

1 loss.” However, there is no indication that the Legislature meant “peril” in a technical way
2 when it adopted the statute. See *Doheny W. Homeowners' Ass'n v. Am. Guar. & Liab. Ins. Co.* (1997) 60 Cal.App.4th 400, 405, fn. 4 (citing Croskey and noting that although “peril”
3 may in some technical or special contexts mean “cause of loss,” the ordinary meaning is
4 “fortuitous, active, physical forces.”)

5 Wildfire smoke is not an active force on its own. It occurs because of the wildfire.
6 It thus appears from the language of the statutes and the ordinary definition of “peril” that
7 when a carrier is required by the Legislature to insure against “all” loss “by fire” that
8 included is the requirement to cover damage from smoke caused by any accidental fire
9 other than those caused by particular sources detailed in the statute (“(a) enemy attack by
10 armed forces, including action taken by military, naval or air forces in resisting an actual or
11 an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e)
12 revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of
13 destruction at the time of and for the purpose of preventing the spread of fire, provided that
14 the fire did not originate from any of the perils excluded by this policy; (i) neglect of the
15 insured to use all reasonable means to save and preserve the property at and after a loss, or
16 when the property is endangered by fire in neighboring premises;)” Ins. Code, § 2071).⁵

18 **2. The Exchange's Authorities Are Not Persuasive**

19 The Exchange cites Insurance Code §10091 (governing FAIR plan policies) and
20 Insurance Code §9095 (governing fraternal fire insurers) as evidence of the Legislature's
21 understanding that smoke damage is distinct from standard fire coverage and is part of

22
23
24 ⁵ That the policies exclude coverage for cover loss caused by smoke from agricultural
25 smudging or industrial operations does not change the analysis. These exclusions relate to
26 smoke from fires intentionally set and, in the case of the smudging operation, intended to
27 cause smoke so as to raise the air temperature to prevent crop loss.

1 “extended” coverage that is not subject to section 2070 and that “loss by Fire” was not
2 intended by the Legislature to include smoke from a fire.

3 Section 10091 defines “Basic property insurance” to mean insurance
4 against “direct loss . . . from perils insured under the standard fire policy and
5 extended coverage endorsement and vandalism and malicious mischief.” While
6 this section makes clear that the Legislature distinguishes between perils insured
7 under the standard fire policy and other perils insured against under extended
8 coverage endorsements, the language does not illuminate whether smoke caused
9 by a fire constitutes a peril insured against under the standard policy or is a
10 separate peril that may be covered by extended coverage endorsements.

11 Insurance Code §9095, applicable to certain fraternal associations, provides
12 that if the association has issued a policy against fire, it may endorse the policy to
13 extend coverage to include, “windstorm, cyclone, tornado and hail, explosion, riot,
14 riot attending a strike, aircraft, vehicles and smoke.” In this context it does appear
15 that the Legislature considered “smoke” to be a peril distinct from “fire.”
16 However, there is no indication that the same considerations apply to fire policies
17 issued by insurers subject to Sections 2070 and 2071.

18 Likewise, Cal. Code Regs., tit. 10, §2670.13 is a regulation adopted by the
19 *Insurance Commissioner* to implement the provisions of section 779.36 of the
20 Insurance Code regarding rates that may be charged for certain credit insurance. It
21 does not reflect *legislative* intent. The regulation provides that where a carrier
22 issues “dual interest” credit property insurance on a closed end plan of
23 indebtedness for personal property purchased by the certificate holder and insuring
24 the interests of both the lender whose loan is secured by the personal property and
25 the certificate holder (borrower), the perils insured against include coverage for
26 “direct loss or damage...by fire and lightning... as well as... extended coverage
27 covering...smoke.”

28

1 The language for credit insurance is not the same as the language for fire
2 insurance and the concerns of the Legislature regarding the proper coverages
3 under a fire insurance policy are not shown to be the same as those for credit
4 insurance. Moreover, the fact that the Insurance Commissioner referenced “*direct*
5 loss by fire” and treated a loss by smoke covered by “extended coverage”
6 provisions suggests that when the Legislature requires coverage for “*all* loss by
7 fire” (as opposed to “direct” loss), that it intended loss caused by smoke to be
8 included in the coverage and not part of “extended coverage.”

9 **3. Rate Approval by the Department of Insurance is Not Dispositive**

10 Defendant points out that its Wildfire Smoke Endorsement, and that of other
11 insurers, was approved by the California Department of Insurance. The short answer to
12 this argument is that the Insurance Commissioner’s approval of a rate does not govern the
13 trial court’s determination of whether the policy conforms to the requirements of the
14 Insurance Code. *Frenzer v. Mutual Benefit Health & Acc. Ass’n* (1938) 27 Cal.App.2d 406,
15 414; *Rand v. American Nat. Ins. Co.* (2010) 717 F.Supp.2d 948, 955.

16 **4. Conclusion**

17 The Court recognizes that wildfires are prevalent in California and that
18 claims for smoke loss from same may be more difficult to evaluate than claims for
19 damage from fire itself (See Dec. of Daly). The Court nonetheless concludes that
20 the Legislature intended, under a plain English reading of the term “ALL LOSS
21 BY FIRE” and the usual meaning of the word “peril,” to include smoke loss in the
22 coverages to be provided under section 2071. Should carriers desire to limit their
23 exposure to such claims their remedy lies with the Legislature.

24 **D. The Endorsement Violates Section 2071**

25 The Exchange contends that under Section 2071 it has the right to set policy limits,
26 including different policy limits for different kinds of losses, citing *St. Cyr v. California*
27 *FAIR Plan Assn.* (2014) 223 Cal.App.4th 786. *St. Cyr* confirms that Section 2071 requires
28 payment of policy limits and not actual cash value of lost property. The statute, however,

1 prescribes a *single* policy limit for loss by fire. It does not permit a separate limit for some
2 losses by fire (the “sublimit”) and a more generous limit for others. Thus, to the extent the
3 endorsement provides only \$5,000 in coverage for a wildfire smoke loss for claims
4 reported more than 90 days after the start of a wildfire it violates the statute.

5 Further, the requirement that the claim must be reported within 90 days of the “start
6 of the wildfire” rather than 60 days “after the loss,” as required by section 2071 (insured to
7 give written notice “without unnecessary delay,” and “within sixty days *after the*
8 *loss*”)(emphasis added), is not permitted.

9 As discussed at oral argument, the Court takes judicial notice, pursuant to Cal. Evid.
10 Code §§ 452(g) and (h), that wildfires in California often begin many miles from where
11 they end and burn for many weeks before they are extinguished. By way of example only,
12 the Station Fire, which preceded the Exchange’s Endorsement, began August 26, 2009 and
13 was not contained until October 16, 2009, burning some 160,577 acres in the process.
14 (http://cdfdata.fire.ca.gov/pub/cdf/images/incidentstatsevents_178.pdf) The recent Thomas
15 Fire began December 4, 2017 in Ventura County, burned over 281,000 acres, and was not
16 contained until at least January 12, 2018.

17 <https://inciweb.nwccg.gov/incident/article/5670/42432/>. In both fires, those who suffered
18 wildfire smoke damage during the last days of the fire (more than 30 days after it
19 commenced) would, under the Exchange’s endorsement, be required to report any loss
20 within ninety days after commencement of the fire, even if their losses were not incurred
21 until well after the fire commenced, or suffer a diminution in the amount of their coverage.
22 The statute does not permit this.

23 **E. The Rule of Lenity Does Not Bear On the Analysis**

24 Defendant alternatively argues that the Court should apply the rule of lenity.
25 (Defendant’s Reply at 12:16-13:5.) The rule of lenity essentially holds that penal statutes
26 are to be construed and applied as favorably to the defendant as the language of the statute
27 and the circumstances reasonably permit. *Walsh v. Department of Alcoholic Beverage*
28 *Control* (1963) 59 Cal.2d 757, 765. The basis for the rule is to prevent courts from

1 enlarging penal statutes. Id. at 764. “[S]tatutes which impose a new and unusual liability
2 which partakes of the nature of a penalty must be strictly construed in favor of the persons
3 sought to be subjected to their operation. However, the intent of the Legislature prevails
4 over the strict letter of the statute and the letter will, if possible, be read to conform to the
5 spirit of the act and to effectuate the purpose of the law.” *Tos v. Mayfair Packing Co.*
6 (1984) 160 Cal.App.3d 67, 75, internal quotes and citations omitted.

7 This rule potentially applies in the insurance context, as noted in *Interinsurance*
8 *Exchange of Automobile Club v. Superior Court* (2007) 148 Cal.App.4th 1218, 1237, FN
9 15, as Insurance Code §2083 makes it a misdemeanor for an insurer to issue a fire policy
10 that varies from the standard form of policy. The Court here makes no ruling expanding
11 any provision of the Penal Code. The rule is thus inapplicable.

12 **IV. CONCLUSION**

13 In requiring that the carrier insure against “ALL LOSS BY FIRE” and there being
14 no indication that the term “peril” as used in section 2070 was intended to have other than
15 a non-technical meaning, the Legislature appears to have intended that smoke from a fire
16 be included in the coverages in Section 2071’s standard form. The endorsement at issue,
17 by limiting coverage to \$5,000 for smoke loss reported more than ninety days after the
18 commencement of a wildfire, potentially provides the insured with less coverage than that
19 required by section 2071. Judgment, accordingly, shall be entered for Plaintiffs.

20 Counsel for Plaintiffs shall prepare a judgment in this action consistent with this
21 ruling and lodge it on or before June 1, 2018.

22 The Court sets a further status conference for June 27 2018 at 9:00 a.m. to discuss
23 further steps in this action and the related *Gomez* action. Counsel shall file a joint status
24 report 5 court days in advance of that hearing.

25
26 Dated: 5/10/18

Maren E. Nelson

27 MAREN E. NELSON
28 JUDGE OF THE SUPERIOR COURT

Evidentiary Objections

Plaintiffs' objection to the Declaration of Clark A. Keller (attaching a copy of the Department of Insurance's approval of Exchange's application for approval of the Wildfire Smoke Endorsement) and of Jared K LeBeau (supporting Defendant's Request for Judicial Notice of the California Department of Insurance's approval of similar wildfire smoke endorsements by other insurers): Overruled. Although certain statements therein may be hearsay, page and line references were not given.

Defendants' request for judicial notice of the documents authenticated by LeBeau is granted pursuant to Evidence Code §452(c). The documents represent official acts of the Department of Insurance.

Defendant's Supplemental Request for Judicial Notice and Supplemental Declaration of LeBeau were filed February 2, 2018. This is additional evidence of CDI approval of a wildfire smoke endorsement. For the same reasons, judicial notice of the acts of CDI is granted.

Plaintiffs' Request for Judicial Notice of two demurrer rulings is denied. The rulings on demurrers are not relevant to the issues before the Court.

Documents Considered

Filed July 21, 2017 by Plaintiffs

Plaintiffs' Notice of Motion and Motion for Summary Judgment

Plaintiffs' Separate Statement

Plaintiffs' Request for Judicial Notice

Declaration of Shant A. Karnikian

Plaintiffs' Compendium of Non-California Authorities

Filed July 21, 2017 by Defendant

Filed July 11, 2017 by Defendant
Defendant's Notice of Motion and Motion for Summary Judgment

Brief in Support of Defendant's Motion for Summary Judgment

DEFINITION OF DEFENDANT'S SEPARATE STATEMENT

Declaration of Clark Keeler

Declaration of John Brooks

Declaration of Mary Vidal

Declaration of Jared LeBeau

Defendant's Request for Judicial Notice

1 **Filed August 10, 2017 by Defendant**

2 Brief in Opposition to Plaintiff's Motion for Summary Judgment

3 Defendant's Response to Plaintiffs' Separate Statement

4 Declaration of Brian P. Daly

5 Defendant's Opposition to Plaintiffs' Request for Judicial Notice

6 **Filed August 10, 2017 by Plaintiffs**

7 Plaintiffs' Opposition to Defendant's Motion for Summary Judgment

8 Plaintiffs' Response to Defendant's Separate Statement

9 Plaintiffs' Request for Judicial Notice

10 Plaintiffs' Objections to Defendant's Evidence

11 Plaintiffs' Objections to Defendant's Request for Judicial Notice

12 Plaintiffs' Compendium of Non-California Authority

13 **Filed September 7, 2017 by Plaintiffs**

14 Plaintiffs' Reply Brief in Support of Motion for Summary Judgment

15 **Filed September 7, 2017 by Defendant**

16 Reply Brief in Support of Defendant's Motion for Summary Judgment

17 Defendant's Response to Plaintiffs' Objections to Defendant's Evidence

18 Defendant's Opposition to Plaintiffs' Request for Judicial Notice

19 Defendant's Response to Plaintiffs' Objections to Defendant's Request for Judicial Notice

20 Defendant's Request for Judicial Notice re Its Reply

21 **Filed February 2, 2018 by Defendant**

22 Defendant's Supplemental Request for Judicial Notice

23 Supplemental Declaration of Jared LeBeau