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APR 24

**LOS ANGELES
SUPERIOR COURT**
ORIGINAL FILED

APR 24 2001

**LOS ANGELES
SUPERIOR COURT**

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**

BC249230

16 DOUGLAS RYAN, an individual, on behalf
17 of the general public,

18 Plaintiff,

19 vs.

20 FARMERS INSURANCE COMPANY, a
21 Corporation, and DOES 1 through 100,
22 inclusive,

23 Defendants.

Case No.:

COMPLAINT FOR INJUNCTIVE AND
RESTITUTIONARY RELIEF UNDER
BUS. & PROF. CODE §17200, ET AL.
TO ENJOIN VIOLATIONS OF
INSURANCE CODE §1861.02(c)

24 Plaintiff, DOUGLAS RYAN, alleges as follows:

25 1. Plaintiff, DOUGLAS RYAN, is an individual residing in the County of Los
26 Angeles, State of California. As authorized under *Business & Professions Code* §17204,
27 plaintiff brings this action on behalf of the general public.

28 2. Plaintiff is informed and believes and thereon alleges that Defendant,
FARMERS INSURANCE COMPANY, is and at all times mentioned was a corporation
engaged in the business of writing automobile insurance and is doing business in the County
of Los Angeles, State of California.

1 individual's lack of prior automobile insurance as a factor in the setting of premiums. Under
2 these plans, the carriers ostensibly seek to obtain written verification of an insured's driving
3 record, but in reality the only acceptable type of driving record verification is evidence of
4 current insurance. Thus, the lack of automobile insurance – in and of itself – determines
5 whether a surcharge will be applied or whether a discount is denied.

6 9. The first lawsuit brought to rectify these violations of *Insurance Code*
7 §1861.02(c) was a class action lawsuit filed against Allstate Insurance Company in a case
8 called *Mitchell v. Allstate*, Los Angeles County Superior Court Case No. BC 212492.
9 Simultaneously with the filing of the class action lawsuit, plaintiffs prosecuted a parallel
10 administrative complaint before the Department of Insurance. The *Mitchell* case thus
11 brought to the Department of Insurance's attention the violations of *Insurance Code*
12 §1861.02(c) by a carrier who imposed a surcharge if a customer was unable to present
13 Allstate with "acceptable" written verification of his or her driving record. A true and
14 correct copy of the *Mitchell* class action lawsuit is attached as Exhibit "A", and a true and
15 correct copy of the parallel administrative complaint is attached as Exhibit "B".

16 10. An administrative hearing was held before the DOI on March 14, 2000, where
17 plaintiffs and Allstate presented their arguments to the hearing officer. Following the
18 hearing, the parties requested that the DOI stay any decision pending the parties' attempt to
19 resolve the matter. Thus, the parties engaged in extensive settlement negotiations over the
20 next year, ultimately reaching a settlement whereby Allstate has agreed to discontinue its
21 Non-Verifiable Accident Record Surcharge.

22 11. As a result of the administrative hearing involving Allstate, the DOI issued a
23 "Notice of Proposed Emergency Action Pursuant to California *Insurance Code* §12921.7,"
24 on April 9, 2001. A true and correct copy of the Notice is attached hereto as Exhibit "C",
25 which essentially provides that insurance carriers can no longer insist that the only
26 acceptable method for an insured to verify his or her accident record is by furnishing
27 evidence of prior insurance.

28 ///

1 2. For an order requiring Defendant to disclose to all existing and potential
2 policyholders its unlawful and unfair business practices against those with a gap of
3 insurance coverage, and its effect on an insured's premiums and insurability.

4 3. For an order of restitution, restoring to all affected policyholders premiums
5 which have been collected pursuant to the unlawful and unfair business practices as pled
6 herein.

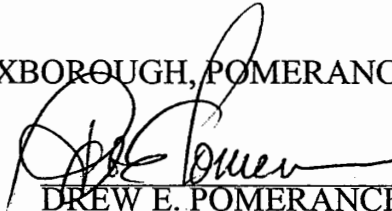
7 4. For a reasonable amount of attorneys', consultants' and experts' fees incurred
8 by plaintiff in connection with this action, pursuant to *Code of Civil Procedure* §1021.5
9 and/or *Insurance Code* §1861.10(b).

10 5. For all costs incurred in this action.

11 6. For such other and further relief as the Court deems just and proper.

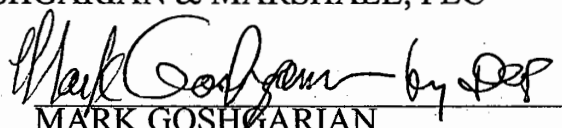
12
13 Dated: April 20, 2001

ROXBOROUGH, POMERANCE & NYE LLP

14
15 By: 
16 DREW E. POMERANCE
17 Attorneys for Plaintiff, DOUGLAS RYAN, an
Individual, On Behalf of the General Public

18 Dated: April 20, 2001

GOSHGARIAN & MARSHALL, PLC

19
20 By: 
21 MARK GOSHGARIAN
22 Attorneys for Plaintiff, DOUGLAS RYAN, an
23 Individual, On Behalf of the General Public

24
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Exhibit A

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CASE ASSIGNED TO CLASS ACTION DEPARTMENT 59
FOR ALL PRETRIAL PROCEEDINGS. CASE IS ASSIGNED
FOR TRIAL AS FOLLOWS.

5 Attorneys for Plaintiffs, Floyd Mitchell, Graciela
Virgin, Margaret Carmona and Virginia Thompson
6

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10
11 FLOYD MITCHELL, GRACIELA)
VIRGEN, MARGARET CARMONA and)
12 VIRGINIA THOMPSON,)

13 Plaintiffs,)

14 v.)

15 ALLSTATE INSURANCE COMPANY, a)
Corporation, and DOES 1)
16 through 100, inclusive,)

17 Defendants.)
18

CASE NO. B C212492

CLASS ACTION COMPLAINT FOR:

1. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AND
2. UNFAIR BUSINESS PRACTICES IN VIOLATION OF BUSINESS AND PROFESSIONS CODE §17200.

19 Plaintiffs, FLOYD MITCHELL, GRACIELA VIRGEN, MARGARET CARMONA
20 and VIRGINIA THOMPSON, individuals, on Behalf of Themselves and All
21 Others Similarly Situated, allege against defendants, ALLSTATE
22 INSURANCE COMPANY, a Corporation, and DOES 1 through 100, Inclusive,
23 as follows:

24 GENERAL ALLEGATIONS

25 1. Plaintiff, FLOYD MITCHELL, is an individual residing in the
26 County of Los Angeles, State of California.

27 2. Plaintiff, GRACIELA VIRGEN, is an individual residing i
28 the County of Los Angeles, State of California

EXHIBIT A

1 3. Plaintiff, MARGARET CARMONA, is an individual residing in
2 the County of Los Angeles, State of California.

3 4. Plaintiff, VIRGINIA THOMPSON, is an individual residing in
4 the County of Los Angeles, State of California.

5 5. Plaintiffs are informed and believe and thereon allege that
6 defendant, ALLSTATE INSURANCE COMPANY, a Corporation (hereinafter
7 "ALLSTATE" and/or "defendant"), is at all times herein mentioned was
8 a business enterprise engaged in the business of writing automobile
9 insurance and is doing business in the County of Los Angeles, State
10 of California.

11 6. The true names and capacities of DOES 1 through 100,
12 inclusive, whether individual, corporate, associate or otherwise, are
13 presently unknown to Plaintiffs, and Plaintiffs sue said defendants
14 by such fictitious names. When Plaintiffs ascertain the true names
15 and capacities of said defendants, Plaintiffs will ask leave of Court
16 to amend this Complaint by setting forth the true names. Plaintiffs
17 are informed and believe, and on the basis of such information and
18 belief allege, that Defendants DOES 1 through 100 participated in
19 some or all of the acts and omissions alleged herein and are
20 responsible and liable to Plaintiffs for the damages and other relief
21 sought herein.

22 7. Plaintiffs further allege that at all times herein
23 mentioned, defendants, and each of them, whether DOES 1 through 100
24 or otherwise, were agents, servants and employees of each other
25 acting at all times relevant hereto within the course and scope of
26 said agency and employment.

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CLASS ACTION ALLEGATIONS

1
2 8. In November 1988, Proposition 103, requiring insurance
3 companies to grant insureds "Good Driver Discounts" passed in the
4 State of California and thereby became law. Subsequent thereto,
5 California Insurance Code section 1861.02 was adopted and became
6 effective on November 8, 1989 which precludes insurance companies
7 from utilizing evidence of a person's prior automobile insurance
8 coverage in determining eligibility for insurance, the Good Driver
9 Discount, or calculating that person's premiums. However, as more
10 particularly described below, ALLSTATE engaged in a uniform and
11 system-wide course of conduct which deprived those policyholders
12 without prior history of automobile insurance of the benefits of
13 Proposition 103 as well as the Good Driver Discount by off-setting
14 all, if not a substantial portion of the discount with a surcharge
15 called "Rule 39 Surcharge," also known as the "Non-Verifiable Driving
16 Record Surcharge" (hereinafter "Rule 39 Surcharge"). Plaintiffs are
17 informed and believe and based thereon allege that the Rule 39
18 Surcharge was a policy implemented by ALLSTATE to circumvent the law
19 proscribing insurance carriers from considering a person's prior
20 insurance coverage as a factor in determining premiums or eligibility
21 for insurance.

22 9. Plaintiffs are typical members of an ascertainable class consisting
23 at least 10,000 individuals within the State of California who have
24 purchased automobile insurance from ALLSTATE from April 1996 to the
25 present, who paid the Rule 39 Surcharge in an amount up to 40% of
26 their quoted premium. Due to the large number of potential class
27 members who have been harmed by the concerted actions of ALLSTATE,
28 joinder of all potential class members into one action would be

1 impractical if not impossible. Only by bringing this action as a
2 class action can the interests of the Plaintiffs be economically
3 tried before this court. The named Plaintiffs bring this action on
4 behalf of themselves and all other individuals similarly situated
5 within the State of California. Those individuals for and on whose
6 behalf this action is brought are hereinafter referred to as "class
7 members."

8 10. The claims of these representative Plaintiffs are typical
9 of the claims of all class members. These representatives, like all
10 class members, purchased automobile insurance from ALLSTATE sometime
11 after November 8, 1989, when California Insurance Code §1861.02
12 became effective precluding automobile companies from utilizing the
13 absence of prior automobile coverage, in and of itself, as a
14 criterion for determining eligibility for a Good Driver Discount
15 policy, to determine automobile rates, premiums or insurability. A
16 driver is legally entitled to a Good Driver Discount policy if he/she
17 has been licensed to drive a motor vehicle for the previous three
18 years and did not have more than one violation point count within the
19 past three years by engaging in any conduct itemized in Insurance
20 Code §1861.025 and Vehicle Code §12810.

21 11. Plaintiffs are informed and believe and based on such
22 information and belief allege that ALLSTATE applied the Rule 3
23 Surcharge for each of its policyholders who did not have insurance
24 for more than 30 consecutive days or more at any time during the
25 three years period prior to purchasing automobile insurance from
26 ALLSTATE. Plaintiffs allege that this surcharge was in violation of
27 Insurance Code §1861.02 since the imposition of the surcharge was
28 based on the insured's absence of prior automobile insurance

1 coverage. By imposing the Rule 39 Surcharge in violation of
2 Insurance Code §1861.02, ALLSTATE committed the same breaches
3 violated the same duties of good faith and fair dealing and generally
4 engaged in the same wrongful conduct toward all class members
5 including these representative Plaintiffs.

6 12. Plaintiffs are informed and believe and thereon allege that
7 commencing in April 1996, ALLSTATE applied the Rule 39 Surcharge
8 against a policyholder's premiums for the maximum of six consecutive
9 6-month policies, equivalent to three years. Plaintiffs further
10 allege that the total amount of Rule 39 Surcharge paid by each of the
11 individual class members is believed to be less than \$75,000.00.

12 13. The resolution of all issues of fact and all issues of law
13 will be substantially similar, if not identical for all class
14 members. ALLSTATE's wrongful conduct, as more particularly alleged
15 below, was system-wide and carried out uniformly with respect to each
16 of its insured policyholders who for any reason, had a consecutive
17 30-days or more lapse in coverage during the three years prior to the
18 purchase of the insurance.

19 **FIRST CAUSE OF ACTION**

20 **(For Tortious Breach of the Implied Covenant of Good Faith
21 and Fair Dealing Against ALLSTATE and Does 1 through 100)**

22 14. Plaintiffs repeat and allege all of the allegations
23 contained in paragraphs 1 through 13 in this Complaint as though such
24 allegations were set forth in full herein.

25 15. Plaintiffs have purchased automobile insurance from
26 ALLSTATE. Attached hereto and incorporated herein by reference
27 Exhibit "A" is a true and correct copy of ALLSTATE's standard
28 automobile insurance policy (hereinafter collectively referred to

1 the "POLICY CONTRACT"). The POLICY CONTRACT, with the exception of
2 individual policy limits and amount of premiums, was identical for
3 all class members and was in force and effect for all relevant policy
4 years for which Plaintiffs were insured with ALLSTATE.

5 16. Plaintiff FLOYD MITCHELL ("MITCHELL") has been insured with
6 ALLSTATE from April or May 1996 to the present. Prior to the
7 commencement of this coverage period, Plaintiff MITCHELL had a lapse
8 of coverage of approximately five to six months for which ALLSTATE
9 imposed the Rule 39 Surcharge of \$163.00 ever six months. Plaintiff
10 MITCHELL was therefore forced to pay this surcharge although he had
11 been an ALLSTATE policyholder for automobile and homeowners insurance
12 continuously since 1987, up until the brief lapse in coverage from
13 about December 1995 to April or May 1996.

14 17. Plaintiff GRACIELA VIRGEN ("VIRGEN") has been insured with
15 ALLSTATE from May 14, 1997 to the present. Prior to the commencement
16 of this coverage period, Plaintiff VIRGEN had a lapse of coverage of
17 approximately two years for which ALLSTATE imposed the Rule 3
18 Surcharge of \$154.00 every six months.

19 18. Plaintiff MARGARET CARMONA ("CARMONA") was insured with
20 ALLSTATE from March 29, 1997 to May 29, 1998. Prior to the
21 commencement of this coverage period, Plaintiff CARMONA had a lapse
22 of coverage of approximately three months for which ALLSTATE imposed
23 the Rule 39 Surcharge of \$474.00 every six months. Plaintiff CARMONA
24 was therefore forced to pay this surcharge although she had been an
25 ALLSTATE policyholder for automobile and homeowners insurance
26 continuously for approximately ten years prior to her brief lapse
27 coverage.

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1 19. Plaintiff VIRGINIA THOMPSON ("THOMPSON") was insured with
2 ALLSTATE beginning on or about October 9, 1997 to the present. Prior
3 to the commencement of this coverage period, Plaintiff THOMPSON had
4 a lapse of coverage of approximately one (1) year for which ALLSTATE
5 imposed the Rule 39 Surcharge of \$70.00 every six months. Plaintiff
6 THOMPSON was therefore forced to pay this surcharge although she had
7 been an ALLSTATE policyholder for automobile insurance and 20th
8 Century Insurance Company continuously since approximately October
9 1988, but for the brief lapse in coverage between October 1996 and
10 October 1997.

11 20. Plaintiffs are informed and believe and thereon allege that
12 the POLICY CONTRACT is a contract of adhesion insofar as it is
13 standard pre-printed form which has been in use by ALLSTATE during
14 the relevant time period to the present. Plaintiffs further allege
15 that the POLICY CONTRACT was prepared and drafted by ALLSTATE for use
16 with all of its insureds, including all class members, that ALLSTATE
17 is a party of superior bargaining strength and that the POLICY
18 CONTRACT does not contain any terms negotiated at arms length by the
19 parties, nor does it contain any of the promises made by ALLSTATE to
20 induce its insureds to purchase the POLICY CONTRACT, nor a
21 explanation of the Rule 39 Surcharge.

22 21. Plaintiffs are informed and believe and thereon allege that
23 regardless of whether the Plaintiffs qualified for the Good Drive
24 Discount, they were forced to pay higher premiums because of the
25 imposition of Rule 39 Surcharge which increased the amount of
26 premiums approximately 30% to 40%. Plaintiffs are also informed and
27 believe and thereon allege that the Rule 39 Surcharge is imposed on
28 the insureds' premiums for six consecutive 6-month periods unless t

1 policy is terminated by either party.

2 22. ALLSTATE knew, or should have known that California law
3 precludes automobile insurance carriers from using an insured's
4 absence of insurance coverage in and of itself, to determine
5 eligibility for insurance, for Good Driver Discounts, and to
6 calculate premiums. Plaintiffs are informed and believe and on such
7 information and belief allege that despite this knowledge, ALLSTATE
8 had maintained a statewide and uniform policy of circumventing the
9 law to use a person's absence of insurance to determine the amount of
10 premiums the person would pay by charging a substantial surcharge.

11 23. Plaintiffs further allege that on May 20, 1998 and May 2
12 1998, the depositions of ALLSTATE's sales agents, Malcolm Brown and
13 John Lenczewski were taken in a certain action entitled, *Ken
14 Letourneau v. Allstate Insurance Company, et al.*, Los Angeles
15 Superior Court Case No. BC 145897 (the "*Ken Letourneau Action*")
16 wherein Messrs. Brown and Lenczewski testified that ALLSTATE'S Rule
17 39 Surcharge was essentially a surcharge for those insureds without
18 prior insurance and surcharge was a way ALLSTATE attempts to get
19 around Proposition 103. A true and correct copy of the relevant
20 portions of the depositions of Malcolm Brown and John Lenczewski are
21 attached hereto as Exhibit "B".

22 24. In the *Ken Letourneau Action*, an independent finding was
23 made by the California Department of Insurance (hereinafter "DOI")
24 that ALLSTATE violated the *Insurance Code* by pressuring its agents
25 not to sell insurance to persons without evidence of prior insurance.
26 The DOI stated in its order:

27 "While Allstate counters that its "incentive" and
28 "productivity improvement" programs carried no impact with

1 respect to an agent's income and held no negative impact on
2 an agent's advancement, the testimony and document
3 presented in this matter demonstrate that Allstate, through
4 use of its "incentive" and/or "productivity improvement"
5 programs, in fact, clearly indicated to its agents that the
6 writing of "no prior" business was undesirable.

7 The Department finds that this practice, even if, *arguendo*,
8 there was no consequent punitive impact on the agent, had
9 the effect of pressuring agents to avoid writing applicants
10 with no evidence of prior insurance in violation of CIC
11 §1855.02(c)." (emphasis in original) (See Exhibit "C"
12 hereto)

13 25. ALLSTATE filed a Writ of Mandate with the San Francisco
14 Superior Court seeking a reversal of the DOI ruling in the *Ke-*
15 *Letourneau Action*. However, on January 26, 1998, after reviewing the
16 entire administrative record on the merits, the San Francisco
17 Superior Court upheld the DOI's findings by specially ruling that:

18 "This Court finds, based on the record before it,
19 that Allstate used 'no priors' as a criterion for
20 determining whether or not to insure an
21 individual. Using 'no priors' to determine
22 insurability is expressly prohibited by the
23 statute. The Court also finds that the frequency
24 with 'no prior' was mentioned as a poor/worst
25 risk, and the weight it was given in documents,

26 ///

27 ///

28 ///

1 in relation to other poor risk criteria, establishes to the
2 Court's satisfaction that evidence of an individual's 'no
3 prior' status was used 'in and of itself' to determine
4 insurability."

5 (Exhibit "D," pg. 3 line 25; pg. 4, line 6)

6 26. Furthermore, on May 21, 1998, the Los Angeles Superior
7 Court in the *Ken Letourneau Action* granted a motion for summary
8 adjudication and thereby ruled as a matter of law that ALLSTATE's
9 conduct in pressuring its agent not to sell and/or to discourage
10 sales of insurance to those without prior insurance violated
11 Proposition 103 and *Insurance Code* §1861.02 and therefore,
12 constituted an unfair business practice in violation of *Business &*
13 *Professions Code* §17200. Based on this finding, the Hon. Enrique
14 Romero, on May 21, 1998, also issued a preliminary injunction
15 enjoining ALLSTATE from using a person's absence of automobile
16 insurance coverage to determine insurability or to calculate the
17 person's premiums. (See Judge Romero's ruling granting Motion for
18 Summary Adjudication and Preliminary Injunction collectively attached
19 hereto as Exhibit "E").

20 27. Plaintiffs are informed and believe and based on such
21 information and belief allege that despite this injunction and its
22 direct violation of the injunction, ALLSTATE continues to impose the
23 Rule 39 Surcharge which uses a person's absence of automobile
24 insurance coverage to determine the amount of the premiums that
25 person will pay.

26 28. Plaintiffs have paid all premiums due under the POLICY
27 CONTRACT and have performed all obligations under the POLICY CONTRACT
28 on their parts to be performed, except for those payments under

1 obligations which may have been excused by the conduct of defendants
2 and each of them.

3 29. Plaintiffs are further informed and believe, and on such
4 information and belief allege, that ALLSTATE's Rule 39 Surcharge is
5 capricious, arbitrary, unreasonable and designed solely to circumvent
6 Proposition 103 and Insurance Code §1861.02.

7 30. Plaintiffs are informed and believe that thereon allege
8 that ALLSTATE's conduct as described above constitutes a breach of
9 the duty of good faith and fair dealing which ALLSTATE owes to
10 Plaintiffs in that ALLSTATE has unreasonably deprived Plaintiffs of
11 the benefits of the POLICY CONTRACT and the provisions of Proposition
12 103, and has placed Plaintiffs in a worse position than when they
13 were first insured with ALLSTATE, in order that ALLSTATE may increase
14 its own wealth and power in the industry. Plaintiffs are informed
15 and believe and thereon allege that the conduct of ALLSTATE and DOES
16 1 through 100, as described herein above, was intentional and
17 purposefully done so that ALLSTATE could extract higher premiums from
18 Plaintiffs and make automobile insurance more expensive for a certain
19 portion of the population. Plaintiffs are also informed and believe
20 and thereon allege that Rule 39 Surcharge was implemented so that
21 ALLSTATE could increase its own financial position while at the same
22 time impairing the financial interests of Plaintiffs and other class
23 members, then, now and in the future.

24 31. As a proximate result of the conduct of ALLSTATE and DOES
25 1 through 100, as described herein above, Plaintiffs and all other
26 class members similarly situated, have suffered general and special
27 damages including, but not limited to, having to pay the Rule 3
28 Surcharge to ALLSTATE every six month policy period up to three year

1 and have also suffered emotional distress, anxiety and extreme worry
2 at having to pay excessive rates for automobile insurance, and/or not
3 being able to afford automobile insurance to the extent and/or
4 limit(s) desired or necessary, and/or facing the possibility of
5 foregoing automobile insurance entirely because of the illegal and
6 excessive surcharge imposed by ALLSTATE.

7 32. Plaintiffs further allege that the conduct of ALLSTATE and
8 DOES 1 through 100 has been malicious, fraudulent, oppressive, and,
9 has been carried out with an intent to injure and cause harm to
10 Plaintiffs and to harass, vex and annoy Plaintiffs. Plaintiffs
11 allege that the facts alleged herein demonstrate that the conduct
12 of ALLSTATE and DOES 1 through 100 is despicable conduct as defined
13 in the California Code of Civil Procedure § 3294. Therefore,
14 Plaintiffs are entitled to recover punitive damages in an amount
15 appropriate to punish or to set an example of defendants, and each of
16 them. Plaintiffs further allege that ALLSTATE at all times had
17 actual and advance notice of the conduct its officers, directors and
18 employees (DOES 1 through 100) and of the injuries being done to
19 Plaintiffs, and that ALLSTATE approved, ordered, instructed,
20 supervised and controlled the conduct of DOES 1 through 100 such as
21 to constitute a ratification of the conduct of said officers,
22 directors and employees. Accordingly, pursuant to the Doctrine of
23 Respondeat Superior, both ALLSTATE and DOES 1 through 100 are liable
24 for punitive damages as prayed for herein.

25 33. Plaintiffs further allege that they had to retain attorney
26 and other expert consultants in order to obtain the benefits due them
27 under both the POLICY CONTRACT and Proposition 103. Under the *Branc*
28 *v. Superior Court* doctrine, Plaintiffs are entitled to recover a

1 damages their attorney fees and consultant costs incurred in
2 obtaining the benefits due them by defendants.

3 34. Plaintiffs further allege that ALLSTATE is continuing to
4 engage in the conduct as described above, and specifically continues
5 to charge the Rule 39 Surcharge causing its insureds' premiums to be
6 higher than those who did not have a lapse in coverage during the
7 three year period prior to their purchase of insurance through
8 ALLSTATE, and unless prohibited by this court from doing so, will
9 continue to charge the insureds the Rule 39 Surcharge and cause
10 damages to ALLSTATE's insureds.

11 SECOND CAUSE OF ACTION

12 (Unfair Business Practices Against ALLSTATE and DOES 1-10)

13 35. Plaintiffs incorporate by reference each and every
14 paragraph of the General Allegations as if fully set forth herein.

15 36. In assessing to the Plaintiffs and others similarly
16 situated, a Rule 39 Surcharge for a lapse in coverage during a three
17 year period prior to purchasing automobile insurance, ALLSTATE has
18 violated California Insurance Code §1861.02 and therefore, has
19 engaged in an unlawful, unfair or fraudulent business practice in
20 violation of Business & Professions Code §17200. The Hon. Enrique
21 Romero in the Ken Letourneau Action specifically ruled that ALLSTATE
22 engaged in an Unfair Business Practices in violation of Business &
23 Professions Code §17200 by violating Proposition 103 and Insurance
24 Code §1861.02 when it pressured its agents not to sell insurance to
25 those individuals without prior coverage. (See Exh. "E") And, Judge
26 Romero also issued a preliminary injunction enjoining ALLSTATE from
27 using the absence of prior insurance as a factor in calculating
28 person's premiums or determining a person's insurability. (See Exh

1 "E") However, Plaintiffs are informed and believe and based thereon
2 allege that despite such rulings, ALLSTATE continues to charge its
3 Rule 39 Surcharge in violation of the preliminary injunction issued
4 in the *Ken Letourneau Action*.

5 37. As a proximate result of ALLSTATE's implementation of the
6 Rule 39 Surcharge to Plaintiffs and those similarly situated,
7 ALLSTATE has over-charged automobile insurance premiums throughout
8 California greatly in excess of the jurisdictional minimum of this
9 Court, resulting in illicit profits to ALLSTATE. These illicit
10 profits rightfully belong to those policyholders of ALLSTATE who were
11 surcharged based on Rule 39 and should be returned to them.

12 38. In light of ALLSTATE's unfair business practices in
13 violation of the law and an injunction issued by the Los Angeles
14 Superior Court, Plaintiffs, on behalf of themselves and the general
15 public pursuant to Business & Professions Code §17204, seek from this
16 Court a permanent injunction, enjoining ALLSTATE from continuing to
17 charge its insureds the Rule 39 Surcharge also known as the Non-
18 Verifiable Driving Record Surcharge. Plaintiffs, on behalf o
19 themselves and the general public pursuant to Business & Profession
20 Code §17204, also request that pursuant to *Business & Profession*
21 *Code §17203*, this Court order restitution through disgorgement o
22 ALLSTATE's illicit profits which rightfully belong to it
23 policyholders throughout the state of California.

24 39. Additionally, and as part of the injunctive relief praye
25 for in paragraph 36 above, this Court should also require ALLSTATE t
26 disclose to every current policyholder whose policy periods fal
27 within the relevant time period and were surcharged the Rule 3
28 Surcharge, its practice of imposing a surcharge in violation o

1 Proposition 103 and *Insurance Code* §1861.02 as determined by the DOI,
2 the San Francisco Superior Court and the Los Angeles Superior Court,
3 and the effect said surcharge has had and continues to have in
4 increasing the policyholder's future premiums and/or ability to
5 obtain automobile insurance.

6 WHEREFORE, Plaintiffs pray for judgment against defendants, and
7 each of them, as follows:

8 ON THE FIRST CAUSE OF ACTION

9 1. For the general and special damages all in a sum according
10 to proof at the time of trial;

11 2. For punitive and exemplary damages in an amount appropriate
12 to punish and set an example of ALLSTATE and DOES 1 through 100;

13 3. For a reasonable amount of attorneys', consultants and
14 experts' fees in accordance with *Brandt v. Superior Court* incurred by
15 the Plaintiffs hereinafter in connection with this action;

16 4. For equitable relief as determined by this Court, included
17 but not limited to, a permanent injunction restraining ALLSTATE from
18 engaging in the unlawful and unfair business practices as pled in
19 this complaint; restitution to ALLSTATE's policyholders, in the form
20 of an order requiring ALLSTATE to disgorge the profits it obtained by
21 engaging in the conduct which violates *Business & Professions Code*
22 §17200 et seq.

23 5. Additionally, for an order requiring ALLSTATE to disclose
24 to all existing and potential policyholders its practice of
25 surcharging those with a gap of insurance coverage, and its effect on
26 an insured's premiums and insurability.

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ON ALL CAUSES OF ACTION

6. For all costs incurred by Plaintiffs to date and to be incurred by Plaintiffs hereafter in connection with this action; and

7. For such other and further relief as the Court deems just and proper.

DATED: June 18, 1999

Respectfully submitted,

GOSHGARIAN & MARSHALL, PLC

By: 

MARK GOSHGARIAN, ESQ.

JOHN A. MARSHALL, ESQ.

Attorneys for Plaintiffs, FLOYD MITCHELL, GRACIELA VIRGEN, MARGARET CARMONA and VIRGINIA THOMPSON

Exhibit B

GOSHGARIAN & MARSHALL

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July 1, 1999

Commissioner Chuck Quackenbush
Department of Insurance
300 Capitol Mall, Suite 1500
Sacramento, CA 95814-4339

BY FEDERAL EXPRESS

Re: Floyd Mitchell, et al. vs. Allstate Insurance Company

Dear Commissioner Quackenbush:

Please be advised that my office has filed a Class Action Complaint on behalf of the above entitled Class Plaintiffs. Enclosed for your file is a conformed copy of the Complaint that is presently pending in Los Angeles Superior Court, LASC Case No. BC212492, before Honorable Bruce Mitchell.

This letter shall serve as Plaintiffs formal request that the Commissioner's office take jurisdiction of this matter pursuant to the holding in Farmers Insurance Exchange vs. Superior Court, 2 Cal.4th 377, 6 Cal.Rptr 487 (1992), which holds that the primary jurisdiction doctrine requires that the plaintiffs in these types of cases first exhaust administrative remedies prior to resort to the courts. Additionally, this letter shall serve as a formal Complaint pursuant to the provisions of Insurance Code §'s 1858 and 12921.4 which include, but are not limited to, Allstate's misconduct, Allstate's improper rates being charged insureds, Allstate's improper rating plan, Allstate's improper rating system and Allstate's improper underwriting rules. Finally, please be advised that the Complainant's herein request a public hearing before the commissioner, as well as private hearing before the hearing officers to be assigned to this matter.

The underlying Class Action lawsuit alleges that Allstate engaged in a uniform and system-wide course of conduct which deprived those policyholders without prior history of automobile insurance of the benefits of Proposition 103 as well as the Good Driver Discount by offsetting all, if not a substantial portion, of the discount with a surcharge also known as "Rule 39" or the "Non-Verifiable Driving Record Surcharge". The factual allegations of Allstate's misconduct as alleged by Complainants are contained in the Class Action Complaint which is enclosed herein and incorporated herein by reference as though fully set forth.

EXHIBIT B

Commissioner Chuck Quackenbush
Department of Insurance
June 30, 1999
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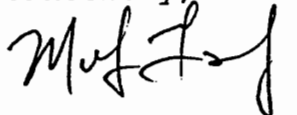
Furthermore, as you may be aware a prior similar Complaint was filed with the DOI on behalf of some the same Class Plaintiffs which was subsequently withdrawn by the Complainants attorneys. It is my understanding that this prior Complaint was withdrawn prior to any findings being made by the DOI with respect to the Class issues. However, it is my understanding that the DOI made findings against Allstate on these same identical legal issues in the case entitled Letourneau v. Allstate wherein the DOI made specific findings that Allstate's use of absence of automobile insurance as a justification for imposing a surcharge was in violation of Proposition 103. The Insurance Commissioner's finding in the Letourneau v. Allstate matter is dated July 3, 1997, and is attached hereto for your convenience.

The attorneys that handled these prior Complaints for the DOI are Brian Soublet, Natasha R. Ray, and Leslie E. Tick.

Please respond in writing whether or not the DOI will take jurisdiction over this matter. If not, please provide me with the equivalent of a "right to sue" letter. If the DOI intends to exercise jurisdiction, please provide the undersigned with a time table as to when the proceedings authorized by the law shall occur.

I look forward to receiving the DOI's official acknowledgment of this matter. If you should have any questions or comments, or are in need of additional information, don't hesitate to call.

Sincerely,



MARK GOSHGARIAN

MG/nn

cc: Clients

Brian Soublet, General Counsel

Natasha R. Ray, Staff Counsel

Leslie E. Tick, Staff Counsel

Dean Hansell, Esq. (Attorney for Allstate Insurance Company)

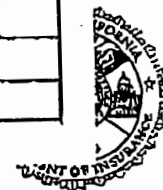
Exhibit C

DEPARTMENT OF INSURANCE

Legal Division, Rate Enforcement Bureau
45 Fremont Street, 21st Floor
San Francisco, CA 94105

Post-It™ Fax Note	7671	Rate	# of pages
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Fax #	<i>310 470 9648</i>	Fax #	

Commissioner



**NOTICE OF PROPOSED EMERGENCY ACTION
PURSUANT TO CALIFORNIA INSURANCE CODE SECTION 12921.7**

File No. ER-41

April 9, 2001

Verifiable Driving Record

California Insurance Commissioner Harry W. Low hereby provides notice, pursuant to California Insurance Code Section 12921.7, that he will propose to the Office of Administrative Law the amendment of Title 10, Chapter 5, Subchapter 4.7, Article 4, Section 2632.13 of the California Code of Regulations on an emergency basis pursuant to California Government Code Section 11346.1(b).

This Notice contains a description of the problem and the necessity for regulation, an explanation of the justification for the adoption of the regulation on an emergency basis and a copy of the proposed regulation.

This Notice is provided to every person, group, and association who has previously filed a request for notice of regulatory action with the Commissioner. Copies of the Notice are available at the Department of Insurance, 45 Fremont Street, 21st Floor, San Francisco, California, 94105.

The proposed regulation will be submitted to the Office of Administrative Law together with the rulemaking file not less than five (5) working days after the mailing of this Notice, as required by California Insurance Code Section 12921.7. Questions regarding this Notice should be directed to:

California Department of Insurance
Legal Division, Rate Enforcement Bureau
Attn: Elizabeth Mohr
45 Fremont Street, 21st Floor
San Francisco, California 94105
(415) 538-4112

DESCRIPTION OF PROBLEM AND NECESSITY FOR REGULATION

California Insurance Code Section 1861.02(c) provides that "[t]he absence of prior automobile insurance coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums, or insurability." However, under California Insurance Code Section 1861.02(a), an insurer must base rates on a policyholder's driving safety record. Accident information provided by a prior insurer is one

way to verify an applicant's driving safety record. But this information could potentially be used, in effect, to impose a prior insurance requirement on new insurance applicants.

Nothing in the California Insurance Code or the Department's regulations currently prohibit insurers from seeking verifiable accident or loss information. In fact, Title 10, California Code of Regulations, Section 2632.5(c)(1) defines driving safety record as the public record of traffic violation convictions and principally at-fault accidents, determined in accordance with Section 2632.13. Sections 2632.13(f) and (g) permit insurers to investigate whether a driver was principally at fault in an accident, including seeking that information from another insurer.

However, insurers have begun to use these and other provisions in ways that arguably impose a "prior insurance" requirement on new applicants. For example, some insurers require that applicants provide written documentation from the applicant's current insurer regarding prior accident history or a renewal offer from the applicant's current insurer indicating accident record experience. Insurers have required applicants to have previously been insured with a subscribing loss underwriting exchange carrier, e.g., C.L.U.E.

Although insurers have permitted applicants other ways to verify their prior accident history, these options are not realistically available for most applicants. Other available options typically have included:

- Written documentation from a military commanding officer that the applicant was stationed overseas and was not principally at fault in an accident.
- Written documentation from the applicant's supervisor in the Peace Corps, Foreign Service, or similar organization that the applicant was not principally at fault in an accident.
- Written documentation that the applicant did not own or have regular access to a vehicle.
- Written medical documentation that the applicant did not operate a vehicle.
- Written documentation from the applicant's employer that the applicant was furnished a company car for business and personal use and was not principally at fault in an accident.
- Some insurers specifically prohibited use of Motor Vehicle Records to verify accident record.

As a result, the "verifiable driving record" requirements appear to have been used to require proof of prior insurance in violation of California Insurance Code Section 1861.02(c).

JUSTIFICATION FOR ADOPTION AS EMERGENCY REGULATIONS

Because some insurers are currently requiring verifiable driving record information from another insurer, consumers who lack prior insurance and seek coverage from one of those insurers do not receive the protections sought to be afforded by the voters when they enacted California Insurance Code Section 1861.02(c) as part of Proposition 103. Additionally, insurers not

requiring accident information from a prior insurer claim that they are at a competitive disadvantage *vis-a-vis* insurers imposing such requirements. Adoption of this regulatory language on an emergency basis will prevent these inequities. Additionally, because insurers require time to reprogram computers, rewrite rating manuals, distribute information to their producers and/or sales force, and make the appropriate filings with the California Department of Insurance, adoption of this regulatory provision on an emergency basis is the only way to ensure timely compliance with Insurance Code Section 1861.02(c).

The Insurance Commissioner proposes the adoption of this rulemaking action pursuant to the authority vested in him by California Insurance Code Section 1861.02(e). The purpose of this rulemaking action is to implement, interpret, and make specific the provisions of California Insurance Code Sections 1861.02 and 1861.025.

TEXT OF THE PROPOSED REGULATION

The text of the proposed rulemaking is attached.

Dated: April 9, 2001

HARRY W. LOW
Insurance Commissioner

By: Elizabeth Mohr

ELIZABETH A. MOHR
Assistant Chief Counsel

DEPARTMENT OF INSURANCE

Legal Division, Rate Enforcement Bureau
 45 Fremont Street, 21st Floor
 San Francisco, CA 94105



ER-41

April 9, 2001

Title 10, California Code of Regulations, Section 2632.13 is proposed for amendment as follows¹

2632.13. Eligibility to Purchase Good Driver Discount Policy and Guidelines for Determination of "Principally At-Fault."

...

(i) Notwithstanding any other provision of this section, in determining an applicant's at-fault accident history, an insurer shall accept the applicant's declaration, under penalty of perjury, attesting to his or her at-fault accident history. If an insurer later discovers that the declaration contains a fraudulent or material misrepresentation, the insurer may cancel the policy pursuant to California Insurance Code sections 661 and 1861.03(c)(1) and take any other action authorized by law. Nothing in this subdivision shall prevent an insurer from using information available from the public record of traffic violation convictions as set forth in section 2632.5(c)(1)(A), principally at-fault accidents as set forth in this section, or information from a subscribing loss underwriting exchange carrier.

Within 45 days of the effective date of this subsection, each insurer writing private passenger automobile insurance shall file, with the Department's Rate Filing Bureau, evidence demonstrating its compliance with this subsection.

(i) [current subsection (i) becomes subsection (j)].

NOTE: Authority cited: Sections 1861.02, 1861.025, 12921 and 12926, Insurance Code; *CalFarm Insurance Company v. Deuknejian*, 48 Cal.3d 805 (1989). Reference: Sections 488.5, 1861.02 and 1861.025, Insurance Code; Section 12810, Vehicle Code.

¹ New language is underlined.