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

AMERICAN JETTER & PLUMBING, INC. and  
RESILIENCE TREATMENT CENTER, on behalf  
of themselves and all others similarly situated,  
  
Plaintiffs,  
  
v.  
  
STATE COMPENSATION INSURANCE FUND,  
a public enterprise fund, and DOES 1 through 50,  
inclusive,  
  
Defendants.

Case No. 19STCV36307  
**SECOND AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES &  
INJUNCTIVE RELIEF**  
  
JURY TRIAL DEMANDED  
  
Assigned for All Purposes to:  
Honorable Amy D. Hogue  
Department 7 at Spring Street Courthouse

1 **INTRODUCTION**

2 1. Plaintiffs American Jetter & Plumbing, Inc. (“American Jetter”) and Resilience  
3 Treatment Center (“Resilience,” collectively with American Jetter, “Plaintiffs”) bring this class  
4 action on behalf of themselves and all others similarly situated (the “Class,” defined *infra*) against  
5 defendants State Compensation Insurance Fund (“State Fund”) and Does 1 through 50, inclusive  
6 (collectively “Defendants”).

7 2. This lawsuit seeks refunds of the unlawful workers’ compensation insurance  
8 premiums Defendants charged Plaintiffs and the Class. As detailed further herein, Defendants have  
9 improperly and illegally charged the Class inflated insurance premium rates using two separate but  
10 related schemes. First, Defendants charged Plaintiff American Jetter and the “Algorithm Group”  
11 (defined *infra*) inflated insurance premium rates by calculating the premiums using improper and  
12 illegal “tier modifiers” and “rating plan modifiers” based on formulas that were not filed, disclosed  
13 to the public, or permitted to be disclosed to the public at the time of the filing of the rate filings  
14 utilizing the formulas, as required by law (the “Algorithm”). Defendants have charged the  
15 Algorithm Group these improper and illegal premiums since 2013, and continued to do so even after  
16 the California Insurance Commissioner confirmed that Defendants’ use of the tier modifiers and  
17 rating plan modifiers at issue was illegal and unenforceable.

18 3. Defendants have also charged Plaintiff Resilience and the “Insufficient  
19 Documentation Group” (defined *infra*) inflated insurance premium rates by increasing the  
20 Insufficient Documentation Group’s tier modifiers, and consequent premiums (for most by 50%),  
21 due to the Insufficient Documentation Group members’ purported failure to provide State Fund with  
22 information necessary for it to accurately underwrite risk and to “encourage full disclosure.”  
23 However, Defendants (i) never notified Plaintiff Resilience or, upon information and belief, the  
24 other Insufficient Documentation Group members of their purported failure to provide sufficient  
25 documentation; (ii) never provided them an opportunity to question or cure this purported failure;  
26 or (iii) even directly disclosed to Plaintiff Resilience or the Insufficient Documentation Group  
27 members of the tier modifier they were being assigned or the basis of that tier modifier.

28 4. These actions by Defendants breached State Fund’s insurance policies with both the

1 Algorithm Group and Insufficient Documentation Group members, and violated provisions of the  
2 California Insurance Code as well as the California Unfair Competition Law (“UCL”).

3 5. Plaintiffs seek restitution and damages stemming from Defendants’ use of the  
4 improper tier modifiers in excess of 1.00. Plaintiffs also seek to enjoin Defendants from continuing  
5 to charge insurance premiums not permitted under the law.

6 **JURISDICTION AND VENUE**

7 6. This Court has personal jurisdiction over State Fund because it is doing business in  
8 the State of California within Los Angeles County.

9 7. Venue is proper in this Court pursuant to California Code of Civil Procedure section  
10 395 because State Fund does substantial business in this County and has its principal offices in this  
11 County. Plaintiffs are also residents of this County and transacted business with State Fund while  
12 in this County.

13 **PARTIES**

14 8. Plaintiff American Jetter & Plumbing, Inc. is a corporation organized and existing  
15 under the laws of the State of California and qualified to do business in the State of California.  
16 American Jetter’s headquarters are located at 1515 Stevens Avenue, Unit B, San Gabriel, California  
17 91776.

18 9. Plaintiff Resilience Treatment Center is a corporation organized and existing under  
19 the laws of the State of California, and qualified to do business in the State of California.  
20 Resilience’s headquarters are located at 9663 Santa Monica Boulevard, Suite 168, Beverly Hills,  
21 California 90210.

22 10. Defendant State Compensation Insurance Fund is a public enterprise fund established  
23 by the California State legislature in 1914. State Fund provides worker’s compensation insurance  
24 throughout California, including in Los Angeles County. State Fund often functions as an insurer  
25 of last resort.

26 11. State Fund is one of the largest providers of workers’ compensation insurance to  
27 California businesses, with the California Department of Insurance’s 2018 Market Share Report  
28 reporting State Fund as having approximately 10.9% of the market share and total premiums of

1 nearly \$1.4 billion. State Fund reports on its website that it has approximately 110,000  
2 policyholders and nearly \$21 billion in assets. State Fund lists one of its “Values” as “**Do What’s**  
3 **Right**. Approach every situation with a passion to help, a desire to learn and a commitment to  
4 integrity – because doing the right thing isn’t always simple, easy, or clear.” (Emphasis in original).

5 12. Plaintiffs are not presently aware of the true names and capacities of the Defendants  
6 designated as Does 1 through 50, inclusive, and will hereafter seek leave of the Court to amend this  
7 complaint to allege the true names and capacities of each Defendant.

8 13. Upon information and belief, Defendants are each responsible in some manner for  
9 the transactions, events and occurrences alleged, and the damages alleged were proximately caused  
10 thereby.

11 14. Upon information and belief, Defendants were each the agents, joint venturers,  
12 trustees, servants, partners, alter-egos, parent corporations, subsidiaries, affiliates, contractors or  
13 employees of each of the remaining Defendants, and the acts or omissions alleged herein were done  
14 by them acting individually, through such capacity or through the scope of their authority, and said  
15 conduct was thereafter ratified by the remaining Defendants.

## 16 SUBSTANTIVE ALLEGATIONS

### 17 The Algorithm Group Claims

18 15. California Insurance Code section 11735 requires, *inter alia*, that all insurers doing  
19 business in California publicly file all rates and supplementary rate information before charging any  
20 such rates. Specifically, section 11735(b) mandates in pertinent part that “[a]ll rates, supplementary  
21 rate information, and any supporting information for rates filed under this article, as soon as filed,  
22 shall be open to public inspection at any reasonable time. Copies may be obtained by any person  
23 upon request and the payment of a reasonable charge.” Section 11730 of the Insurance Code further  
24 defines “supplementary rate information” as including any “minimum premium, policy fee, rating  
25 rule, rating plan, and any other similar information needed to determine the applicable premium for  
26 an insured.”

27 16. Beginning with its rate filing in effect for policies commencing March 1, 2013 (the  
28 “2013 Rate Filing”), State Fund has calculated certain workers’ compensation insurance premiums

1 using a formula that includes a “tier modifier” and “rating plan modifier.” The tier modifier is  
2 calculated based on an Algorithm that takes into account various factors including insureds’ prior  
3 loss history and average wages.

4 17. The tier modifier is one component of the formula State Fund uses to determine an  
5 insured’s rating plan modifier, which in turn is a component of the formula used to calculate an  
6 insured’s premiums. When the tier modifier is in excess of 1.00, an insured’s rating plan modifier  
7 and premium is set above the rate that would be charged absent the tier modifier. For example, if  
8 an insured is assigned a 1.50 tier modifier for their policy, their premium will be increased by 50%,  
9 all else being equal.

10 18. State Fund violated Insurance Code sections 11735 and 11730, among others, by  
11 failing to file, publicly disclose or permit to be publicly disclosed the Algorithm at the time of the  
12 filing of the rate filings utilizing the Algorithm. The Algorithm is supplementary rate information  
13 necessary for insureds to determine (or later confirm) what tier modifier they should fall under and,  
14 consequently, what their total premiums will be (or should have been). In fact, State Fund has never  
15 even directly informed insureds what tier modifier has been assigned to their policy, further  
16 preventing insureds from being able to determine (or confirm) their applicable premiums and shop  
17 for competitive workers’ compensation insurance coverage.

18 19. The illegality of this scheme was confirmed by the California Insurance  
19 Commissioner. On November 16, 2018, the California Insurance Commissioner issued a decision  
20 in *In the Matter of the Appeal of A-Brite Blind & Drapery Cleaning*, No. AHB-WCA-17-26 (Cal.  
21 Ins. Comm’r, November 16, 2018) (“*A-Brite*,” attached as Exhibit A), concluding as a matter of law  
22 that State Fund used an unlawful and unenforceable tier modifier and rating plan modifier to  
23 calculate an insured’s premium for its policies effective December 2, 2015 to December 2, 2016,  
24 and December 2, 2016 to December 2, 2017.

25 20. The basis for the Insurance Commissioner’s decision was that State Fund had  
26 improperly used the undisclosed Algorithm for calculating insureds’ tier modifiers.

27 21. The Insurance Commissioner in *A-Brite* held that State Fund’s use of the undisclosed  
28 Algorithm to calculate A-Brite’s tier modifier and rating plan modifier was impermissible because,

1 *inter alia*, State Fund failed to make the Algorithm publicly available to its insureds at the time of  
2 filing. Because of this, insureds like A-Brite, Plaintiff American Jetter and the Algorithm Group  
3 members could not determine what their insurance premiums should be, and when assessed a tier  
4 modifier greater than 1.00 were charged premiums in excess of what was lawful.

5 22. The Insurance Commissioner in *A-Brite* ordered State Fund to recalculate A-Brite’s  
6 premium by removing the tier modifier, which was over 1.00 and therefore created a premium  
7 charge. This removal of the tier modifier resulted in an \$8,805 reduction in premiums for A-Brite.

8 **The Insufficient Documentation Group Claims**

9 23. In State Fund’s 2013 Rate Filing, State Fund briefly noted the following rating rule  
10 with respect to the assignment of tier modifiers:

11 Every insured with three consecutive years of insurance history can be slotted into one of  
12 the three tiers, regardless of whether they are currently a State Fund policyholder or are  
13 applying as new business. However, not every insured that comes to State Fund will be  
14 mature enough to have three years of history, so State Fund plans to place these into the  
15 Middle/B Tier. When they reach their third year, these insureds will be treated the same as  
16 all other and will be assigned to the appropriate tier depending on their claims experience.  
17 As is already mandatory, State Fund will continue to require full and complete insurance  
18 history as part of the application process. *Those businesses that fail to provide  
19 documentation of claims history and other required information will be placed into the  
20 Worst/C Tier, to encourage full disclosure to enable to State Fund to most accurately  
21 underwrite the risk.* (Emphasis added).<sup>1</sup>

22 24. In other words, State Fund explained that through its “Insufficient Documentation  
23 Rule,” if it unilaterally determined that an insured had failed to provide sufficient documentation of  
24 claims history and “other required information” (left unclear in the rate filing or elsewhere), it would  
25 penalize the insured with a detrimental tier modifier (causing an increase in premiums) in order to  
26 “encourage full disclosure” from the insured in pursuit of the goal of “enabl[ing] . . . State Fund to  
27 most accurately underwrite the risk.”

28 25. Despite State Fund’s 2013 Rate Filing stating that the dual purpose of the Insufficient  
Documentation Rule is to “encourage full disclosure” from insureds and “enable . . . State Fund to  
most accurately underwrite the [insureds’] risk,” upon information and belief State Fund does not

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<sup>1</sup> A version of the Insufficient Documentation Rule has been in effect in every State Fund rate filing since the 2013 Rate Filing

1 as a matter of practice, and in violation of the Insurance Code and the UCL, (1) notify insureds when  
2 it believes insufficient documentation has been provided, or identify what information is purportedly  
3 missing; or (2) provide such insureds an opportunity to question or cure the purported deficiency  
4 and avoid a substantial increase in their premiums. In fact, Defendants do not even directly inform  
5 insureds of the tier modifier that has been applied to their policy premiums (much less the reason  
6 why).

7 **Plaintiffs' Facts**

8 **American Jetter**

9 26. Plaintiff American Jetter is a construction company that does building maintenance,  
10 plumbing, and wallboard construction.

11 27. American Jetter purchased workers' compensation insurance from State Fund  
12 including policies effective for the periods January 13, 2017 through January 13, 2018 (the "2017  
13 Policy"), January 13, 2018 through January 13, 2019 (the "2018 Policy"), and January 13, 2019  
14 through March 11, 2019 (the "2019 Policy"), periods during which State Fund unlawfully set its  
15 rating plan modifier and rates using the undisclosed tier modifier Algorithm.<sup>2</sup>

16 28. American Jetter received a tier modifier of 1.50 for its 2017 Policy and paid  
17 premiums to State Fund based in part on the tier modifier. State Fund assigned the 1.50 tier modifier  
18 to American Jetter for its 2017 Policy based on State Fund's application of the Algorithm to  
19 American Jetter's loss history and other historical data.

20 29. State Fund's use of the 1.50 tier modifier increased American Jetter's premium for  
21 the 2017 Policy period by approximately \$60.

22 30. American Jetter received a tier modifier of 1.50 for its 2018 Policy and paid  
23 premiums to State Fund based in part on the tier modifier. State Fund assigned the 1.50 tier modifier  
24 to American Jetter for its 2018 Policy based on State Fund's application of the Algorithm to  
25 American Jetter's loss history and other historical data.

26 31. State Fund's use of the 1.50 tier modifier increased American Jetter's premium for

27 \_\_\_\_\_  
28 <sup>2</sup> The 2017 Policy, 2018 Policy and 2019 Policy are attached as Exhibits B, C and D,  
respectively.

1 the 2018 Policy period by approximately \$8,749.

2 32. American Jetter received a tier modifier of 1.20 for its 2019 Policy and paid  
3 premiums to State Fund based in part on the tier modifier. State Fund assigned the 1.20 tier modifier  
4 to American Jetter for its 2019 Policy based on State Fund's application of the Algorithm to  
5 American Jetter's loss history and other historical data.

6 33. State Fund's use of the 1.20 tier modifier increased American Jetter's premium for  
7 the 2019 Policy period by approximately \$2,013.

8 34. In total, American Jetter has paid State Fund approximately \$10,822 in excess  
9 premiums due to State Fund's unlawful charging of premiums based on Defendants' use of  
10 undisclosed Algorithm in calculating American Jetter's tier modifiers, rating plan modifiers and  
11 premiums.

12 35. For the 2017 through 2019 Policy periods, American Jetter was not directly informed  
13 of its assignment of tier modifiers of 1.50 and 1.20 (or provided the basis for such assignments) that  
14 increased its premiums.

15 36. Prior to the commencement of this suit, American Jetter made multiple attempts to  
16 confirm with State Fund, through American Jetter's counsel, both the basis for the calculation of the  
17 tier modifier used in calculating American Jetter's premiums, as well as simply which tier modifier  
18 has been applied to the policies. Remarkably, State Fund consistently refused to answer either  
19 query.<sup>3</sup>

20 37. Instead, American Jetter's policies, and audit materials received regarding the  
21 policies, reflect a blended rating plan modifier that included the tier modifier as one of its factors.

22 38. For the 2017 Policy, American Jetter received a rating plan modifier of 1.725,  
23 causing additional premium charges of approximately \$870, inclusive of the increased premium  
24 caused by the tier modifier.

25 39. For the 2018 Policy, American Jetter received a rating plan modifier of 1.725,  
26 causing additional premium charges of approximately \$13,190, inclusive of the increased premium

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27 <sup>3</sup> American Jetter was later able to confirm the tier modifiers assigned to the policy periods  
28 at issue by obtaining documentation provided to its broker.



1 caused by the tier modifier.

2 40. For the 2019 Policy, American Jetter received a rating plan modifier of 1.380,  
3 causing additional premium charges of approximately \$3,424, inclusive of the increased premium  
4 caused by the tier modifier.

5 41. It is impossible to calculate, and confirm the calculation of, the rating plan modifier  
6 without knowledge of the undisclosed and incomplete Algorithm that is used to calculate the tier  
7 modifier, thereby making the rating plan modifier, like the tier modifier, a separate improperly  
8 undisclosed component of insureds' premiums.

9 **Resilience**

10 42. Plaintiff Resilience is a mental health treatment facility.

11 43. Resilience purchased workers' compensation insurance from State Fund including  
12 the policy effective for the period June 9, 2016, through June 9, 2017 (the "2016 Policy"),<sup>4</sup> a period  
13 during which State Fund unlawfully set its rating plan modifier and rates using the undisclosed tier  
14 modifier Algorithm.

15 44. Resilience received a tier modifier of 1.50 for its 2016 Policy and paid premiums to  
16 State Fund based in part on the tier modifier. State Fund assigned the 1.50 tier modifier to Resilience  
17 for its 2016 Policy based on State Fund's Insufficient Documentation Rule, apparently determining  
18 that Resilience failed to provide sufficient information for State Fund to determine Resilience's  
19 underwriting risk and corresponding tier modifier under the Algorithm.

20 45. But Defendants did not provide Resilience with any notice or indication that  
21 Defendants believed Resilience had failed to provide sufficient documentation, or what  
22 documentation Defendants believed was still outstanding. Nor did Defendants provide Resilience  
23 with an opportunity to question or cure the purported deficiency and avoid a substantial increase in  
24 premiums. In fact, Defendants did not even directly inform Resilience of what tier modifier had  
25 been applied to the 2016 Policy, or the basis for the tier modifier assigned.

26 46. State Fund's use of the 1.50 tier modifier increased Resilience's premium for the  
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28 <sup>4</sup> The 2016 Policy is attached as Exhibit E.

1 2016 Policy period by approximately \$23,983.

2 47. For the 2016 Policy, Resilience received a rating plan modifier of 1.77675, causing  
3 additional premium charges of approximately \$31,454, inclusive of the increased premium caused  
4 by the tier modifier.

5 48. For the 2016 Policy period, Resilience was not directly informed of its assignment  
6 to the 1.50 tier modifier category, or the reason for the assignment. Resilience was later able to  
7 confirm the 1.50 tier modifier assigned to the 2016 Policy by obtaining documentation provided to  
8 its broker. However, neither this documentation, nor any other information Resilience or the  
9 Insufficient Documentation Group members were provided, notified or indicated that the basis for  
10 the increased tier modifier was a purported failure to provide sufficient documentation of  
11 underwriting risk.

12 **CLASS ACTION ALLEGATIONS**

13 49. Plaintiffs bring this action pursuant to Code of Civil Procedure section 382 as a class  
14 action individually on behalf of themselves and on behalf of all others similarly situated. The Class  
15 is defined as follows:

16 All insureds of State Fund whose workers' compensation insurance premiums for  
17 any policy in effect from March 1, 2013, through the present were calculated using  
18 a tier modifier in excess of 1.00 and where such calculation resulted in the payment  
19 of a higher premium than the insured would have otherwise paid. Excluded from  
20 the Class are Defendants, their affiliates, predecessors, successors, officers,  
directors, agents, servants and employees and the immediate families of such  
persons.

21 **Numerosity**

22 50. The members of the Class are too numerous for joinder to be practicable. There are  
23 tens of thousands of State Fund insureds whose premiums were calculated using a tier modifier in  
24 excess of 1.00. Upon information and belief the Class has thousands, if not tens of thousands, of  
25 members in its ranks. The exact quantity and identities of each member of the Class is known to  
26 Defendants through State Fund's own records.

27 **Commonality**

28 51. There is a well-defined community of interest in the relevant questions of law and

1 fact among members of the Class. Common questions of law and fact predominate over any  
2 questions affecting individual members of the Class, including, but not limited to:

3 a. Whether State Fund included the complete tier modifier Algorithm in its rate  
4 filings;

5 b. Whether State Fund filed the tier modifier Algorithm at the time of filing the  
6 rate filings utilizing the Algorithm;

7 c. Whether State Fund publicly disclosed the tier modifier Algorithm at the time  
8 of filing the rate filings utilizing the Algorithm;

9 d. Whether State Fund permitted the tier modifier Algorithm to be publicly  
10 disclosed at the time of filing the rate filings utilizing the Algorithm;

11 e. Whether State Fund violated California Insurance Code section 332 by failing  
12 to file the tier modifier Algorithm at the time of filing the rate filings utilizing the Algorithm

13 f. Whether State Fund violated California Insurance Code section 332 by failing  
14 to publicly disclose the tier modifier Algorithm at the time of filing the rate filings utilizing the  
15 Algorithm;

16 g. Whether State Fund violated California Insurance Code section 332 by failing  
17 to allow to be publicly disclosed the tier modifier Algorithm at the time of filing the rate filings  
18 utilizing the Algorithm;

19 h. Whether State Fund violated California Insurance Code section 332 by failing  
20 to provide Insufficient Documentation Group members (1) notice that State Fund had deemed them  
21 to have failed to provide sufficient documentation; (2) notice of what documentation was  
22 purportedly still outstanding; (3) any opportunity to contest or cure the purported lack of  
23 documentation; and/or (4) direct notification of the tier modifier assigned or the basis of the  
24 assignment of the tier modifier;

25 i. Whether State Fund violated California Insurance Code section 11735 by  
26 failing file the tier modifier Algorithm at the time of filing the rate filings utilizing the Algorithm;

27 j. Whether State Fund violated California Insurance Code section 11735 by  
28 failing to publicly disclose the tier modifier Algorithm at the time of filing the rate filings utilizing

1 the Algorithm;

2 k. Whether State Fund violated California Insurance Code section 11735 by  
3 failing to allow to be publicly disclosed the tier modifier Algorithm at the time of filing the rate  
4 filings utilizing the Algorithm

5 l. Whether State Fund violated California Insurance Code section 11735 by  
6 failing to provide Insufficient Documentation Group members (1) notice that State Fund had deemed  
7 them to have failed to provide sufficient documentation; (2) notice of what documentation was  
8 purportedly still required; (3) any opportunity to contest or cure the purported lack of  
9 documentation; and/or (4) direct notification of the tier modifier assigned or the basis of the  
10 assignment of the tier modifier.

11 m. Whether Defendants breached State Fund's contracts for insurance with  
12 Plaintiffs and the Class through their conduct;

13 n. Whether Defendants violated California Business & Professions Code  
14 section 17200 through their conduct;

15 o. Whether Defendants concealed their improper and illegal actions from  
16 members of the Class;

17 p. Whether Defendants should be enjoined from continuing their improper  
18 practices, including by being required to (i) inform members of the Class of their tier modifiers and  
19 the basis of the tier modifiers, and (ii) provide Insufficient Documentation Group members with  
20 notice of the purported insufficient documentation and an opportunity to cure; and

21 q. What the proper measure of damages is for each claim.

22 **Typicality**

23 52. Plaintiffs have the same interests in this matter as all other members of the Class  
24 since they were charged unlawful rates in the same manners as other members of the Class.

25 53. If members of the Class brought individual cases, they would require proof of the  
26 same material and substantive facts and would seek the same relief.

27 54. The claims of Plaintiffs and the members of the Class share a common nucleus of  
28 operative facts and originate from the same conduct by Defendants.

1 **Adequacy of Representation**

2 55. Plaintiffs will diligently represent the interests of the Class. The interests of Plaintiffs  
3 are sufficiently aligned with the interests of the other members of the Class such that they will have  
4 no conflicts with the interests of the Class and will be adequate representatives.

5 56. Counsel for Plaintiffs are highly experienced in consumer class action litigation and  
6 will prosecute the action with skill and diligence.

7 **Superiority**

8 57. The prosecution of separate actions by individual members of the Class would create  
9 a risk of inconsistent or varying adjudications which would establish incompatible standards of  
10 conduct for the parties opposing the Class. Such incompatible standards of conduct and varying  
11 adjudications of the same essential facts, proof and legal theories would also create and allow the  
12 existence of inconsistent and incompatible rights within the Class.

13 58. Moreover, a class action is superior to other methods for the fair and efficient  
14 adjudication of the controversies raised in this Complaint because:

15 a. Individual claims by members of the Class could be impracticable as the costs  
16 of pursuit would far exceed what any one member of the Class has at stake;

17 b. Plaintiffs are unaware of any significant number of other actions that have  
18 been commenced over the controversies alleged in this Complaint, and individual members of the  
19 Class are unlikely to have an interest in separately prosecuting and controlling individual actions;

20 c. The concentration of litigation of these claims in one forum will achieve  
21 efficiency and promote judicial economy; and

22 d. The proposed class action is manageable.

23 59. Defendants have acted in a uniform manner on grounds generally applicable to  
24 Plaintiffs and the other members of the Class so that final declaratory and injunctive relief as  
25 requested herein is appropriate with respect to the Class as a whole.

26 60. Therefore, class treatment of Plaintiffs' claims is appropriate and necessary.  
27  
28

**COUNT I**  
**BREACH OF CONTRACT**  
**(On Behalf of Plaintiffs and the Class)**

1  
2  
3       61.       Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-60  
4 above as if fully set forth herein.

5       62.       Plaintiffs and the Algorithm Group entered into contracts with State Fund to provide  
6 workers' compensation insurance to Plaintiffs and the Class.

7       63.       Upon information and belief, these standard form contracts provided in pertinent part  
8 that "[a]ll premium for this policy will be determined by our manuals of rules rates, rating plan and  
9 classifications. We may change our manual and apply the changes to this policy if authorized by  
10 law or a governmental agency regulating this workers' compensation insurance." The contracts  
11 further provide that "[t]he final premium will be determined after this policy ends by using the actual  
12 premium basis and the proper classifications, rates and rating plan that lawfully apply to the business  
13 and work covered by this policy."

14       64.       Plaintiff American Jetter and each member of the Algorithm Group purchased a  
15 workers' compensation insurance policy from State Fund and was charged and paid a premium to  
16 State Fund based in part on State Fund's unlawful application of a tier modifier in excess of 1.00  
17 where such tier modifier was applied by State Fund based on the mathematical application of the  
18 tier modifier Algorithm to the insured's claims history and other information taken into account by  
19 the Algorithm.

20       65.       Defendants breached State Fund's agreements with Plaintiff American Jetter and the  
21 Algorithm Group by charging insurance rates that were not calculated in a lawful manner. For the  
22 reasons set forth herein, Defendants' usage of the undisclosed tier modifier Algorithm, and the rating  
23 plan modifier incorporating the undisclosed tier modifier Algorithm, in calculating its insureds'  
24 premiums was unlawful. Accordingly, Defendants' assessment of unlawful rates is a breach of State  
25 Fund's insurance agreements with Plaintiff American Jetter and the Algorithm Group.

26       66.       Plaintiff Resilience and each member of the Insufficient Documentation Group  
27 purchased a workers' compensation insurance policy from State Fund and was charged and paid a  
28 premium to State Fund based in part on State Fund's unlawful application of a tier modifier in excess

1 of 1.00 where such tier modifier was applied by State Fund due to State Fund’s determination that  
2 the insured failed to provide sufficient documentation of its claims history and other information  
3 required by State Fund.

4 67. Defendants breached State Fund’s insurance agreements with Plaintiff Resilience  
5 and the Insufficient Documentation Group by charging insurance rates that were not calculated in a  
6 lawful manner. Certain of State Fund’s rate filings provide that “[t]hose businesses that fail to  
7 provide documentation of claims history and other required information will be placed into the  
8 Worst/C Tier, to encourage full disclosure to enable to State Fund to most accurately underwrite the  
9 risk.”

10 68. But Defendants did not provide any notice to Resilience or, upon information and  
11 belief, to the Insufficient Documentation Group that Defendants believed insufficient  
12 documentation had been provided. Nor did Defendants inform Resilience or the Insufficient  
13 Documentation Group members of what documentation Defendants believed was still outstanding,  
14 or provide an opportunity to question or cure the purported deficiency and avoid a substantial  
15 increase in premiums. In fact, Defendants did not even directly inform Resilience or the Insufficient  
16 Documentation Group members of what tier modifier had been applied to their policy premiums or  
17 the basis of the tier modifier applied. Accordingly, Defendants could not have applied the increased  
18 tier modifiers to the Insufficient Documentation Group members for the purpose of “encourag[ing]  
19 full disclosure” of underwriting risk, as policyholders were never even made aware that this was the  
20 basis of their increased premiums. State Fund also declined to provide insureds an opportunity to  
21 provide any purportedly missing information which would have “enable[d] . . . State Fund to most  
22 accurately underwrite the risk.”

23 69. Defendants further breached the terms of State Fund’s insurance agreements with  
24 Plaintiff Resilience and the Insufficient Documentation Group because State Fund promises through  
25 such agreement to charge only lawful premiums. But as discussed *infra*, Defendants’ assignment  
26 of inflated tier modifiers to Plaintiff Resilience and the Insufficient Documentation Group without  
27 notification, an opportunity to cure, or any apparent basis, violates provisions of the California  
28 Insurance Code and the UCL.





1       76.       State Fund violated, with respect to the Algorithm Group, section 11735 of the  
2 Insurance Code by failing to file, publicly disclose, or permit to be publicly disclosed its tier  
3 modifier Algorithm at the time of filing the rate filings utilizing the Algorithm. This prevented  
4 insureds from being able to determine why they were assigned a specific tier modifier, or to  
5 determine how the tier modifier and consequent premiums were derived and calculated.

6       77.       State Fund's failure to file, publicly disclose, or permit to be publicly disclosed its  
7 tier modifier Algorithm at the time of filing the rate filings utilizing the Algorithm further prevented  
8 insureds from being able to determine the basis of their assigned rating plan modifier, or to  
9 determine how their consequent premium was derived and calculated.

10       78.       Section 332 of the Insurance Code requires that "[e]ach party to a contract of  
11 insurance shall communicate to the other, in good faith, all facts within his knowledge which are or  
12 which he believes to be material to the contract and as to which he makes no warranty, and which  
13 the other has not the means of ascertaining." Concealment consists of any "[n]eglect to  
14 communicate that which a party knows, and ought to communicate." Ins. Code § 330.

15       79.       State Fund's failure to file, publicly disclose, or permit to be publicly disclosed its  
16 tier modifier Algorithm at the time of filing the rate filings utilizing the Algorithm violated, with  
17 respect to the Algorithm Group, section 332 of the Insurance Code.

18       80.       Defendants' conduct described herein, with respect to the Algorithm Group,  
19 constitutes a course of unfair conduct within the meaning of Business & Professions Code § 17200,  
20 *et seq.*

21       81.       State Fund's violations of Sections 332 and 11735 of the Insurance Code described  
22 herein, with respect to the Algorithm Group, constitute unlawful business acts and practices in  
23 violation of Business & Professions Code section 17200, *et seq.*

24       82.       Plaintiff Resilience and each member of the Insufficient Documentation Group  
25 purchased a workers' compensation insurance policy from State Fund and was charged and paid a  
26 premium to State Fund based in part on State Fund's unlawful application of a tier modifier in excess  
27 of 1.00 where such tier modifier was applied by State Fund due to State Fund's determination that  
28 the insured failed to provide sufficient documentation of its claims history and other information

1 required by State Fund.

2 83. Certain of State Fund's rate filings set forth State Fund's "Insufficient  
3 Documentation Rule" providing that "[t]hose businesses that fail to provide documentation of  
4 claims history and other required information will be placed into the Worst/C Tier, to encourage full  
5 disclosure to enable to State Fund to most accurately underwrite the risk."

6 84. But Defendants did not provide any notice to Resilience or, upon information and  
7 belief, to Insufficient Documentation Group members that Defendants believed insufficient  
8 documentation had been provided. Nor did Defendants inform Resilience or the Insufficient  
9 Documentation Group members of what documentation Defendants believed was still outstanding,  
10 or provide an opportunity to question or cure the purported deficiency and avoid a substantial  
11 increase in premiums. In fact, Defendants did not even directly inform Resilience or the Insufficient  
12 Documentation Group members of what tier modifier had been applied to their policy premiums or  
13 the basis of the tier modifier applied. Accordingly, Defendants could not have applied the increased  
14 tier modifiers to the Insufficient Documentation Group members for the purpose of "encourag[ing]  
15 full disclosure" of underwriting risk, as policyholders were never even made aware that this was the  
16 basis of their increased premiums. State Fund also declined to provide insureds an opportunity to  
17 provide any purportedly missing information which would have "enable[d] . . . State Fund to most  
18 accurately underwrite the risk."

19 85. Section 332 of the Insurance Code requires that "[e]ach party to a contract of  
20 insurance shall communicate to the other, in good faith, all facts within his knowledge which are or  
21 which he believes to be material to the contract and as to which he makes no warranty, and which  
22 the other has not the means of ascertaining." Concealment consists of any "[n]eglect to  
23 communicate that which a party knows, and ought to communicate." Ins. Code § 330.

24 86. As discussed *supra*, Defendants violated Section 332 by concealing from Plaintiff  
25 Resilience and the Insufficient Documentation Group (1) the fact that State Fund had deemed them  
26 to have failed to provide sufficient documentation; (2) notice of what documentation was  
27 purportedly still required; and (3) the tier modifier assigned or the basis of the assignment of the tier  
28 modifier. This was all information that Defendants clearly "ought to communicate" to Resilience

1 and the Insufficient Documentation Group.

2 87. Section 11735 of the Insurance Code requires in pertinent part that every “insurer  
3 shall file with the commissioner all rates and supplementary rate information that are to be used in  
4 this state.” Section 11730 of the Insurance Code further defines “supplementary rate information”  
5 as including any “minimum premium, policy fee, rating rule, rating plan, and any other similar  
6 information needed to determine the applicable premium for an insured.”

7 88. As discussed *supra*, State Fund violated Section 11735 by first informing prospective  
8 and current insureds in its rate filings that it would only utilize the Insufficient Documentation Rule  
9 in order to “encourage full disclosure” and “enable to State Fund to most accurately underwrite the  
10 risk.” But State Fund then instead, in complete contradiction of the stated Rule, concealed from the  
11 insureds the fact that that the Rule was even applied to them (thereby denying them any  
12 “encouragement” to provide missing information). State Fund also declined to offer insureds an  
13 opportunity to provide any purportedly missing information which would “enable to State Fund to  
14 most accurately underwrite the risk.” As Section 11735 only allows insureds to apply rating rules  
15 that are stated in its rate filings, and because the actions State Fund took were in diametric opposition  
16 to the stated Insufficient Documentation Rule in the rate filings, State Fund violated Section 11735  
17 and 11730’s requirements that only those “rating rule[s], rating plan[s], [or] any other similar  
18 information needed to determine the applicable premium for an insured” can be applied to determine  
19 insureds’ premiums.

20 89. State Fund’s violations of Sections 332 and 11735 of the Insurance Code described  
21 herein, with respect to the Insufficient Documentation Group, constitute unlawful business acts and  
22 practices in violation of Business & Professions Code section 17200, *et seq.*

23 90. Defendants’ conduct described herein, with respect to the Insufficient  
24 Documentation Group, further constitutes a course of unfair conduct within the meaning of Business  
25 & Professions Code § 17200, *et seq.*

26 91. Defendants’ conduct described herein, with respect to the Insufficient  
27 Documentation Group, constitutes a course of fraudulent business acts of practices within the  
28 meaning of Business & Professions Code § 17200, *et seq.*, as members of the public were likely to

1 be deceived by Defendants' conduct.

2 92. Plaintiffs and the Class suffered an injury-in-fact and lost money or property as a  
3 result of Defendants' unlawful and unfair business acts and practices.

4 93. Plaintiffs are also entitled to injunctive relief. Plaintiffs and the Class continue to be  
5 charged unlawful premiums by State Fund and/or could be charged such unlawful premiums in the  
6 future as State Fund is the insurer of last resort for businesses in California, and all businesses are  
7 required by law to purchase workers' compensation insurance. Accordingly, the Court should  
8 enjoin State Fund from continuing its unlawful conduct, including by, *inter alia*, requiring State  
9 Fund to (i) directly notify insureds of their tier modifiers and provide the basis of the tier modifiers  
10 upon request, and (ii) directly provide insureds with notice of any purported insufficient  
11 documentation and a reasonable opportunity to cure.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiffs, on behalf of themselves and all others similarly situated, pray  
14 for judgment as follows:

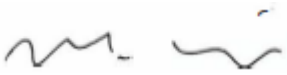
- 15 a. Declaring this action to be a proper class action and certifying Plaintiffs as  
16 the representatives of the Class;
- 17 b. Appointing Plaintiffs' attorneys as Class Counsel to the Class;
- 18 c. Awarding restitution and monetary damages as appropriate;
- 19 d. Awarding punitive and exemplary damages as appropriate;
- 20 e. Ordering injunctive and declaratory relief as appropriate;
- 21 f. Awarding pre-judgment and post-judgment interest as appropriate;
- 22 g. Awarding reasonable attorneys' fees, costs and expenses incurred in this  
23 action; and
- 24 h. Granting such other and further relief as the Court may deem just and proper.

25 **JURY DEMAND**

26 Plaintiffs request a trial by jury of all claims so triable.  
27  
28

1 Dated: June 10, 2022

Respectfully submitted,

2 By:  \_\_\_\_\_

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25 *Counsel for Plaintiffs and the Class*

26  
27  
28

# **EXHIBIT A**

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Sacramento, CA 95814  
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FILED

DEC 04 2018

ADMINISTRATIVE HEARING BUREAU

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal of )  
)  
**A-BRITE BLIND & DRAPERY CLEANING,** ) FILE AHB-WCA-17-26  
)  
Appellant, )  
)  
From the Decision of the )  
)  
**STATE COMPENSATION INSURANCE FUND,** )  
)  
)  
Respondent. )  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

A-Brite Blind & Drapery Cleaning (“Appellant”) brings this appeal against State Compensation Insurance Fund (“SCIF”) in connection with Appellant’s workers’ compensation policy (the “Policy”). The appeal concerns the annual policy periods beginning December 2, 2015 (the “2015 Period”), December 2, 2016 (the “2016 Period”), and December 2, 2017 (the “2017 Period”).

Appellant contends SCIF applied an incorrect rating plan modifier to the 2015 Period and 2016 Period, improperly calculated the premium discount modifier for all three periods, and miscalculated Appellant’s payroll for the 2015 Period. For the reasons discussed below, the

Commissioner finds SCIF misapplied the rating plan modifier but correctly calculated the premium discount modifier. The Commissioner also finds Appellant failed to prove SCIF miscalculated the 2015 Period payroll.

## **II. Issues Presented**

1. Did SCIF apply the correct rating plan modifier during the 2015 Period and 2016 Period, in accordance with SCIF's filings with the California Insurance Commissioner and applicable law?

2. Did SCIF apply the correct premium discount modifier to the Policy for the 2015 Period, the 2016 Period and the 2017 Period, in accordance with SCIF's filings with the Commissioner and applicable law?

3. Did SCIF miscalculate Appellant's payroll for the purposes of determining premium for the 2015 Period?

## **III. Procedural History**

This appeal arises under Insurance Code section 11737, subdivision (f). Appellant initiated the proceedings on August 29, 2017, by filing an appeal from SCIF's July 25, 2017 decision concerning the rating plan modifier and premium discount modifier. On October 6, 2017, Appellant supplemented its appeal by filing copies of its correspondence with SCIF. The California Department of Insurance Administrative Hearing Bureau issued an Appeal Inception Notice on October 10, 2017. SCIF filed its response on October 24, 2017. The Workers' Compensation Insurance Rating Bureau of California ("WCIRB") also filed a response on October 30, 2017, electing not to actively participate in the appeal.

Administrative Law Judge ("ALJ") Clarke de Maigret conducted an evidentiary hearing



in the California Department of Insurance's Los Angeles hearing room on January 16, 2018.<sup>1</sup> Kathleen Newman represented Appellant, and Stefan Janzen, Esq. represented SCIF at the hearing.

Kathleen Newman, one of Appellant's general partners, testified on Appellant's behalf. Keith Mills, an underwriting systems analyst at SCIF, and Marina Montoya, a senior payroll auditor at SCIF, both testified on SCIF's behalf.

The evidentiary record includes the foregoing testimony, SCIF's pre-filed Exhibits 201 through 218, and the ALJ's pre-filed Exhibits 1 and 2, all of which were admitted in evidence at the hearing. It also includes Exhibits 3, 101, 219, and 220, which were introduced and admitted at the hearing. Lastly, the evidentiary record includes Exhibit 102, which Appellant submitted on January 31, 2018 and the ALJ admitted on February 9, 2018. Upon order of the ALJ, certain personal information pertaining to Appellant's employees was redacted from Exhibits 3 and 102, and the unredacted pages were sealed in the administrative record.

At the ALJ's request, SCIF submitted a post-hearing brief on February 6, 2018. The ALJ closed the evidentiary record on February 9, 2018. On March 12, 2018, the ALJ reopened the record and ordered SCIF to provide additional post-hearing briefing and submit further evidence. SCIF filed the additional brief but refused to comply with the ALJ's order to submit the evidence.<sup>2</sup> The ALJ again closed the evidentiary record on March 23, 2018.

On June 15, 2018 a Proposed Decision was submitted to the Insurance Commissioner in this matter. On August 9, 2018, the Commissioner, pursuant to the provisions of 10 CCR

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<sup>1</sup> These proceedings were conducted in accordance with California Code of Regulations, title 10, sections 2509.40 through 2509.78, and the administrative adjudication provisions of the California Administrative Procedure Act referenced in section 2509.57 of those regulations.

<sup>2</sup> The evidence at issue was SCIF's tiering algorithm and related calculations. See the discussion in part V(B)(3) below.

2509.69, chose not to adopt the proposed decision as his decision, but to decide the case upon the record.

#### **IV. Factual Findings**

The Commissioner makes the following findings of fact, based on a preponderance of the evidence in the record.

##### **A. Appellant's Business**

A-Brite Blind and Drapery Cleaning ("A-Brite") is a general partnership, whose partners include Kathleen Newman and her husband, Randall Newman.<sup>3</sup> The Newmans are also the shareholders of a corporation named Firetect, Inc. ("Firetect").<sup>4</sup> Ms. Newman is Firetect's president.<sup>5</sup> The Newmans, as A-Brite's general partners, and Firetect are jointly insured as a single employer under the Policy.<sup>6</sup>

Appellant is in the business of cleaning residential and theatrical blinds and drapery, as well as treating drapery with fire retardant.<sup>7</sup> The business is headquartered in Valencia, Los Angeles County, California, and has been in operation for 30 years.<sup>8</sup>

##### **B. Appellant's Policy and Claims History**

SCIF has provided workers' compensation insurance to Appellant for about the last 20 years.<sup>9</sup> The Policy at issue in this case renewed on December 2, 2015, 2016 and 2017, the starting dates of the 2015 Period, 2016 Period, and 2017 Period, respectively.<sup>10</sup> For those

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<sup>3</sup> Transcript of Proceedings on January 16, 2018 ("Tr.") at 25:10-26:3.

<sup>4</sup> Tr. 26:18-25.

<sup>5</sup> Tr. 27:22-23.

<sup>6</sup> Evidentiary Hearing Exhibit ("Exh.") 208 at 208-1. Throughout this Proposed Decision, the term "Appellant" refers to A-Brite and Firetect jointly, except where otherwise required by the context.

<sup>7</sup> Tr. 26:4-17.

<sup>8</sup> Tr. 25:1-4.

<sup>9</sup> Tr. 38:11-14; Exh. 219.

<sup>10</sup> Tr. 10:3-18; Exh. 208 at 208-1; Exh. 218 at 218-1.

periods, Appellant dealt directly with SCIF and did not use an insurance broker.<sup>11</sup>

During the 20 years it has been insured by SCIF, Appellant received a single workers' compensation claim.<sup>12</sup> That claim resulted from a bruise sustained by one of Appellant's employees on September 10, 2015.<sup>13</sup> SCIF initially reserved \$24,000 to cover the estimated losses and expenses.<sup>14</sup> However, the claim closed on November 6, 2015 with substantially lower total combined losses and expenses of \$819, which SCIF paid.<sup>15</sup>

### **C. Determination of Premium under the Policy**

The Policy provides that Appellant's premiums are determined by SCIF's "manuals of rules, rates, rating plans and classifications."<sup>16</sup> SCIF's manuals and rating plans include several modifiers, which affected Appellant's premium.<sup>17</sup>

#### **1. Rating Plan Modifier**

SCIF determined the premiums for the 2015 Period and 2016 Period in part based on a "rating plan modifier."<sup>18</sup> SCIF applied the rating plan modifier to Appellant's "standard premium" to arrive at a "modified premium."<sup>19</sup> The rating plan modifier resulted from multiplying four components, namely, (a) a "territory modifier," based on geographical area, (b) a "claims free" modifier, for policyholders with claims below a certain level, (c) a "direct placement" modifier for policyholders who deal with SCIF directly rather than through a

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<sup>11</sup> Tr. 37:23-24, 38:5-7; Exh. 206; Exh. 215.

<sup>12</sup> Tr. 28:21-29:11; Exh. 3 at 3-3 through 3-6.

<sup>13</sup> Exh. 201 at 201-1.

<sup>14</sup> Exh. 1 at 1-40.

<sup>15</sup> Tr. 65:8-9; Exh. 201 at 201-1.

<sup>16</sup> Exh. 209 at 209-4 [Part Five, § A].

<sup>17</sup> Exh. 1; Exh. 2.

<sup>18</sup> Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>19</sup> Exh. 212 at 212-1. In Appellant's case, standard premium is equal to base premium, which is calculated by multiplying Appellant's workers' compensation payroll in each employment classification by SCIF's base rate for the respective classification. (*Ibid.*)

broker, and (d) a “tier modifier,” based on a rating tier assigned according to a “tier score” calculated using an algorithm.<sup>20</sup> These modifiers are typically expressed as numerical coefficients. For example, a modifier of 0.80 reduces premium by 20 percent, while a modifier of 1.20 increases it by 20 percent.

**a. Territory Modifier**

In the 2015 Period and 2016 Period, SCIF applied a territory modifier of 1.15 to the Policy<sup>21</sup>. SCIF’s rate filings with the Commissioner included a 1.15 territory modifier for Los Angeles County, effective April 1, 2015.<sup>22</sup>

**b. Claims Free Modifier**

During the 2015 Period, SCIF applied a 10 percent “claims free” credit to the Policy (*i.e.*, a modifier of 0.90).<sup>23</sup> For unclear reasons, SCIF did not apply the credit to the 2016 period.<sup>24</sup> Under SCIF’s rate filings effective during those periods, the credit was applicable to policyholders continuously insured with SCIF who incurred no more than \$1,000 in workers’ compensation claims during the three years preceding the policy period (or two years for policyholders with less than \$10,000 in annual base premium).<sup>25</sup>

**c. Direct Placement Modifier**

SCIF applied a three percent “direct placement” credit (0.97 modifier) to the Policy

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<sup>20</sup> Tr. 58:14-59:8. See also Tr. 15:3-17:18 regarding trade secret privilege claimed by SCIF in the algorithm.

<sup>21</sup> Exh. 206 at 206-3; Exh. 215 at 215-3.

<sup>22</sup> Exh. 1 at 1-9, 1-27.

<sup>23</sup> Exh. 206 at 206-3; Exh. 208 at 208-2.

<sup>24</sup> Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>25</sup> Exh. 1 at 1-4; Exh. 2 at 2-1.

for both the 2015 Period and 2016 Period.<sup>26</sup> A 2011 SCIF rate filing with the Commissioner describes this three percent credit.<sup>27</sup>

**d. Rating Tier Modifier**

SCIF assigns policyholders to various “rating tiers,” each with its own modifier.<sup>28</sup> SCIF assigns tiers based on “tier scores.”<sup>29</sup> Tier scores are calculated by SCIF using software it alternately refers to as the rating engine, tiering engine, scoring engine, or quote engine.<sup>30</sup> SCIF treats the tiering algorithm as a closely-guarded secret and does not allow it to be viewed by customers, members of the public, or even SCIF’s own underwriting staff.<sup>31</sup> SCIF does not indicate tier scores on its policies, quotes or billing statements; nor does it provide customers with any calculations showing how the scores are calculated, even if customers specifically request that information.<sup>32</sup> The algorithm is not included in any of SCIF’s rate filings with the Commissioner.<sup>33</sup>

The algorithm takes into account the policyholder’s prospective estimated premium, payroll and number of employees.<sup>34</sup> It also factors in three years of the policyholder’s historical premium and loss data.<sup>35</sup> That data includes the frequency and number of workers’ compensation claims and whether those claims involved medical expenses or compensation for

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<sup>26</sup> Exh. 206 at 206-3; Exh. 208 at 208-2; Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>27</sup> Exh. 1 at 1-1; Exh. 2 at 2-2.

<sup>28</sup> Tr. 56:10-17; Exh. 1 at 1-26; Exh. 2 at 2-27.

<sup>29</sup> Tr. 74:22-75:2.

<sup>30</sup> Tr. 62:24, 65:19-21; 74:20-25.

<sup>31</sup> Tr. 14:22-17:18; Tr. 74:20-75:13; See also SCIF Letter to ALJ renewing objection, dated February 1, 2018.

<sup>32</sup> Tr. 97:3-21, 101-3; 102-17; Exh. 101; Exh. 205; Exh. 208.

<sup>33</sup> See Exh. 1, Exh. 2.

<sup>34</sup> Tr. 57:8-11.

<sup>35</sup> Tr. 57:11-13, 83:10-19.

lost employee time or disability.<sup>36</sup>

Each rating tier has an associated modifier.<sup>37</sup> Starting in 2013 and through the commencement of the 2015 Period, SCIF employed a rating framework with four tiers, A through D.<sup>38</sup> In the year preceding the 2015 Period, Appellant was assigned to Tier B, which at the time had a rating tier modifier of 0.951.<sup>39</sup>

SCIF revised its tier rating framework for the 2015 Period.<sup>40</sup> Tier A received a modifier of 0.65. Tier B was assigned a modifier of 1.0. Tier C received a factor of 1.5, and tier D was assigned a modifier of 2.0.<sup>41</sup>

In the 2015 Period, Tier D applied to tier scores of at least 0.30092.<sup>42</sup> Using its secret algorithm, SCIF initially calculated Appellant's tier score as 0.419525161.<sup>43</sup> Consequently, SCIF moved Appellant from Tier B to Tier D, thereby doubling Appellant's premium.<sup>44</sup> The tier score increase resulting in Appellant's move to Tier D was precipitated by the lone workers' compensation claim in 2015, for which SCIF initially reserved \$24,000 in estimated losses and expenses.<sup>45</sup> SCIF notified Appellant of the tier change and premium increase in a renewal quote dated October 5, 2015.<sup>46</sup> Nothing in the record or in SCIF's rate filings explains how Appellant's tier scores were calculated.

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<sup>36</sup> Tr. 57:15-25.

<sup>37</sup> Tr. 56:10-17; 58:12-17; Exh. 1 at 1-26; Exh. 2 at 2-33, 2-34.

<sup>38</sup> Tr. 56:18; Exh. 1 at 1-26.

<sup>39</sup> Tr. 59:11-12.

<sup>40</sup> Tr. 59:21-24; Exh. 1 at 1-26.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> Exh. 1 at 1-39.

<sup>44</sup> Tr. 61:5-6.

<sup>45</sup> Tr. 61:5-64:10; Exh. 1 at 1-40.

<sup>46</sup> Exh. 205 at 205-3.



Appellant complained to SCIF about the increase,<sup>47</sup> which resulted in SCIF recalculating the tier score and reassigning Appellant to Tier C on January 25, 2016, with a tier modifier of 1.5.<sup>48</sup> The sole factor lowering Appellant's tier score from the Tier D range to the Tier C range was SCIF's entry into the scoring engine of \$819 in actual losses and expenses for the 2015 claim rather than the \$24,000 that was originally estimated.<sup>49</sup> In contrast, if Appellant had incurred no workers' compensation claims in the three years prior to the 2015 Period, SCIF would have assigned Appellant to Tier B with a modifier of 1.0.<sup>50</sup>

Starting in the 2016 Period, SCIF increased the number of rating tiers to a numerical system ranging from four to seven.<sup>51</sup> SCIF continued to maintain that its algorithm was confidential and did not include it in its rate filings with the Commissioner. For policyholders with standard premium between \$10,000 and \$25,000, the new Tier 3 had a modifier of 1.0, which would have no impact on premium. And Tier 4 had a factor of 1.2, which would increase standard premium by 20 percent.<sup>52</sup> SCIF assigned Appellant to Tier 4 for the 2016 Period.<sup>53</sup> If Appellant had incurred no workers' compensation claims in the three prior years, SCIF would have assigned Appellant to Tier 3.<sup>54</sup>

In other words, the lone \$819 claim in a 20-year period resulted in a 50 percent (or \$6,971) increase to Appellant's premium for the 2015 Period and a 20 percent (or estimated \$1,834) increase for the 2016 Period.<sup>55</sup>

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<sup>47</sup> Exh. 3 at 3-7.

<sup>48</sup> Tr. 33:12-23, 64:11-65:16; Exh. 3 at 3-30.

<sup>49</sup> Tr. 64:21-65:21; Exh. 1 at 1-36 through 1-41.

<sup>50</sup> Tr. 105:21-106:14.

<sup>51</sup> Tr. 72:12-14; Exh. 2 at 2-27.

<sup>52</sup> Tr. 93:6-14; Exh. 2 at 2-27.

<sup>53</sup> Tr. 72:7-11; Exh. 2 at 2-39.

<sup>54</sup> Tr. 106:15-107:3.

<sup>55</sup> Exh. 212 at 212-1; Exh. 215 at 215-3.

## 2. Premium Discount Modifier

Appellant's premiums for each of the 2015 Period, 2016 Period and 2017 Period were calculated in part using a "premium discount modifier."<sup>56</sup> That modifier applied a flat discount of 11.3% to all modified premium over \$5,000.<sup>57</sup> SCIF's 2011 rate filings with the Commissioner describe that discount.<sup>58</sup>

### D. Policy Audit

On March 27, 2017, SCIF conducted an audit for the 2015 Period.<sup>59</sup> The audit found Appellant's workers' compensation payroll was \$188,995. Based on that audit, SCIF determined that Appellant incurred a base premium of \$13,942.87, a modified premium of \$20,996.99,<sup>60</sup> a total premium of \$19,189.36,<sup>61</sup> mandatory surcharges of \$629.83, and total charges of \$19,819.19.<sup>62</sup>

### V. Discussion

Appellant argues SCIF's rating plan modifiers and premium discount modifiers were incorrectly applied.<sup>63</sup> Appellant further contends SCIF miscalculated Appellant's 2015 Period payroll. SCIF argues all of the modifiers were valid and correctly applied.<sup>64</sup> SCIF also stands behind its audit and further asserts the Commissioner may lack jurisdiction to determine the payroll calculation issue.<sup>65</sup> For the reasons discussed below, the Commissioner finds that (1)

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<sup>56</sup> Tr. 71:6-72:6; Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>57</sup> Tr. 71:6-16; Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>58</sup> Exh. 1 at 1-2, 1-3.

<sup>59</sup> Tr. 115:14-25; Exh. 211 at 211-1.

<sup>60</sup> Obtained by multiplying the base premium by a rating plan modifier of 1.50593. (Exh. 212 at 212-1.)

<sup>61</sup> Obtained by multiplying the modified premium by a premium discount modifier of 0.91391. (*Ibid.*)

<sup>62</sup> Obtained by adding the total premium and the mandatory surcharges. (*Id.* at 212-1, 212-2.)

<sup>63</sup> Appeal dated August 25, 2017 ("Appeal").

<sup>64</sup> SCIF's Response to the Appeal, dated October 18, 2017, at 3-4.

<sup>65</sup> Letter from SCIF to the ALJ, dated February 9, 2018.



the Commissioner has jurisdiction over all issues in this appeal, (2) SCIF misapplied the rating plan modifier, (3) SCIF correctly applied the premium discount modifier, and (4) Appellant failed to meet its burden of proof to show SCIF miscalculated Appellant's payroll.

**A. The Commissioner Has Jurisdiction over This Appeal**

**1. Applicable Law**

**a. The Statutory Rate Filing Scheme**

California has an "open rating" workers' compensation regulatory system, in which each insurer sets its own rates and files them with the Commissioner. This framework is intended to curtail monopolistic and discriminatory pricing practices, ensure carriers charge rates adequate to cover their losses and expenses, and provide public access to rate information so that employers may find coverage at the best competitive rates.<sup>66</sup>

Insurance Code section 11735 lays out the statutory filing requirements. Subdivision (a) of that section provides in part, "Every insurer shall file with the commissioner all rates and supplementary rate information that are to be used in this state. The rates and supplementary rate information shall be filed not later than 30 days prior to the effective date." The term "rate" means "the cost of insurance per exposure base unit," subject to certain limitations.<sup>67</sup> And "supplementary rate information" means "any manual or plan of rates, classification system, rating schedule, minimum premium, policy fee, rating rule, rating plan, and any other similar information needed to determine the applicable premium for an insured."<sup>68</sup>

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<sup>66</sup> See generally Ins. Code §§ 11730-11742.

<sup>67</sup> Ins. Code § 11730, subd. (g). Rates exclude the application of individual risk variations based on loss or expense considerations, as well as minimum premiums.

<sup>68</sup> Ins. Code § 11730, subd. (j).

## b. Jurisdiction over Private Party Appeals

Insurance Code section 11737, subdivision (f), confers jurisdiction on the Commissioner to hear and decide private party appeals concerning the application of insurers' section 11735 filings. Specifically, the statute provides in pertinent part:

Every insurer... shall provide within this state reasonable means whereby any person aggrieved by the application of its filings may be heard by the insurer... on written request to review the manner in which the rating system has been applied in connection with the insurance afforded or offered. ... Any party affected by the action of the insurer... on the request may appeal... to the commissioner, who after a hearing ... may affirm, modify, or reverse that action.

## 2. Analysis

Appellant asserts SCIF failed to correctly apply the rates and supplementary rate information filed under Insurance Code section 11735. Specifically, Appellant contends SCIF misapplied its filed rating plan modifiers and premium discount modifiers to SCIF's filed rates. Appellant further contends SCIF miscalculated Appellant's 2015 Period payroll. If true, that would result in the application of SCIF's filed rates to the wrong exposure level. Appellant requested that SCIF remedy these issues. SCIF rejected that request, and Appellant timely filed this appeal.<sup>69</sup> Because the issues on appeal concern the manner in which SCIF applied its rating system to the Policy, the Commissioner has jurisdiction under Insurance Code section 11737, subdivision (f).

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<sup>69</sup> See Cal. Code Regs., tit. 10, § 2509.46 ["An appeal is timely if it is filed either within 30 days after rejection of a Complaint and Request for Action or rejection of review thereof . . ."]. California Code of Regulations, title 10, section 2509.42, subdivision (q) provides in part, "Service by first class mail . . . is complete at the time of deposit with the carrier, but any . . . right or duty to do any act or make any response within any prescribed period of notice . . . shall be extended for a period of five days." SCIF mailed its rejection of Appellant's complaint and request for action on July 25, 2017 (See Appeal). Appellant filed this appeal within the 35 day window on August 29, 2017. (*Ibid.*)

**B. Use of the Tier Modifier Resulted in a Misapplication of SCIF's Filed Rates.**

SCIF's rating plan modifier consists of four components, one of which is the tier modifier. For the reasons discussed below, the tier modifier is an improper adjustment to SCIF's filed rates.

**1. SCIF Misapplied its Filed Rates Due to its Use of an Unfiled Tiering Algorithm.**

SCIF uses a proprietary algorithm to calculate the tier modifier. SCIF contends it is not legally required to file the algorithm with the Commissioner, and that use of the unfiled algorithm to determine Appellant's premium was lawful. The Commissioner disagrees.

**a. Applicable Law**

Insurance Code section 11735, subdivision (a), requires insurers to file all rates and supplementary rate information, without exception, before using them in California. The term "supplementary rate information" includes any "minimum premium, policy fee, rating rule, rating plan, and any other similar *information needed to determine the applicable premium for an insured.*"<sup>70</sup> "[M]oney paid by an insured to an insurer for coverage constitutes premium regardless of its name."<sup>71</sup> Thus, any information necessary to determine amounts owed by an insured to its insurer is supplementary rate information. If SCIF wished to apply its Tiering algorithm to Appellant's rate, it was required to file the algorithm and allow it to be subject to public inspection under Insurance Code section 11735.

Insurers may only charge premium in accordance with their filed rates and

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<sup>70</sup> Ins. Code § 11730, subd. (j), emphasis added.

<sup>71</sup> *In the Matter of the Appeal of Shasta Linen Supply, Inc.* (Cal. Ins. Comm'r, June 22, 2016, AHB-WCA-14-31) (*Shasta Linen*) at 48-49; see also *Troyk v. Farmers Group Inc.* (2009) 171 Cal.App.4th 1305, 1325 ["[I]nsurance premium includes not only the 'net premium,' or actuarial cost of the risk covered (i.e. expected amount of claims payments), but also the direct and indirect costs associated with providing that insurance coverage and any profit or additional assessment charged."]

supplementary rate information.<sup>72</sup> As the Commissioner determined in his precedential decision *In the Matter of the Appeal of Shasta Linen Supply, Inc.*, an insurer's use of unfiled rates or supplementary rate information is unlawful.<sup>73</sup> That is true regardless of whether the Commissioner first disapproved the unfiled rates under Insurance Code section 11737.<sup>74</sup>

**b. Analysis**

**i. The Tiering Algorithm Constitutes Supplementary Rate Information.**

SCIF determined Appellant's premiums for the 2015 Period and 2016 Period in part based on a "rating plan modifier"<sup>75</sup> that increased Appellant's premium.<sup>76</sup> The rating plan modifier resulted from multiplying four component modifiers, including a "tier modifier." Tier modifiers, in turn, are tied to "rating tiers" assigned to policyholders based on "tier scores" that SCIF calculates using an algorithm that SCIF claims is proprietary. The algorithm takes account of the policyholder's prospective estimated premium, payroll and number of employees,<sup>77</sup> as well as the policyholder's historical premium and loss data.<sup>78</sup> There is no way for the policyholder or anyone else to calculate a tier score without the algorithm. Without the

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<sup>72</sup> Ins. Code § 11735, subd. (a); Ins. Code § 11730, subd. (j); See *Appeal of Gary E. Milne* (Cal. Ins. Comm'r Feb. 19, 1999, AHB-WCA-97-11) at 10 ["[I]nsurers do not have unrestricted discretion to set workers' compensation insurance rate levels under open rating. The open rating system contemplates competitive pricing consistent with the public interest in fair and adequate insurance."]

<sup>73</sup> *Shasta Linen* at 52. *Shasta Linen* was designated precedential under Gov. Code section 11425.60, subdivision (b).

<sup>74</sup> See *Ibid.*

<sup>75</sup> Exh. 210 at 210-1; Exh. 218 at 218-2.

<sup>76</sup> Exh. 212 at 212-1. In Appellant's case, standard premium is equal to base premium, which is calculated by multiplying Appellant's workers' compensation payroll in each USRP classification by SCIF's base rate for the respective classification. (*Ibid.*)

<sup>77</sup> Tr. 57:8-11.

<sup>78</sup> Tr. 57:11-13.

tier score, it is impossible to determine which rating tier applies, and which tier modifier to assign the policyholder. Since a policyholder's base premium during the 2015 Period, for example, could have been reduced by as much 45 percent or increased by up to 100 percent depending on the rating tier, it is not possible to determine premium without the algorithm.<sup>79</sup> Because the algorithm is a key component of the rate calculation, it constitutes "information needed to determine the applicable premium for an insured[.]" thereby satisfying the definition of "supplementary rate information" under Insurance Code section 11730, subdivision (j).<sup>80</sup>

**ii. SCIF's Use of the Unfiled Algorithm Was Unlawful, Contravened Public Policy, and Misapplied SCIF's Filed Rates.**

Insurers must file all supplementary rate information under Insurance Code section 11735, subdivision (a), and under subdivision (b), which requires that information be publicly available. But SCIF withheld the algorithm—a critical piece of information that determines policyholders' rates—based on its assertion that "any policyholder (or future policyholder) can potentially 'game the system' if the algorithm was known to them" and that other insurers "could, conceivably, use knowledge of the algorithm to gain a competitive advantage over State Fund[.]"<sup>81</sup> SCIF's position ignores the mandate of the statute and frustrates the public policy concerns behind it.

Among the policy aims of section 11735, two important goals of the public inspection

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<sup>79</sup> Exh. 1 at 1-26.

<sup>80</sup> Without the algorithm, it is impossible for the Commissioner to determine whether the applied rates tend to create a monopoly in the market, are inadequate or unfairly discriminatory. (See Ins. Code §§ 11732, 11732.5, 11737, subd. (b), (c).)

<sup>81</sup> Letter from State Fund to the ALJ, dated February 1, 2018, objecting to disclosure of the algorithm. In fact, SCIF violated the ALJ's order to submit a copy of the algorithm in this appeal. (See SCIF's Amended Objection to Order Vacating Evidentiary Ruling; Order to Disclose Tiering Algorithm, dated March 22, 2018 ("Obj. to Order to Disclose").)



provisions are to enable employers to obtain coverage at the best rates and to curtail monopolistic pricing practices.<sup>82</sup> When rate information is transparent, policyholders are better able to compare coverage and reduce their costs. Transparency reduces the likelihood that insurers will gain a monopolistic advantage when all carriers' pricing information is public.

In furtherance of those aims, the Legislature passed Insurance Code section 11742 to mandate the establishment of an online rate comparison guide. Subdivision (a) of that section provides:

The Legislature finds and declares that the insolvencies of more than a dozen workers' compensation insurance carriers have seriously constricted the market and lead to a dangerous increase in business at the State Compensation Insurance Fund. Yet more than 200 insurance companies are still licensed to offer workers' compensation insurance in California. Unfortunately, many employers do not know which carriers are offering coverage, and it is both difficult and time consuming to try to get information on rates and coverages from competing insurance companies. A central information source would help employers find the required coverage at the best competitive rates.

When insurers use secret unfiled formulas to modify their filed rates, they directly frustrate the Legislature's intent behind the comparison guide and section 11735's public inspection provisions. Rate disclosure confers little value if the public does not have access to the formulas carriers use to modify their rates. Meaningful price comparison is simply impossible without those formulas.

By hiding its algorithm, SCIF obscured Appellant's looming premium increase until Appellant was in no position to avoid it. Appellant's witness testified, "I could not fathom what a negative monetary impact it would have on our small business to have a claim after over 20 years in business. One claim for \$819.... When I received the final renewal for 2015, I was

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<sup>82</sup> See generally Ins. Code §§ 11730-11742.

shocked.”<sup>83</sup> If Appellant or its advisors had access to the algorithm, they could have determined in advance the claim’s impact on premium and potentially mitigated the effects. At a minimum, Appellant would have had additional time to shop for a less expensive policy.

Insurance Code section 11735 and the legislative policy behind it required that SCIF file the algorithm as supplementary rate information. SCIF failed to do so, rendering its use of the unfiled algorithm unlawful. By effectively increasing SCIF’s filed rates by 50 percent for the 2015 Period and 20 percent for the 2016 Period, SCIF’s use of the algorithm resulted in the misapplication of those rates.

**2. SCIF Wrongly Asserts it Complied with the Commissioner’s Regulations, Thus Fulfilling the Statutory Filing Requirements.**

SCIF argues it complied with the Commissioner’s rate filing regulations and in so doing satisfied Insurance Code section 11735’s filing requirements. Specifically, SCIF asserts that the Commissioner has authority under the regulations to determine what constitutes supplementary rate information. SCIF asserts that the Commissioner’s acceptance of its rate filing without the tiering algorithm *ipso facto* constituted a determination that the algorithm was not supplementary rate information. Therefore, SCIF contends that the algorithm did not need to be filed under section 11735.<sup>84</sup> SCIF’s interpretation of the rate filing process and regulations is wrong.

**a. Applicable Law**

In addition to complying with the statutory filing requirements under Insurance Code section 11735, workers’ compensation insurers must file their rates in accordance with

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<sup>83</sup> Tr. at 29:8-25.

<sup>84</sup> Obj. to Order to Disclose at 4-6.

California Code of Regulations, title 10, sections 2509.30 *et seq.* Section 2509.32, subdivision (e), which provides:

A complete rate filing is one for which the insurer has completed the Filing Form and submitted all necessary attachments and exhibits. Necessary attachments and exhibits are those materials that, together with the Filing Form, are sufficient to enable the Commissioner to determine the rates the insurer would charge its insureds. Unless the Commissioner notifies the insurer within 30 days of the filing date that its rate filing is incomplete, the rate filing will be considered complete.

#### **b. Analysis**

SCIF did not comply with the regulations, which broadly set forth the information that is required in an insurer's rate filing—insurers must file *all* information that is necessary to determine an insurer's rates, which would encompass SCIF's algorithm. The statute does not give the Commissioner the power to exclude information in violation of the statute's language that all such information must be filed.

The regulation provides further clarification of Insurance Code section 11735, subdivision (b)'s requirement that "[r]ates filed pursuant to this section shall be filed in the form and manner prescribed by the commissioner." Section 2509.32, subdivision (e), does not suggest that an insurer's failure to file supplemental information relieves it from its obligation to comply with statutory law; indeed, the regulation expressly mandates that insurers file information "sufficient to enable the Commissioner to determine the rates the insurer would charge its insureds." The regulation is consistent with the statute, which broadly defines the term "supplementary rate information" to include "minimum premium, policy fee, rating rule, rating plan, and any other similar information needed to determine the applicable premium for an insured." Indisputably, if SCIF intended to use the algorithm to modify its rates, the algorithm would be necessary determine SCIF's rates. Since SCIF's algorithm falls squarely within the statutory and regulatory



definitions, SCIF was required file it. SCIF knew that its rate filing was not complete because SCIF knew the algorithm is necessary “to enable the Commissioner to determine the rates the insurer would charge its insureds.” Section 2509.32(e) does not purport to allow insurers to avoid the filing requirements that are specified in Insurance Code section 11735 under any circumstance. Rather, it provides the form and manner of compliance and reiterates the provisions in the statute.

SCIF cites no basis to support its assertion that it need not comply with statutory and regulatory law so long as the Commissioner accepted its filing as complete. SCIF seems to confuse the Commissioner’s acceptance of its filing with the Commissioner’s limited power to disapprove rates under certain narrowly-tailored circumstances, if he determines that the premiums charged, in the aggregate, would be inadequate to cover an insurer’s losses and expenses, unfairly discriminatory, or tend to create a monopoly in the market.<sup>85</sup> While applicable law grants the Commissioner authority to reject a rate filing if an insurer fails to comply with the filing requirements or if the filing is incomplete,<sup>86</sup> the Commissioner lacks the authority to override a statutory mandate that insurers file all supplemental rate information. The Commissioner’s determination that a filing is complete is a ministerial function to determine whether the paperwork includes the Filing Form, exhibits and attachments necessary to comprise a complete filing as defined in Title 10 California Code of Regulations section 2509.32(e). The Commissioner’s acceptance of SCIF’s rate filing as complete is not a substantive endorsement that SCIF has met its statutory obligation to file all of supplementary rate information that it uses to calculate an insured’s premium, such as the unfiled algorithm. Whatever else may be said of the legal importance of an administrative action to deem a filing

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<sup>85</sup> Ins. Code § 11737(b).

<sup>86</sup> Tit. 10, Cal. Code Regs. § 2509.32(c).

complete, the scope of such action cannot serve to protect formulae an insurer withholds from its filing, and then applies outside of the filing process to calculate a policyholder's applicable premium.<sup>87</sup>

Moreover, SCIF's failure to file its algorithm undermined an additional purpose of the statute that required it to file its algorithm, preventing A-Brite's ability to access crucial information that greatly affected its workers' compensation insurance rates.

SCIF's argument also overlooks section 11735's important public policy consideration in requiring that pricing information be publicly available to assist employers shopping for coverage. Given this policy, as well as section 11730's broad definition of "supplementary rate information," and section 11735's express requirement that insurers file *all* of that information before using it, an insurer's failure to file such information would frustrate the public's statutory right to access that information. The Commissioner's acceptance of SCIF's rate filing as complete does not relieve SCIF from its responsibility to file its supplementary information as required by law. More to the point, SCIF's failure to file the supplementary information cannot inure to the prejudice of A-Brite. SCIF unlawfully misapplied its rates by modifying them with an unfiled algorithm. The Commissioner will not affirm its use of the unfiled algorithm to A-Brite's prejudice.

### **3. Trade Secret Privilege Did Not Exempt the Algorithm from Statutory Filing and Disclosure Requirements.**

SCIF argues that even if the tiering algorithm is supplementary rate information, it

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<sup>87</sup> (See, e.g., *State Compensation Ins. Fund v. Superior Court* (2001) 24 Cal.4th 930 [insurer's misallocation of expenses which were reported to WCIRB, thereby resulting in higher premiums for insured, is not conduct immune from civil liability]; accord *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 992-93 [11 Cal.Rptr.3d 45, 62] ["It is possible for an insurance carrier to file with the Department a rate filing and class plan that satisf[y] all of the ratemaking components of the regulations, and still result in a violation of the Insurance Code as applied." (emphasis in original)]; see also *MacKay v. Superior Court* (2010) 188 Cal.App.4th 1427, 1450 [115 Cal.Rptr.3d 893, 911], as modified (Oct. 20, 2010) ["...underlying conduct challenged was not the charging of an approved rate, but the application of an unapproved underwriting guideline..."].)

remains protected from disclosure under the trade secret privilege.<sup>88</sup> Specifically, SCIF contends that because section 11735 does not expressly override the subsequently enacted trade secret protections of Government Code section 6254, section 11735 does not require the filing and public disclosure of trade secrets. The Commissioner is not persuaded.

**a. Applicable Law**

Civil Code section 3426.1 defines a “trade secret” as information that “(1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and [¶] (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

Evidence Code section 1060 provides: “If he or his agent or employee claims the privilege, the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.” Like the rest of the Evidence Code, that section applies to court actions.<sup>89</sup> It has no applicability to administrative or other governmental proceedings unless expressly invoked by statute or regulation.<sup>90</sup>

Government Code section 6254 exempts certain trade secrets from the disclosure requirements of the California Public Records Act.<sup>91</sup> In particular, subdivision (ab) of that section states the act does not require disclosure of “[t]he following records of the State Compensation Insurance Fund:”

(3) Records related to the impressions, opinions,

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<sup>88</sup> Obj. to Order to Disclose at 6-8.

<sup>89</sup> Evid. Code § 300.

<sup>90</sup> 31 Cal.Jur.3d Evidence, § 7; see also *Big Creek Lumber Co. v. County of San Mateo* (1995) 31 Cal.App.4th 418, 430 fn. 16.

<sup>91</sup> Cal. Gov. Code § 6250 et seq.

recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategy of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund [under the Insurance Code].

...

(5)(A) Records that are trade secrets pursuant to... [Evidence Code section 1060], including without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.

In addition, section 6254, subdivision (k) exempts the following information from the Public Records Act's disclosure requirements: "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege."

#### **b. Analysis**

Trade secret privilege does not limit section 11735's public inspection requirements. The California Supreme Court's analysis and holding in *State Farm Mutual Automobile Insurance Co. v. Garamendi*<sup>92</sup> are instructive. That case concerned Insurance Code section 1861.07, which broadly requires public disclosure of "[a]ll information provided to the commissioner" in connection with insurance rate approval applications (unrelated to workers' compensation). The plaintiff insurance company argued Government Code section 6254's trade secret provisions limited section 1861.07's disclosure requirements. Specifically, the plaintiff contended that since section 1861.07 expressly excludes a specific subdivision of section 6254, the Legislature implicitly intended all other subdivisions to apply, including

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<sup>92</sup> *State Farm Mut. Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029.

those that exempt trade secrets from disclosure. The Court disagreed, holding that the public disclosure rule covering “[a]ll information provided to the commissioner” under section 1861.07 is absolute.<sup>93</sup> That section’s exclusion of the specific provision of section 6254 “merely buttresses this rule.”<sup>94</sup> Thus, the Court concluded that information provided to the commissioner under section 1861.07 was not subject to trade secret privilege under section 6254 or, by extension, Evidence Code section 1060.<sup>95</sup>

Insurance Code section 11735’s public disclosure requirement is similarly absolute. The statute requires the filing of “all rates and supplementary rate information that are to be used in this state” and “[a]ll rates, supplementary rate information, and any supporting information for rates filed under this article, as soon as filed, shall be open to public inspection at any reasonable time...”<sup>96</sup>

Finally, contrary to SCIF’s assertions,<sup>97</sup> it is immaterial that Government Code section 6254 was enacted after Insurance Code section 11735. Section 6254 limits public disclosure obligations under the Public Records Act, so the Public Records Act cannot reasonably be construed to limit the Insurance Commissioner’s review and acceptance of supplementary rate information under the Insurance Code. Specifically, the lead-in to section 6254 states that “this chapter does not require the disclosure” of the information exempted pursuant to that section. And “this chapter” refers to Government Code, division 7, chapter 3.5, *i.e.*, the Public Records Act. A plain reading of the Public Records Act limits its application to the chapter within the

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<sup>93</sup> Id. at 1042-1043, emphasis in original.

<sup>94</sup> Id. at 1042.

<sup>95</sup> Id. at 1047. As noted above, privilege under Evidence Code section 1060 is incorporated by reference in Government Code section 6254, subdivision (k).

<sup>96</sup> Emphasis added.

<sup>97</sup> Obj. to Order to Disclose at 7.

Government Code, and is plainly inapplicable to the construction of the Insurance Code and workers' compensation insurance rate filing requirements concerning the Insurance Commissioner. Because a plain reading of Government Code section 6254 and Insurance Code section 11735 demonstrates two separate and independent areas of authority, the order in which they were enacted is of no consequence here.

For these reasons, the trade secret privilege does not exempt the tiering algorithm from Insurance Code section 11735's filing and public inspection provisions.

**4. SCIF Must Exclude The Unfiled Tier Modifier in Computing Appellant's Rates.**

Section 11737, subdivision (f), grants the Commissioner broad authority to award remedies in workers' compensation appeals. The statute authorizes him to "affirm, modify, or reverse" an insurer's action concerning the application of its rating system. The statute contains no language restricting remedies the Commissioner may order to modify or reverse an insurer's action. Nor has any California court inferred such restrictions from the statute. Indeed, the breadth of the Commissioner's authority is consistent with his comprehensive role to "require from every insurer a full compliance with all the provisions of [the Insurance Code]."<sup>98</sup>

SCIF failed to apply the correct rate to the policy by unlawfully applying the unfiled rating tier modifier component for the 2015 Period and 2016 Period. SCIF must recalculate the rates for those Periods without applying the unfiled rating tier modifier.

**C. The Claims Free Modifier Applies to Both the 2015 Period and the 2016 Period.**

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<sup>98</sup> Ins. Code § 12926.



The Commissioner finds SCIF correctly applied a claims-free modifier to the 2015 Period but improperly failed to apply that modifier to the 2016 Period.

Under a SCIF rate filing that was in effect during the 2015 Period and 2016 Period, a claims-free modifier of 0.90 applied to policyholders continuously insured with SCIF and incurring no more than \$1,000 in workers' compensation claims during the three years preceding the current policy period (or two years for policyholders with less than \$10,000 in annual base premium).<sup>99</sup> In the three years preceding the 2015 Period, Appellant was continuously insured with SCIF and incurred no workers' compensation claims. Accordingly, SCIF correctly applied the claims free modifier to the Policy for that period.<sup>100</sup>

However, SCIF did not apply the modifier to the 2016 Period.<sup>101</sup> In September of 2015, Appellant incurred a single workers' compensation claim, which was closed on November 6, 2015. The total losses and expenses incurred in connection with that claim were \$819.<sup>102</sup> Thus, Appellant incurred less than \$1,000 in claims in the three years preceding the beginning of the 2016 Period. Accordingly, SCIF should have applied the 0.90 claims-free modifier to that period as well.

#### **D. SCIF Correctly Calculated the Remaining Modifiers.**

The Commissioner finds the remaining components of the rating plan modifier—i.e., the direct placement modifier and the territory modifier—were correctly applied for the 2015 Period and the 2016 Period. Appellant contends the premium discount modifier was incorrectly calculated for all three periods at issue. The Commissioner disagrees.

##### **1. Direct Placement Modifier**

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<sup>99</sup> Exh. 1 at 1-4; Exh. 2 at 2-1.

<sup>100</sup> Exh. 206 at 206-3; Exh. 208 at 208-2.

<sup>101</sup> Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>102</sup> Tr. 65:8-9; Exh. 201 at 201-1.

A SCIF rate filing applicable to both the 2015 Period and 2016 Period states SCIF “will provide a 3% credit to employers who obtain their policy without engaging a broker.”<sup>103</sup> Appellant did not engage a broker but instead dealt directly with SCIF to procure coverage for those periods. SCIF therefore correctly included the three percent credit (i.e., a modifier of 0.97) within the rating plan modifier it applied to the Policy for both the 2015 Period and 2016 Period.<sup>104</sup>

## **2. Territory Modifier**

SCIF’s rate filings applicable to the 2015 Period and 2016 Period required it to apply a territory modifier of 1.15 to customers in Los Angeles County.<sup>105</sup> Appellant is located in that county. Therefore, SCIF correctly included that territory modifier within the Policy’s rating plan modifier during both the 2015 Period and the 2016 Period.<sup>106</sup>

## **3. Premium Discount Modifier**

SCIF’s rate filings require a premium discount of 11.3 percent for all modified premium over \$5,000 and no discount for the first \$5,000.<sup>107</sup> SCIF correctly applied the discount to Appellant’s actual modified premium for the 2015 Period, and to Appellant’s estimated modified premiums for the 2016 Period and 2017 Period.<sup>108</sup> However, because Appellant’s modified premiums must be recalculated using the correct rating plan modifier in accordance with part V (B) above, SCIF must re-compute the premium discount calculations

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<sup>103</sup> Exh. 1 at 1-1; Exh. 2 at 2-2.

<sup>104</sup> Exh. 206 at 206-3; Exh. 208 at 208-2; Exh. 215 at 215-3; Exh. 218 at 218-2.

<sup>105</sup> Exh. 1 at 1-9, 1-27 [effective April 1, 2015]; Exh. 2 [no changes to territory modifiers from prior year].

<sup>106</sup> Exh. 206 at 206-3; Exh. 215 at 215-3.

<sup>107</sup> Exh 1 at 1-2, 1-3.

<sup>108</sup> Tr. 71:6-72:6; Exh. 210 at 210-1; Exh. 218 at 218-2.



using the revised modified premiums.<sup>109</sup>

**E. Appellant Failed to Demonstrate SCIF Miscalculated Appellant's 2015 Period Payroll.**

Appellant asserts SCIF miscalculated Appellant's 2015 Period payroll. The Commissioner finds Appellant has failed to meet its burden of proof on this issue.

**1. Applicable Law**

Under California Code of Regulations, title 10, section 2509.61, "[a] party has the burden of proof as to each fact the existence or non-existence of which is essential to the claim for relief or defense that he or she is asserting." As in an ordinary civil court action, that burden includes both the initial burden of going forward and the burden of persuasion by a preponderance of the evidence.<sup>110</sup>

**2. Analysis**

SCIF produced a final payroll audit report for the 2015 Period, indicating Appellant's workers' compensation payroll for the entire period was \$188,995.<sup>111</sup> Appellant contests the accuracy of the report and produced its own payroll summary for that period, asserting a total workers' compensation payroll of \$180,890.44.<sup>112</sup> Appellant thereby met its initial burden of going forward.

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<sup>109</sup> For example, Appellant's actual base premium for the 2015 Period was \$13,942.87. (Exh. 212 at 212-1.) The correct rating plan modifier in accordance with part V(B) above is 1.00395 (i.e., 1.15 territory modifier x 0.90 claims free modifier x 0.97 direct placement modifier). Multiplying the base premium by that rating plan modifier yields a modified premium of \$13,997.94 (i.e., 1.00395 x \$13,942.87). Thus, the premium discount modifier for the 2015 Period is:  $1 - ((\$13,997.94 - \$5,000) \times 0.113) \div \$13,997.94 = 0.927363$ .

<sup>110</sup> *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051 fn. 5.

<sup>111</sup> Exh. 211 at 211-5.

<sup>112</sup> Exh. 3 at 3-47 through 3-51.

However, Appellant's payroll summary contains inaccuracies. Specifically, it does not entirely coincide with the 2015 Period, which began on December 2, 2015 and ended on December 2, 2016. The workers' compensation payroll for that period should cover the work performed by Appellant's employees between those dates.<sup>113</sup> But Appellant's payroll summary sets forth the payments made during that period, rather than the amounts earned. The summary does not include any activity after the payments on November 25, 2016,<sup>114</sup> which were for the work period ending November 20, 2016.<sup>115</sup> Appellant's summary therefore failed to include payroll earned during the last 11 days of the 2015 Period. If Appellant had included those days, its payroll total would likely have closely matched SCIF's.<sup>116</sup>

Because Appellant's payroll summary is inaccurate and incomplete, Appellant failed to meet its burden of persuasion to establish SCIF incorrectly calculated the 2015 Period payroll.

#### **F. Conclusions of Law**

Based on the foregoing facts and analysis, the Commissioner concludes as follows:

1. SCIF failed to apply the correct rating plan modifier to the Policy during the 2015 Period and 2016 Period, in accordance with SCIF's filings with the Commissioner and applicable law. The rating plan modifier is incorrect for two reasons. First, SCIF included an unlawful and unenforceable rating tier modifier component during both the 2015 Period and 2016 Period. Second, SCIF failed to properly include a claims free modifier component for the

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<sup>113</sup> Cal. Code Regs., tit. 10, § 2318.6, Part 3, Section V, Rule 1 [payroll includes amounts "earned during the policy period"].

<sup>114</sup> Exh. 3 at 3-47 through 3-50.

<sup>115</sup> See, e.g., Exh. 102 at 102-88.

<sup>116</sup> Using Appellant's payroll total and assuming relatively steady work periods, one would expect the payroll for the full year to be approximately as follows:  $\$180,890.44 \div [(365 \text{ days} - 11 \text{ days}) \div 365 \text{ days}] = \$186,511.33$ . That figure is much closer to the audit total, suggesting SCIF's payroll calculation is more accurate than Appellant's.

2016 Period.

2. SCIF correctly included a territory modifier component and direct placement modifier component in the rating plan modifier during both the 2015 Period and 2016 Period, in accordance with SCIF's rate filings.

3. The correct rating plan modifier for both the 2015 Period and 2016 Period comprises three components: a territory modifier of 1.15, a claims free modifier of 0.90, and a direct placement modifier of 0.97. Accordingly, SCIF must apply the following rating plan modifier to each of those periods:  $1.15 \times 0.90 \times 0.97 = 1.00395$ .

4. SCIF used the correct premium discounts to the Policy for the 2015 Period, the 2016 Period, and the 2017 Period, in accordance with SCIF's filings with the Commissioner and applicable law. SCIF applied premium discount modifiers to each of those policy periods at the rate of 11.3 percent on all modified premium over \$5,000, which was consistent with SCIF's rate filings with the Commissioner under Insurance Code section 11735, subdivision (a). However, SCIF must recalculate the premium discount modifier to reflect the correct rating plan modifier's effect on modified premium.

5. Appellant failed to meet its burden of proof to establish SCIF miscalculated Appellant's payroll for the purposes of determining premium for the 2015 Period.

#### **ORDER**

1. SCIF shall recalculate Appellant's premium for the 2015 Policy Period and 2016 Policy Period in accordance with this decision and submit a revised premium calculation and statement of account for those periods to Appellant within 30 days after the date this decision is adopted.

2. It is further ordered that the entirety of this Decision is designated precedential pursuant to Government Code section 11425.60, subdivision (b).

Dated: November 16, 2018

  
\_\_\_\_\_  
DAVE JONES  
Insurance Commissioner

## DECLARATION OF SERVICE BY MAIL

Case Name/No.: In the Matter of the Appeal of:  
A-BRITE BLIND & DRAPERY CLEANING,  
File AHB-WCA-17-26

I, CANDACE GOODALE, declare that:

I am employed in the County of Sacramento, California. I am over the age of 18 years and not a party to this action. My business address is State of California, Department of Insurance, Executive Office, 300 Capitol Mall, Suite 1700, Sacramento, California, 95814.

I am readily familiar with the business practices of the Sacramento Office of the California Department of Insurance for collection and processing of correspondence for mailing with the United States Postal Service. Said ordinary business practice is that correspondence is deposited with the United States Postal Service that same day in Sacramento, California.

On November 16, 2018 following ordinary business practices, I caused a true and correct copy of the following document(s):

**ORDER ADOPTING PROPOSED DECISION; PROPOSED DECISION; and  
NOTICE OF THE LIMITS FOR RECONSIDERATION & JUDICIAL  
REVIEW**

to be placed for collection and mailing at the office of the California Department of Insurance at 300 Capitol Mall, Sacramento, California, 95814 with proper postage prepaid, in a sealed envelope(s) addressed as follows:

(SEE ATTACHED SERVICE LIST)

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on November 16, 2018.

  
CANDACE GOODALE

**CORRECTED DECLARATION OF SERVICE BY MAIL**

Case Name/No.: In the Matter of the Appeal of:  
A-BRITE BLIND & DRAPERY CLEANING,  
File AHB-WCA-17-26

I, CANDACE GOODALE, declare that:

I am employed in the County of Sacramento, California. I am over the age of 18 years and not a party to this action. My business address is State of California, Department of Insurance, Executive Office, 300 Capitol Mall, Suite 1700, Sacramento, California, 95814.

I am readily familiar with the business practices of the Sacramento Office of the California Department of Insurance for collection and processing of correspondence for mailing with the United States Postal Service. Said ordinary business practice is that correspondence is deposited with the United States Postal Service that same day in Sacramento, California.

On November 16, 2018 following ordinary business practices, I caused a true and correct copy of the following document(s):

**DECISION; NOTICE OF TIME LIMITS FOR RECONSIDERATION & JUDICIAL REVIEW**

to be placed for collection and mailing at the office of the California Department of Insurance at 300 Capitol Mall, Sacramento, California, 95814 with proper postage prepaid, in a sealed envelope(s) addressed as follows:

(SEE ATTACHED SERVICE LIST)

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on November 16, 2018.

  
CANDACE GOODALE

# **EXHIBIT B**



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM PACIFIC STANDARD TIME

RATING PERIOD 1-13-17 TO 1-13-18

AMERICAN JETTER  
WEST COVINA, CALIF 91790

DEPOSIT PREMIUM \$1,185.00  
MINIMUM PREMIUM \$980.00  
PREMIUM ADJUSTMENT PERIOD ANNUALLY  
R NA

NAME OF EMPLOYER- LOYA, JAVIER  
(AN INDIVIDUAL EMPLOYER AND NOT JOINTLY WITH ANY OTHER EMPLOYER)

CODE NO. PRINCIPAL WORK AND RATES EFFECTIVE FROM 01-13-17 TO 01-13-18

		PREMIUM BASIS	BASE RATE	INTERIM BILLING RATE*
5187-1	PLUMBING--SHOP AND OUTSIDE	1200	9.15	15.78
5183-1	PLUMBING--SHOP AND OUTSIDE	0	14.04	24.22

\*\*\*\*\*BUREAU NOTE INFORMATION\*\*\*\*\*

SSN 000000000

TOTAL ESTIMATED ANNUAL PREMIUM \$980





HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY [REDACTED]

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM PACIFIC STANDARD TIME

RATING PERIOD 1-13-17 TO 1-13-18

\* INTERIM BILLING RATES WILL BE USED ON PAYROLL REPORTS. THEY TAKE INTO ACCOUNT RATING PLAN CREDITS (OR DEBITS) WHICH WILL APPLY AT FINAL BILLING AND AN ESTIMATE OF YOUR PREMIUM DISCOUNT AS DETAILED BELOW.

RATING PLAN CREDITS (DEBITS) EFFECTIVE FROM 01-13-17 TO 01-13-18

RATING PLAN MODIFIER	1.72500
ESTIMATED PREMIUM DISCOUNT MODIFIER	<u>1.00000</u>
COMPOSITE FACTOR APPLIED TO BASE RATES TO DERIVE INTERIM BILLING RATES	1.72500

```
*****
*
*          PREMIUM DISCOUNT SCHEDULE EFFECTIVE FROM 01-13-17 TO 01-13-18
* ESTIMATED MODIFIED PREMIUM IS DISCOUNTED ACCORDING TO THE FOLLOWING SCHEDULE:
*
*           FIRST                ABOVE
*           $5,000              $5,000
*           0.0%                11.3%
*
*****
```

THE ESTIMATED PREMIUM DISCOUNT IS BASED ON AN ESTIMATE OF YOUR PAYROLL. ACTUAL PREMIUM DISCOUNT APPLIED AT FINAL BILLING WILL BE BASED ON THE ACTUAL PAYROLL REPORTED ON YOUR POLICY AND SUBJECT TO AUDIT.



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

CONTINUOUS POLICY [REDACTED]

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR LOCAL STATE FUND OFFICE BELOW:

CSC - POLICY AT VACAVILLE  
 1020 VAQUERO CIRCLE  
 VACAVILLE, CA 95688  
 (877) 405-4545

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions agreements or limitations of the Policy other than as herein stated.

When countersigned by a duly authorized officer or representative of the State Compensation Insurance Fund, these declarations shall be valid and form part of the Policy.

AUTHORIZED REPRESENTATIVE

PRESIDENT AND CEO

# **EXHIBIT C**



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY [REDACTED]

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM PACIFIC STANDARD TIME

RATING PERIOD 1-13-18 TO 1-13-19

AMERICAN JETTER  
[REDACTED]  
WEST COVINA, CALIF 91790

DEPOSIT PREMIUM	\$1,045.00
MINIMUM PREMIUM	\$1,045.00
PREMIUM ADJUSTMENT PERIOD	ANNUALLY
	R NA

NAME OF EMPLOYER- LOYA, JAVIER  
(AN INDIVIDUAL EMPLOYER AND NOT JOINTLY WITH ANY OTHER EMPLOYER)

CODE NO. PRINCIPAL WORK AND RATES EFFECTIVE FROM 01-13-18 TO 01-13-19

		PREMIUM BASIS	BASE RATE	INTERIM BILLING RATE*
5187-1	PLUMBING--SHOP AND OUTSIDE	1200	8.44	14.56
5183-1	PLUMBING--SHOP AND OUTSIDE	0	14.06	24.25

\*\*\*\*\*BUREAU NOTE INFORMATION\*\*\*\*\*

SSN 000000000

TOTAL ESTIMATED ANNUAL PREMIUM \$1,045



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY [REDACTED]

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM PACIFIC STANDARD TIME

RATING PERIOD 1-13-18 TO 1-13-19

\* INTERIM BILLING RATES WILL BE USED ON PAYROLL REPORTS. THEY TAKE INTO ACCOUNT RATING PLAN CREDITS (OR DEBITS) WHICH WILL APPLY AT FINAL BILLING AND AN ESTIMATE OF YOUR PREMIUM DISCOUNT AS DETAILED BELOW.

RATING PLAN CREDITS (DEBITS) EFFECTIVE FROM 01-13-18 TO 01-13-19

RATING PLAN MODIFIER	1.72500
ESTIMATED PREMIUM DISCOUNT MODIFIER	<u>1.00000</u>
COMPOSITE FACTOR APPLIED TO BASE RATES TO DERIVE INTERIM BILLING RATES	1.72500

\*\*\*\*\*  
\*  
\* PREMIUM DISCOUNT SCHEDULE EFFECTIVE FROM 01-13-18 TO 01-13-19 \*  
\* ESTIMATED MODIFIED PREMIUM IS DISCOUNTED ACCORDING TO THE FOLLOWING SCHEDULE: \*  
\* FIRST ABOVE \*  
\* \$5,000 \$5,000 \*  
\* 0.08 11.38 \*  
\*  
\*\*\*\*\*

THE ESTIMATED PREMIUM DISCOUNT IS BASED ON AN ESTIMATE OF YOUR PAYROLL. ACTUAL PREMIUM DISCOUNT APPLIED AT FINAL BILLING WILL BE BASED ON THE ACTUAL PAYROLL REPORTED ON YOUR POLICY AND SUBJECT TO AUDIT.



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE CONTINUOUS POLICY ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.		

CONTINUOUS POLICY [REDACTED]

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR LOCAL STATE FUND OFFICE BELOW:

CSC - POLICY AT VACAVILLE  
 1020 VAQUERO CIRCLE  
 VACAVILLE, CA 95688  
 (877) 405-4545

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions agreements or limitations of the Policy other than as herein stated.

When countersigned by a duly authorized officer or representative of the State Compensation Insurance Fund, these declarations shall be valid and form part of the Policy.

AUTHORIZED REPRESENTATIVE

PRESIDENT AND CEO

# **EXHIBIT D**



HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
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IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE **CONTINUOUS POLICY** ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY 9122347-19

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM  
PACIFIC STANDARD TIME

RATING PERIOD 1-13-19 TO 1-13-20

\* INTERIM BILLING RATES WILL BE USED ON PAYROLL REPORTS. THEY TAKE INTO ACCOUNT RATING PLAN CREDITS (OR DEBITS) WHICH WILL APPLY AT FINAL BILLING AND AN ESTIMATE OF YOUR PREMIUM DISCOUNT AS DETAILED BELOW.

RATING PLAN CREDITS (DEBITS) EFFECTIVE FROM 01-13-19 TO 01-13-20

RATING PLAN MODIFIER	1.38000
ESTIMATED PREMIUM DISCOUNT MODIFIER	<u>1.00000</u>
COMPOSITE FACTOR APPLIED TO BASE RATES TO DERIVE INTERIM BILLING RATES	1.38000

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*****
*
*           PREMIUM DISCOUNT SCHEDULE EFFECTIVE FROM 01-13-19 TO 01-13-20
* ESTIMATED MODIFIED PREMIUM IS DISCOUNTED ACCORDING TO THE FOLLOWING SCHEDULE:
*           FIRST                ABOVE
*           $5,000              $5,000
*           0.0%                11.3%
*
*****

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THE ESTIMATED PREMIUM DISCOUNT IS BASED ON AN ESTIMATE OF YOUR PAYROLL. ACTUAL PREMIUM DISCOUNT APPLIED AT FINAL BILLING WILL BE BASED ON THE ACTUAL PAYROLL REPORTED ON YOUR POLICY AND SUBJECT TO AUDIT.

**BROKER COPY**





HOME OFFICE	SAN FRANCISCO	ANNUAL RATING ENDORSEMENT
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IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE **CONTINUOUS POLICY** ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.

HERE ARE YOUR NEW RATES FOR THE PERIOD INDICATED. IF YOUR NAME OR ADDRESS SHOULD BE CORRECTED OR IF INSURANCE IS NOT NEEDED FOR NEXT YEAR, PLEASE TELL US.

**IMPORTANT** THIS IS NOT A BILL  
SEND NO MONEY UNLESS STATEMENT IS ENCLOSED

CONTINUOUS POLICY 9122347-19

THE RATING PERIOD BEGINS AND ENDS AT 12:01AM PACIFIC STANDARD TIME

RATING PERIOD 1-13-19 TO 1-13-20

AMERICAN JETTER  
8504 FIRESTONE #188  
DOWNEY, CALIF 90241

DEPOSIT PREMIUM	\$1,610.00
MINIMUM PREMIUM	\$1,610.00
PREMIUM ADJUSTMENT PERIOD	ANNUALLY
	R NA

NAME OF EMPLOYER- LOYA, JAVIER  
(AN INDIVIDUAL EMPLOYER AND NOT JOINTLY WITH ANY OTHER EMPLOYER)

CODE NO. PRINCIPAL WORK AND RATES EFFECTIVE FROM 01-13-19 TO 01-13-20

		PREMIUM BASIS	BASE RATE	INTERIM BILLING RATE*
5183-1	PLUMBING-SHOP<\$26HR	5500	12.83	17.71
5187-1	PLUMBING-SHOP>=\$26HR	1200	6.39	8.82

\*\*\*\*\*BUREAU NOTE INFORMATION\*\*\*\*\*

SSN 00000000

TOTAL ESTIMATED ANNUAL PREMIUM \$1,610

**BROKER COPY**

IT IS AGREED THAT THE CLASSIFICATIONS AND RATES PER \$100 OF REMUNERATION APPEARING IN THE **CONTINUOUS POLICY** ISSUED TO THIS EMPLOYER ARE AMENDED AS SHOWN BELOW.

CONTINUOUS POLICY 9122347-19

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR LOCAL STATE FUND OFFICE BELOW:

CSC - POLICY AT VACAVILLE  
1020 VAQUERO CIRCLE  
VACAVILLE , CA 95688  
(877) 405-4545

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions agreements or limitations of the Policy other than as herein stated.

When countersigned by a duly authorized officer or representative of the State Compensation Insurance Fund, these declarations shall be valid and form part of the Policy.



AUTHORIZED REPRESENTATIVE



PRESIDENT AND CEO

**BROKER COPY**

# **EXHIBIT E**



HOME OFFICE	SAN FRANCISCO	POLICY DECLARATIONS
<b>CALIFORNIA WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY POLICY</b> THESE DECLARATIONS ARE A PART OF THE WORKERS' COMPENSATION POLICY INDICATED HEREON.		

THIS INSURANCE IS EFFECTIVE FROM  
 12:01 A.M., PACIFIC STANDARD TIME  
 12-03-15 TO 12-03-16 AND SHALL  
 AUTOMATICALLY RENEW EACH 12-03  
 UNTIL CANCELLED

CONTINUOUS POLICY 9147758-15

RESILIENCE TREATMENT CENTER	DEPOSIT PREMIUM	\$1,545.00
1940 CENTURY PARK LOS ANGELES, CALIF 90067	MINIMUM PREMIUM PREMIUM ADJUSTMENT PERIOD	\$390.00 MONTHLY N SP

NAME OF EMPLOYER- RESILIENCE TREATMENT CENTER  
 (A CORPORATION)

TRADE NAMES- RESILIENCE TREATMENT CENTER

LOCATIONS- 001 1940 CENTURY PARK, STE 200  
 LOS ANGELES CA 90067

1. WORKERS' COMPENSATION INSURANCE - PART ONE OF THIS POLICY APPLIES TO THE WORKERS' COMPENSATION LAWS OF THE STATE OF CALIFORNIA.
2. EMPLOYER'S LIABILITY INSURANCE - PART TWO OF THIS POLICY APPLIES TO LIABILITY UNDER THE LAWS OF THE STATE OF CALIFORNIA. THE LIMIT OF OUR LIABILITY INCLUDING DEFENSE COSTS UNDER PART TWO IS,  

\$1,000,000

CODE NO. PRINCIPAL WORK AND RATES EFFECTIVE FROM 12-03-15 TO 12-03-16

		PREMIUM BASIS	BASE RATE	INTERI BILLIN RATE
8834-1	PHYSICIANS' PRACTICES AND OUTPATIENT CLINICS--ALL EMPLOYEES--INCLUDING CLERICAL OFFICE EMPLOYEES	480000	3.04	3.2

\*\*\*\*\*BUREAU NOTE INFORMATION\*\*\*\*\*

GARAI, ANDIE P,S,T 100.00%

FEIN 474573476

TOTAL ESTIMATED ANNUAL PREMIUM \$15,450



HOME OFFICE	SAN FRANCISCO	POLICY DECLARATIONS
<b>CALIFORNIA WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY POLICY</b> THESE DECLARATIONS ARE A PART OF THE WORKERS' COMPENSATION POLICY INDICATED HEREON.		

CONTINUOUS POLICY 9147758-15

\* INTERIM BILLING RATES WILL BE USED ON PAYROLL REPORTS. THEY TAKE INTO ACCOUNT RATING PLAN CREDITS (OR DEBITS) WHICH WILL APPLY AT FINAL BILLING AND AN ESTIMATE OF YOUR PREMIUM DISCOUNT AS DETAILED BELOW.

RATING PLAN CREDITS (DEBITS) EFFECTIVE FROM 12-03-15 TO 12-03-16

RATING PLAN MODIFIER	1.15000
ESTIMATED PREMIUM DISCOUNT MODIFIER	<u>0.92068</u>
COMPOSITE FACTOR APPLIED TO BASE RATES TO DERIVE INTERIM BILLING RATES	1.05878

\*\*\*\*\*

\*  
 \* PREMIUM DISCOUNT SCHEDULE EFFECTIVE FROM 12-03-15 TO 12-03-16 \*  
 \* ESTIMATED MODIFIED PREMIUM IS DISCOUNTED ACCORDING TO THE FOLLOWING SCHEDULE: \*  
 \* FIRST ABOVE \*  
 \* \$5,000 \$5,000 \*  
 \* 0.0% 11.3% \*  
 \*

\*\*\*\*\*

THE ESTIMATED PREMIUM DISCOUNT IS BASED ON AN ESTIMATE OF YOUR PAYROLL. ACTUAL PREMIUM DISCOUNT APPLIED AT FINAL BILLING WILL BE BASED ON THE ACTUAL PAYROLL REPORTED ON YOUR POLICY AND SUBJECT TO AUDIT.



IMPORTANT - THIS IS NOT A BILL. SEND NO MONEY UNLESS STATEMENT IS ENCLOSED.

HOME OFFICE	SAN FRANCISCO	POLICY DECLARATIONS
<b>CALIFORNIA WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY POLICY</b> THESE DECLARATIONS ARE A PART OF THE WORKERS' COMPENSATION POLICY INDICATED HEREON.		

CONTINUOUS POLICY 9147758-15

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions agreements or limitations of the Policy other than as herein stated.

When countersigned by a duly authorized officer or representative of the State Compensation Insurance Fund, these declarations shall be valid and form part of the Policy.

AUTHORIZED REPRESENTATIVE

PRESIDENT AND CEO

1 Betsy C. Manifold (182450)  
manifold@whafh.com

2 **WOLF HALDENSTEIN ADLER**  
3 **FREEMAN & HERZ LLP**

4 750 B Street, Suite 1820  
San Diego, CA 92101  
Tel: (619) 239-4599  
Fax: (619) 234-4599

5 MICHAEL LISKOW (243899)  
mliskow@calcaterrapollack.com  
6 **CALCATERRA POLLACK LLP**  
7 1140 Avenue of the Americas, 9th Floor  
New York, NY 10036-5803  
Tel: (212) 899-1761  
8 Fax: (332) 206-2073

9 SCOTT M. PRIZ (*pro hac vice*)  
priz@priz-law.com  
10 **PRIZ LAW, LLC**  
11 3230 S. Harlem Ave., Suite 221B  
Riverside, IL 60546  
Tel: (708) 268-5768

12 *Counsel for Plaintiffs and the Class*

13  
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF LOS ANGELES**

16  
17 AMERICAN JETTER & PLUMBING, INC. and  
18 RESILIENCE TREATMENT CENTER, on behalf  
of itself and all others similarly situated,

19 Plaintiffs,

20 v.

21 STATE COMPENSATION INSURANCE FUND, a  
22 public enterprise fund, and DOES 1 through 50,  
23 inclusive,

24 Defendants.

Case No. 19STCV36307

**PROOF OF SERVICE**

(COMPLEX LITIGATION)

Case assigned for all purposes to the  
Honorable Amy D. Hogue  
Spring Street Courthouse

DATE:

TIME:

DEPT.: 7 at Spring Street Courthouse

1 **PROOF OF SERVICE**

2 I, Michele Mitchell, the undersigned, do declare as follows:

3 I am a resident of the County of San Diego; I am over the age of 18 years, and not a party to,  
4 or have any interest in, this legal action; my business address is 750 B Street, Suite 1820, San Diego,  
5 California 92101.

6 On June 10, 2022, I served the following document(s):

7 **SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES & INJUNCTIVE**  
8 **RELIEF**

9 on the interested parties in this action:


10 Noah Graff, Assistant Chief Counsel  
NGraff@scif.com  
11 R. Timothy O'Connor, Staff Counsel  
RTOConnor@scif.com  
12 John B. De Leon, Staff counsel  
JDeLeon2@scif.com  
13 Steven Clarence, Staff Counsel  
SCLarence@scif.com  
14 STATE COMPENSATION INSURANCE FUND  
900 Corporate Center Drive, Suite 401  
15 Monterey Park, CA 91754

16 *Counsel for Defendant*  
17 *State Compensation Insurance Fund*

18 in the manner identified below on all interested parties:

19 **(XX) VIA ELECTRONIC MAIL** – I electronically transmitted a copy of the  
20 document(s) listed above in a pdf or word processing format via CASE  
21 ANYWHERE to those persons noticed above at their respective electronic service  
addresses pursuant to Cal. Rules of Court, rule 2.2515(g) on the date set forth.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing  
23 is true and correct. Executed this 10th day of June 2022 at San Diego, California.

24 

25 \_\_\_\_\_  
26 MICHELE I. MITCHELL

27 26023