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LEGAL DIVISION
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8 **BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

9 In the Matter of

ORDER TO SHOW CAUSE AND
STATEMENT OF CHARGES /
ACCUSATION

(Cal. Ins. Code, §§790.03, 700(c), 704)

File No. UPA 2007-00020

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12 CALIFORNIA AUTOMOBILE
13 INSURANCE COMPANY,

14
15 Respondent.
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17 WHEREAS, the Insurance Commissioner of the State of California has reason to believe
18 that the above Respondent, CALIFORNIA AUTOMOBILE INSURANCE COMPANY, has been
19 engaged or is engaging in this State in the unfair methods of competition or unfair or deceptive
20 acts or practices set forth in the STATEMENT OF CHARGES/ACCUSATION contained herein,
21 each falling within Section 790 et seq. of the California Insurance Code;

22 WHEREAS, the Insurance Commissioner has reason to believe that a proceeding with
23 respect to the alleged acts of Respondent would be in the public interest;

24 NOW, THEREFORE, and pursuant to the provisions of Section 790.05 of the California
25 Insurance Code, Respondent is ordered to appear before the Insurance Commissioner of the State
26 of California on **December 10, 2007, at 1515 Clay Street, Ste. 206, Oakland, California, at**
27 **9:00 A.M.**, and show cause, if any cause there be, why the Insurance Commissioner should not
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1 issue an Order to said Respondent requiring Respondent to Cease and Desist from engaging in
2 the methods, acts, and practices set forth in the STATEMENT OF CHARGES contained herein
3 in Paragraphs II.A. through C., inclusive.

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5 **I.**

6 **JURISDICTION AND BACKGROUND**

7 A. Respondent CALIFORNIA AUTOMOBILE INSURANCE COMPANY
8 (“California Auto” or “Respondent”) is, and at all relevant times has been, the holder of a
9 Certificate of Authority issued by the Commissioner and is authorized to transact insurance
10 business in California. Respondent is part of the Mercury Group of Companies, designated by
11 the National Association of Insurance Commissioners (NAIC) as Group Number 0660. Mercury
12 Group of Companies, itself, is not a specific entity licensed by the California Insurance
13 Commissioner.

14 B. Respondent is a California corporation licensed in the State of California to transact
15 automobile, fire and miscellaneous (among other) insurance, as defined in Section 100 et seq. of the
16 California Insurance Code.

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18 **II.**

19 **STATEMENT OF CHARGES / ACCUSATION**

20 A. Introduction

21 It is alleged that Respondent knowingly engaged in the following conduct on a single
22 occasion or performed it with such frequency as to indicate a general business practice:

- 23
- 24 • Misrepresented to Claimant pertinent facts relating to coverages at issue;
 - 25 • Failed to acknowledge and act reasonably promptly upon communications with
26 respect to a claim;
 - 27 • Failed to adopt and implement reasonable standards for the prompt investigation
28 and processing of a claim;

- 1 • Failed to affirm or deny coverage of a claim within a reasonable time after proof of
- 2 loss requirements were completed and submitted;
- 3 • Failed to attempt in good faith to effectuate the prompt, fair, and equitable
- 4 settlement of a claim in which liability had become reasonably clear;
- 5 • Failed to conduct its business in this State in its own name.

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7 B. The Accident

8 In third-party claim number 84L85635, the following two-vehicle accident occurred, as

9 ultimately confirmed in binding arbitration between Respondent and Claimant's subrogating

10 insurer:

11 On April 24, 2006, Claimant was driving her 2002 Ford Explorer on a 4-lane road (2 lanes

12 in each direction) in the left, or median, lane. Respondent's insured ("Insured") pulled out of the

13 MacDonald's driveway in her 1995 Lexus, made an unsafe merge into traffic going the same way

14 as Claimant by making too wide a right turn into the median lane, striking Claimant's vehicle in

15 its right rear passenger door. Physical damage resulted to both vehicles. No bodily injury

16 occurred to either party. Claimant in no way contributed to the accident. Insured's actions were

17 the sole and proximate cause of the accident.

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19 C. The Claim

20 The following additional facts have been gleaned from Claimant's Request for Assistance

21 to the Department of Insurance ("Department") and from documents provided by Respondent to

22 the Department:

23 Insured was carrying no proof of insurance at the scene of the accident but provided her

24 telephone number to Claimant, who phoned, reached Insured with no problem, and received from

25 Insured the information that she was insured by "Mercury Insurance" under policy number

26 N8898512. Insured's carrier actually was California Auto, Respondent herein, although all

27 correspondence from Respondent is on "Mercury Insurance Group" letterhead, with "California

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1 Automobile Insurance Company only occasionally appearing over or under the signature at
2 letter's end. The specimen copy of Insured's automobile policy requested and received by the
3 Department carries the identifier, "The Mercury Companies, Home Office – Brea, California."

4 Claimant promptly contacted her own insurer, AMCO Insurance Company (of the Allied
5 Insurance Group), provided a recorded statement for AMCO, and, upon request, provided same to
6 Respondent.

7 Insured at the outset, on May 2, 2006, disputed Claimant's version of events, according to
8 Respondent's file notes, asserting that Claimant had changed lanes, entering the righthand lane as
9 Insured pulled out of the driveway. After that initial assertion to Respondent, however, Insured
10 made herself unavailable and became completely uncooperative with Respondent, a fact
11 Respondent could not have failed to recognize later than July 31, 2006, if not sooner.

12 To explain further:

13 Respondent's file notes of May 2, 2006, describe the claims handling practice of sending
14 "status letters and [making] 2 phone call attempts every 30 days to all parties with unresolved
15 claims . . . ," among others. Hence, the file notes show attempts were made to reach Insured just
16 once a month to month-and-a-half until March 2007 (except as will be shown shortly). The notes
17 show Insured failing to return the messages left for her on 5/22/06, 5/31/06, 7/17/06, 7/31/06,
18 11/10/06, 12/19/06, 2/2/07, 2/27/07, 2/28/07 and 3/1/07. Insured failed to attend a July 31, 2006,
19 scheduled recording of her statement. Surprisingly, no attempt was made by Respondent to reach
20 Insured between July 31 and November 10, 2006, leaving the "R/S" (recorded statement) not
21 taken.

22 Thus, all Respondent had in its claim file to suggest a version of the accident different
23 from Claimant's was whatever Insured said on the phone to Respondent on May 2, 2006, a week
24 after the accident. That did not change until March 27, 2007 – almost a year after the accident.

25 In the meantime, Claimant had waited to repair her car, having been phoned by
26 Respondent with the information that "they could not contact their insured and . . . that the
27 process could take a considera[ble] amount of time." After a few months of waiting and being
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1 phoned again by Respondent with the same limited information, Claimant sought and received
2 proceeds under her own insurance policy with which to repair her car, in the amount of \$1687.99.
3 Claimant had to pay a \$500.00 deductible toward repairs, plus \$12.32 in out-of-pocket rental car
4 expenses.

5 AMCO made a subrogation demand of Respondent on or about September 20, 2006, for a
6 total of \$2,187.99 for Claimant's vehicle repairs and deductible. Attached to the subrogation
7 demand were damage estimates and photos of both Claimant's and Insured's cars dated,
8 respectively, May 2, 2006, and April 27, 2006. The subrogation demand is date-stamped as
9 received by Respondent on September 25, 2006. On October 23, 2006, the subrogation demand
10 was amended to add \$150.00 for a rental car. Respondent neither paid the claim nor attempted to
11 contact Insured to discuss the situation or reschedule a recorded statement.

12 On February 2, 2007, AMCO filed an application with the Automobile Subrogation
13 Arbitration Forum ("the Forum"), having received nothing from Respondent. The same day, as
14 illustrated above, Respondent made its first attempt since mid-December to reach Insured. On
15 February 12th Claimant submitted a Request for Assistance with the Department.

16 On March 16, 2007, Respondent received a request from the Department for its file notes
17 showing "a time line [of the claim] from start to finish." On or about March 27, 2007, Insured
18 apparently provided Respondent with a recorded statement through a field visit "on a rush basis"
19 from a claims agent – something that could have been ordered and accomplished by Respondent
20 many months before.

21 According to its website, Arbitration Forums' Automobile Subrogation Forum is designed
22 to "resolve intercompany subrogation disputes amongst insurers, self-insureds and large retention
23 commercial insureds involving automobile physical damage not in excess of \$100,000 unless
24 agreed upon by all parties."

25 First scheduled for April 17, 2007, the arbitration in the claim at bar was rescheduled by
26 the Forum itself to June 12, 2007.

27 The arbitrator found on June 27, 2007, for Claimant's carrier, AMCO, in the amount of
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1 \$2,337.99, i.e., that AMCO proved liability of the Insured at 100%, California Auto failed to
2 prove liability of Claimant, and the decision was supported by the vehicle damage. It took two
3 (2) weeks for Respondent to cut checks to Claimant and to AMCO.

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5 **IV.**

6 **CONCLUSION**

7 A. California Insurance Code, Section 790.03(h)(1)

8 The facts alleged above show that Respondent has misrepresented to a claimant pertinent
9 facts or insurance policy provisions relating to any coverages at issue, constituting grounds under
10 Section 790.05 of the Insurance Code for the Insurance Commissioner to order Respondent to
11 cease and desist from engaging in such unfair acts or practices and to pay a civil penalty not to
12 exceed five thousand dollars (\$5,000) for each act or, if the act or practice was willful, a civil
13 penalty not to exceed ten thousand dollars (\$10,000) for each act as set forth under Section
14 790.035 of the Insurance Code.

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16 B. California Insurance Code, Section 790.03(h)(2); California Code of Regulations,
17 Title 10, Sections 2695.5(b), 2695.7(c)(1)

18 The facts alleged above show that Respondent has failed to acknowledge and act
19 reasonably promptly upon communications with respect to claims arising under insurance
20 policies, constituting grounds, under Section 790.05 of the Insurance Code, for the Insurance
21 Commissioner to order Respondent to cease and desist from engaging in such unfair acts or
22 practices and to pay a civil penalty not to exceed five thousand dollars (\$5,000) for each act, or if
23 the act or practice was willful, a civil penalty not to exceed ten thousand dollars (\$10,000) for
24 each act as set forth under Section 790.035 of the Insurance Code.

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1 C. California Insurance Code, Section 790.03(h)(3); California Code of Regulations,
2 Title 10, Section 2695.7(d)

3 The facts alleged above show that Respondent has failed to adopt and implement
4 reasonable standards for the prompt investigation and processing of claims arising under
5 insurance policies, constituting grounds, under Section 790.05 of the Insurance Code, for the
6 Insurance Commissioner to order Respondent to cease and desist from engaging in such unfair
7 acts or practices and to pay a civil penalty not to exceed five thousand dollars (\$5,000) for each
8 act, or if the act or practice was willful, a civil penalty not to exceed ten thousand dollars
9 (\$10,000) for each act as set forth under Section 790.035 of the Insurance Code.

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11 D. California Insurance Code, Section 790.03(h)(4); California Code of Regulations,
12 Title 10, Section 2695.7(b)

13 The facts alleged above show that Respondent has failed to affirm or deny coverage of a
14 claim within a reasonable time after proof of loss requirements have been completed and
15 submitted, constituting grounds, under Section 790.05 of the Insurance Code, for the Insurance
16 Commissioner to order Respondent to cease and desist from engaging in such unfair acts or
17 practices and to pay a civil penalty not to exceed five thousand dollars (\$5,000) for each act, or if
18 the act or practice was willful, a civil penalty not to exceed ten thousand dollars (\$10,000) for
19 each act as set forth under Section 790.035 of the Insurance Code.

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21 E. California Insurance Code, Section 790.03(h)(5); California Code of Regulations,
22 Title 10, Section 2695.7(d)

23 The facts alleged above show that Respondent has not attempted in good faith to
24 effectuate prompt, fair, and equitable settlements of claims in which liability has become
25 reasonably clear, constituting grounds, under Section 790.05 of the Insurance Code, for the
26 Insurance Commissioner to order Respondent to cease and desist from engaging in such unfair
27 acts or practices and to pay a civil penalty not to exceed five thousand dollars (\$5,000) for each
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1 act, or if the act or practice was willful, a civil penalty not to exceed ten thousand dollars
2 (\$10,000) for each act as set forth under Section 790.035 of the Insurance Code.

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4 F. California Insurance Code, Section 880

5 The facts alleged above show that Respondent has failed to conduct its business in this
6 State in its own name, constituting grounds for the Insurance Commissioner to revoke the
7 Certificate of Authority of Respondent, pursuant to Section 700(c) of the Insurance Code.

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9 G. California Insurance Code, Section 700(c)

10 The facts alleged above show that Respondent has conducted its business in
11 noncompliance with the requirements as to its business set forth in the California Insurance Code
12 and in the other laws of the State of California, constituting grounds for the Insurance
13 Commissioner to revoke the Certificate of Authority of Respondent, pursuant to Section 700(c)
14 of the Insurance Code.

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16 H. California Insurance Code, section 704

17 The facts alleged above show that Respondent has not carried out its contracts in good
18 faith, constituting grounds for the Insurance Commissioner to suspend the Certificate of
19 Authority of Respondent for not exceeding one year, pursuant to Section 704 of the Insurance
20 Code.

21
22 WHEREFORE Petitioner prays for judgment against Respondent as follows:

23 (1) An Order to Cease and Desist from engaging in such unfair acts or practices in
24 violation of Section 790.03 of the California Insurance Code, as set forth above;

25 (2) For willful acts in violation of Section 790.03 and the regulations promulgated
26 pursuant to Section 790.10 of the California Insurance Code, as set forth above, a penalty in the
27 amount of one hundred thousand dollars (\$100,000);
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1 (3) For acts in violation of Sections 700(c) and 704 of the California Insurance Code,
2 suspension of Respondent's Certificate of Authority for not exceeding one year.

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Dated: September 24, 2007

DEPARTMENT OF INSURANCE

By _____
CINDY A. OSSIAS
Senior Staff Counsel