

1 CALIFORNIA DEPARTMENT OF INSURANCE

Legal Division

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

10
11 In the Matter of Alliance United Insurance
Company.

12
13 Respondent.

File No.: Pending

OAH No. Pending

14
15 **ORDER TO SHOW CAUSE AND NOTICE**
OF HEARING

(Ins. Code §§790.03, 790.05); (Ins. Code §§
790.03(h)(1), (2), & (3))

16
17 **STATEMENT OF**
CHARGES/ACCUSATION
(10 CCR §§ 2695.1, et seq.)

18 and

19 **RELIEF REQUESTED AND PRAYER AND**
NOTICE OF MONETARY PENALTY
(Ins. Code §§ 704.7, 790.03, 790.035, 790.05)

20 Date: On a date to be set.

21 Time:

22 Place: Office of Administrative Hearings, Los
23 Angeles, CA

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25
26 **ORDER TO SHOW CAUSE**

1 WHEREAS, the Department has reason to believe that Alliance United Insurance
2 Company ("RESPONDENT") has engaged in or is engaging in this State in the unfair methods
3 of competition or unfair or deceptive acts or practices, and other unlawful acts set forth in the
4 STATEMENT OF SPECIFIC CHARGES/ACCUSATION contained herein; and

5
6 WHEREAS, the Insurance Commissioner of the State of California ("Commissioner" or
7 "Department") has reason to believe that a proceeding with respect to the alleged acts of the
8 RESPONDENT would be in the public interest;

9 NOW, THEREFORE, and pursuant to the provisions of California Insurance Code (CIC)
10 section 790.05, RESPONDENT is ordered to appear at the time, date and location to be
11 determined by the Office of Administrative Hearings, and show cause, if any cause there be,
12 why the Commissioner should not issue an Order requiring RESPONDENT, to Cease and
13 Desist from engaging in the methods, acts, and practices set forth in the STATEMENT OF
14 SPECIFIC CHARGES/ACCUSATION contained herein, and imposing the penalties set forth in
15 CIC sections 704, subdivision (b), 704.7, and 790.035 and other relief as requested.
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17 **JURISDICTION AND BACKGROUND**

18 1. Pursuant to Government Code section 11503, the Department files this matter in
19 its official capacity.

20 2. RESPONDENT is and at all relevant times has been holder of Certificate of
21 Authority issued (Certificate Number 4532-8) by the Commissioner and is authorized to transact
22 insurance business in the state of California.
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24 3. Pursuant to sections 12921.1(a) and 12921.3(a) of the CIC, the Department
25 conducts a program to receive and respond to consumer inquiries, receive and investigate
26 consumer complaint, and when warranted, bring enforcement actions against insurers.
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1 4. Under this program, the Department has received at least two complaints against
2 RESPONDENT involving a refusal to pay labor rates charged by body shops where third party
3 claimants chose to repair their vehicles. As set forth in "Statement of Specific
4 Charges/Accusation" below, the Department believes and thereby alleges that RESPONDENT's
5 acts or practices of arbitrarily capping and denying labor rates without support violate section
6 790.03(h) of CIC and the following areas of the California Code of Regulations, title 10, chapter
7 5, subchapter 7.5, entitled Fair Claims Settlement Practices Regulations ("10 CCR"):

9 a) Failing to send a written denial of a claim, in violation of 10 CCR 2695.7(b)(1) and CIC
10 sections 790.03(h)(2) & (3);

11 b) Making an offer that is unreasonably low to settle a claim, in violation of 10 CCR
12 section 2695.7(g) and CIC sections 790.03(h)(1) & (5); and

13 c) Failing to prepare estimates for an amount that will allow for repairs to be made in
14 accordance with accepted trade standards for good and workmanlike automotive repairs, failing to
15 pay the difference between the written estimate and a higher estimate or to reasonably adjust
16 written estimates prepared by the shop of the claimant's choice, and failing to provide support in
17 the form of an auto body repair labor rate survey or by any other data or evidence that capping
18 and denying the labor rate charged by the claimant's chosen auto body repair shop was reasonable
19 in violation of 10 CCR section 2695.8(f) and CIC sections 790.03(h)(1) & (5).
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21 5. The Department further alleges the practices, acts and violations as set forth in
22 "Statement of Specific Charges/Accusation" below indicate RESPONDENT knowingly
23 committed on a single occasion, or performed with such frequency as to indicate a general
24 business practice, the following unfair claims settlement acts or practices:

25 a) Misrepresenting to claimants pertinent facts or insurance policy provisions relating to
26 any coverages at issue in violation of CIC section 790.03(h)(1);
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1 b) Failing to acknowledge and act reasonably promptly upon communications with
2 respect to claims arising under insurance policies, in violation of CIC section 790.03(h)(2);

3 c) Failing to adopt and implement reasonable standards for prompt investigation and
4 processing of claims arising under insurance policies in violation of CIC section 790.03(h)(3);
5 and
6

7 d) Not attempting in good faith to effectuate prompt, fair and equitable settlements of
8 claims in which liability has become reasonably clear, in violation of CIC section 790.03(h)(5).

9 **STATEMENT OF SPECIFIC CHARGES/ACCUSATION**

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11 **Department File No. CSB-6965848**

12 6. On September 26, 2014, the Department received a complaint by Marvin Guthrie
13 against RESPONDENT. The complainant had a third-party claim with RESPONDENT for
14 damage to his vehicle. The complainant took his vehicle to a body shop of his choice, located in
15 Oxnard California, for repairs. That shop wrote an estimate that was greater than
16 RESPONDENT's written estimate for labor rates. RESPONDENT refused to pay the body
17 shop's labor rate of \$65. Instead, RESPONDENT was only willing to pay \$55 causing the
18 complainant to pay the difference in labor rates.
19

20 7. RESPONDENT stated that it declined to pay the body shop's labor rate because
21 the rate exceeded the usual and customary rates for the area.¹ RESPONDENT, however, had not
22 conducted a labor rate survey or provided any other credible evidence that the labor rate used to
23 cap or deny the portion of the claim was reasonable for the geographic area where the
24 complainant's chosen shop was located. Under these circumstances, RESPONDENT's
25 unsupported reduction of the body shop's labor rate was arbitrary and not reasonable.
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¹ See RESPONDENT's letters, dated August 26, 2014 and October 9, 2014, to Complainant

1 RESPONDENT's acts or practices are a violation of CIC sections 790.03(h)(1) & 5 and 10 CCR
2 section 2695.7(g).

3 8. When the written estimate prepared by claimant's body shop exceeded
4 RESPONDENT's estimate on labor rates, RESPONDENT had the option to either pay the
5 difference between the labor rates or reasonably adjust the estimates prepared by the body shop
6 of claimant's choice. (10 CCR section 2695.8(f).) RESPONDENT did not pay the higher repair
7 shops estimate and failed to provide support in the form of an auto body repair labor rate survey
8 or by any other data or evidence that capping and denying the labor rate charged by the
9 complainant's chosen auto body repair shop was reasonable. By failing to comply with either
10 option, RESPONDENT's acts or practices are in violation of CIC Sections 790.03(h)(1) & (5)
11 and 10 CCR section 2695.8(f).
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14 **Department File No. CSB-6970014**

15 9. On October 9, 2014, the Department received a complaint by Alberto Ponce
16 against RESPONDENT. The complainant had a third-party claim with RESPONDENT for
17 damage to his vehicle. The complainant took his vehicle to a body shop of his choice, located in
18 Oxnard California, for repairs. That shop wrote an estimate that was greater than
19 RESPONDENT's written estimate for labor rates. RESPONDENT refused to pay the body
20 shop's labor rate of \$65. Instead, RESPONDENT was only willing to pay \$58 causing the
21 complainant to pay the difference in labor rates.
22

23 10. RESPONDENT contended that it refused to pay the body shop's labor rate
24 because the prevailing labor rate for the market area was between \$52 to \$58 RESPONDENT,
25 however, had not conducted a labor rate survey or provided any other credible evidence that the
26 labor rate used to cap or deny the portion of the claim was reasonable for the geographic area
27 where the complainant's chosen shop was located. Under these circumstances,
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1 RESPONDENT's unsupported reduction of the labor rate from \$65 to \$58 was arbitrary and not
2 reasonable. RESPONDENT's acts or practices are a violation of CIC sections 790.03(h)(1) &
3 (5) and 10 CCR section 2695.7(g).

4 11. When the written estimate prepared by claimant's body shop exceeded
5 RESPONDENT's estimate on labor rates, RESPONDENT had the option to either pay the
6 difference between the labor rates or reasonably adjust the estimates prepared by the body shop
7 of claimant's choice. (10 CCR section 2695.8(f).) RESPONDENT did not pay the higher repair
8 shop's estimate and failed to provide support in the form of an auto body repair labor rate
9 survey or by any other data or evidence that capping and denying the labor rate charged by the
10 complainant's chosen auto body repair shop was reasonable. By failing to comply with either
11 option, RESPONDENT is in violation of CIC sections 790.03(h)(1) & (5) and 10 CCR section
12 2695.8(f).
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15 12. There is no evidence that RESPONDENT sent the claimant a written denial for
16 the partial denial of the labor rate difference. RESPONDENT's failure to send a written denial
17 is a violation of CIC sections 790.03(h)(2) & (3) and 10 CCR section 2695.7(b)(1).

18 **STATEMENT OF MONETARY PENALTY ORDER, AND STATEMENT OF**
19 **POTENTIAL LIABILITY, PURSUANT TO CIC § 790 et. Seq**
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21 1. The facts alleged above in Paragraphs 6 through 12 show that RESPONDENT
22 knowingly committed acts of misrepresenting to claimants pertinent facts or insurance policy
23 provisions relating to any coverages at issue in violation of Insurance Code section 790.03(h)(1);
24 failing to acknowledge and act reasonably promptly upon communications with respect to claims
25 arising under insurance policies, in violation of Insurance Code section 790.03(h)(2); failing to
26 adopt and implement reasonable standards for prompt investigation and processing of claims
27 arising under insurance policies in violation of CIC section 790.03(h)(3); and not attempting in
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1 good faith to effectuate prompt, fair and equitable settlement of claims in which liability had
2 become reasonable clear, in violation of CIC section 790.03(h)(5).

3 2. The facts alleged above in Paragraphs 6 through 12 constitute grounds, under CIC
4 Section 790.05, for the Commissioner to order RESPONDENT to cease and desist from engaging
5 in such unfair acts or practices and to pay a civil penalty not to exceed five thousand dollars
6 (\$5,000) for each act, or if the act or practice was willful, a civil penalty not to exceed ten
7 thousand dollars (\$10,000) for each act as set forth under CIC Section 790.035.
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9 3. The facts alleged above in Paragraphs 6 through 12 show that RESPONDENT has
10 failed to carry out its contracts in good faith, constituting grounds for the Commissioner to
11 suspend the Certificate of Authority of Respondent for a period not to exceed one year pursuant
12 to CIC Section 704(b), or to impose a fine in an amount not exceeding \$55,000 in lieu of
13 suspension pursuant to the authority of CIC Section 704.7.
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15 **PETITION FOR DISCIPLINE AND ORDER**

16 WHEREFORE, Petitioner prays for judgment against RESPONDENT as follows:

17 1. An Order to Cease and Desist from engaging in such unfair acts or practices in
18 violation of CIC Section 790.03 as set forth above;

19 2. For acts in violation of CIC Section 790.03 and the regulations promulgated
20 pursuant to CIC Section 790.10, as set forth above, a civil penalty not to exceed five thousand
21 dollars (\$5,000) for each act or, if the act or practice was willful, a civil penalty not to exceed ten
22 thousand dollars (\$10,000) for each act.
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24 For acts in violation of CIC Section 704(b), suspension of RESPONDENT's certificate of
25 authority for not exceeding one year or a fine in the amount fifty-five thousand dollars (\$55,000)
26 in lieu of suspension.
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1 3. The California Department of Insurance reserves the right to amend this Notice
2 of Noncompliance, Order to Show Cause, Statement of Charges/Accusations, as new facts
3 become available.

4 Dated: September 23, 2015

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6 CALIFORNIA DEPARTMENT OF INSURANCE

7
8 BY

 
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