

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 Allstate Indemnity
Company,

12
13 Respondents.

File No.: Pending

OAH No. Pending

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

(Ins. Code §§790.03, 790.05);

16 **STATEMENT OF**
CHARGES/ACCUSATION

(Ins. Code §§ 790.03(h)(1), (2) & (3); (10 CCR
§§ 2695.1, et seq.)

18 and

19 **NOTICE OF MONETARY PENALTY**

(Ins. Code §§ 704.7, 790.03, 790.035, 790.05)

21 Date: On a date to be set.

22 Time:

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

25
26 **ORDER TO SHOW CAUSE**

27 WHEREAS, the Department has reason to believe that Allstate Indemnity Company
28 ("RESPONDENT") has engaged in or are engaging in this State in the unfair methods of

1 competition or unfair or deceptive acts or practices, and other unlawful acts set forth in the
2 STATEMENT OF SPECIFIC CHARGES/ACCUSATION contained herein; and

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

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

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

19 2. RESPONDENT is and at all relevant times has been holder of Certificate of
20 Authority issued (Certificate Number 1633-7) by the Commissioner and is authorized to transact
21 insurance business in the state of California.
22

23 3. Pursuant to sections 12921.1(a) and 12921.3(a) of the CIC, the Department
24 conducts a program to receive and respond to consumer inquiries, receive and investigate
25 consumer complaints, and when warranted, bring enforcement actions against insurers.

26 4. Under this program, the Department has received at least five complaints against
27 RESPONDENT involving a refusal to pay labor rates charged by body shops where claimants
28

1 chose to repair their vehicles. As set forth in "Statement of Specific Charges/Accusation" below,
2 the Department believes and thereby alleges that RESPONDENT's acts or practices of arbitrarily
3 capping and denying labor rates without support violate the following areas of the California
4 Code of Regulations, title 10, chapter 5, subchapter 7.5, entitled Fair Claims Settlement Practices
5 Regulations ("10 CCR") and section 790.03(h) of CIC:
6

7 a) Failing to send a written denial of a claim, in violation of 10 CCR 2697.7(b)(1) and CIC
8 sections 790.03(h)(2) & (3);

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

11 c) Failing to prepare estimates for an amount that will allow for repairs to be made in
12 accordance with accepted trade standards for good and workmanlike automotive repairs, failing to
13 pay the difference between the written estimate and a higher estimate or to reasonably adjust
14 written estimates prepared by the shop of the claimants' choice, and failing to provide support in
15 the form of an auto body repair labor rate survey or by any other data or evidence that capping
16 and denying the labor rate charged by the claimant's chosen auto body repair shop was reasonable
17 in violation of 10 CCR section 2695.8(f) and CIC sections 790.03(h) (1) & (5).
18

19 5. The Department further alleges the practices, acts and violations as set forth in
20 "Statement of Specific Charges/Accusation" below indicate RESPONDENT knowingly
21 committed on a single occasion, or performed with such frequency as to indicate a general
22 business practice, the following unfair claims settlement acts or practices:
23

24 a) Making or disseminating or cause to be made or disseminated before the public in this
25 state any statement containing any assertion, representation or statement which is known or
26 should be known to be untrue, deceptive, or misleading in violation of CIC section 790.03(b);
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1 b) Misrepresenting to claimants pertinent facts or insurance policy provisions relating to
2 any coverages at issue in violation of CIC section 790.03(h)(1);

3 c) Failing to acknowledge and act reasonably promptly upon communications with respect
4 to claims arising under insurance policies, in violation of CIC section 790.03(h)(2);

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

7 e) 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 and
10

11 c) Failing to provide promptly a reasonable explanation of the basis relief on in the
12 insurance policy, in relation to the facts or applicable law, for the denial of a claim or for the offer
13 of a compromise settlement, in violation of CIC section 790.03(h)(13).
14

15 **STATEMENT OF SPECIFIC CHARGES/ACCUSATION**

16 **Department File No. CSB-6838900**

17 1. On or about October 15, 2013, the Department received a complaint by Douglas
18 Marshall of Autotrends against RESPONDENT. Autotrends, which is located in Oakland
19 California, was the auto body shop chosen by RESPONDENT's third-party claimant to repair her
20 vehicle. The complainant alleged RESPONDENT refused to pay the body shop's labor rate of
21 \$90. Instead, RESPONDENT was only willing to pay a labor rate of \$78.
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23 2. After the Department intervened, RESPONDENT agreed to increase, and did
24 increase the labor rate payment from \$78 to \$84.
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1 3. RESPONDENT contended the rate it offered to pay accepted by "the vast majority
2 of shops."¹ RESPONDENT characterized the labor rate it paid as "reasonable"² and
3 "competitive."³ RESPONDENT, however, had not conducted a labor rate survey or provided any
4 other credible evidence that the labor rate used to cap or deny the portion of the claim was
5 reasonable within complainant's geographic area. Under these circumstances, RESPONDENT's
6 reduction of the body shop's labor rate was unsupported, arbitrary and not reasonable.
7
8 RESPONDENT's acts or practices are a violation of CIC sections 790.03(h)(1) & (5) and 10
9 CCR section 2695.7(g).

10 4. When the written estimate prepared by claimant's body shop exceeded
11 RESPONDENT's estimate on labor rates, RESPONDENT had the option to either pay the
12 difference between the labor rates or reasonably adjust the estimates prepared by the body shop
13 of claimant's choice. (10 CCR section 2695.8(f).) RESPONDENT did not pay the repair shop's
14 estimate and failed to provide support in the form of an auto body repair labor rate survey or by
15 any other data or evidence that capping and denying the labor rate charged by the complainant's
16 chosen auto body repair shop was reasonable. By failing to comply with either option,
17 RESPONDENT is in violation of CIC sections 790.03(h)(1) & 5 and 10 CCR section 2695.8(f).
18

19 **Department File No. CSB-6864449**

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21 5. On December 30, 2013, the Department received a complaint by Tony Czuczko of
22 Collision Concierge by Sport Body Shop against RESPONDENT. Collision Concierge, which is
23 located in Upland California, was chosen by RESPONDENT's insured to repair his vehicle. The
24 complainant alleged RESPONDENT refused to pay the body shop's labor rate of \$72. Instead,
25 RESPONDENT was only willing to pay a labor rate of \$43.
26

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¹ See RESPONDENT's letter dated November 27, 2013 to complainant.

28 ² See RESPONDENT's letter dated November 27, 2013 to complainant.

³ See claim notes entered on 10/2/2013 at 5:50PM in RESPONDENT's claim log.

1 6. RESPONDENT contended that the labor rate it offered to pay was the prevailing
2 labor rate for the market area.⁴ RESPONDENT characterized complainant's repair estimate as
3 "over inflated."⁵ RESPONDENT; however, had not conducted a labor rate survey or provided
4 any other credible evidence that the labor rate used to cap or deny the portion of the claim was
5 reasonable. Under these circumstances, RESPONDENT's reduction of the body shop's labor rate
6 was unsupported, arbitrary and not reasonable. RESPONDENT's acts or practices are a violation
7 of CIC sections 790.03(h)(1) & (5) and 10 CCR section 2695.7(g).
8

9 7. When the written estimate prepared by claimant's body shop exceeded
10 RESPONDENT's estimate on labor rates, RESPONDENT had the option to either pay the
11 difference between the labor rates or reasonably adjust the estimates prepared by the body shop
12 of claimant's choice. (10 CCR section 2695.8(f).) RESPONDENT did not pay the repair shop's
13 estimate and failed to provide support in the form of an auto body repair labor rate survey or by
14 any other data or evidence that capping and denying the labor rate charged by the complainant's
15 chosen auto body repair shop was reasonable. By failing to comply with either option,
16 RESPONDENT is in violation of 790.03(h)(1) & (5) and 10 CCR section 2695.8(f).
17

18 8. There is no evidence that RESPONDENT sent the claimant a written denial for
19 the denial of labor rate difference. RESPONDENT's failure to send a written denial is a
20 violation of CIC sections 790.03(h)(2) & (3) and 10 CCR section 2695.7(b)(1).
21

22 **Department File No. CSB-6880286**

23 9. On February 10, 2014, the Department received a complaint by Alan Brinker
24 against RESPONDENT. The complainant was insured by RESPONDENT for an auto claim.
25 The complainant took his vehicle to a body shop of his choice, located in Santa Clara
26 California, for repairs. That shop wrote an estimate that was greater than RESPONDENT's
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⁴ See RESPONDENT's letter dated January 16, 2014 to complainant.

1 written estimate for labor rate. RESPONDENT refused to pay the body shop's labor rate of \$85.
2 Instead, RESPONDENT would only pay a labor rate of \$78.

3 10. RESPONDENT contended that the labor rate it offered to pay was the prevailing
4 labor rate for that market area.⁶ RESPONDENT, however, had not conducted a labor rate survey
5 or provided any other credible evidence that the labor rate used to cap or deny the portion of the
6 claim was reasonable for the geographic area where the complainant's chosen shop was located.
7 Under these circumstances, RESPONDENT's reduction of the body shop's labor rate was
8 unsupported, arbitrary and not reasonable. RESPONDENT's acts or practices are a violation of
9 CIC sections 790.03(h)(1) & (5) and 10 CCR section 2695.7(g).
10

11 11. When the written estimate prepared by claimant's body shop exceeded
12 RESPONDENT's estimate on labor rates, RESPONDENT had the option to either pay the
13 difference between the labor rates or reasonably adjust the estimates prepared by the body shop
14 of claimant's choice. (10 CCR section 2695.8(f).) RESPONDENT did not pay the repair shop's
15 estimate and failed to provide support in the form of an auto body repair labor rate survey or by
16 any other data or evidence that capping and denying the labor rate charged by the complainant's
17 chosen auto body repair shop was reasonable. By failing to comply with either option,
18 RESPONDENT is in violation of CIC sections 790.03(h)(1) & (5) and 10 CCR section
19 2695.8(f).
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22 12. RESPONDENT's representation to the complainant-insured that the labor rate it
23 pays, as opposed to the body shop's labor rate, was the "prevailing labor rate" is untrue,
24 deceptive, and misleading because the such representation is not supported by any credible
25 evidence in the form of an auto body repair labor rate survey or by any other data or evidence.
26 Similarly, characterizing a labor rate as "prevailing," in the absence of any supporting data, is a
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⁵ See claim notes entered on 11/21/2013 at 3:37PM in RESPONDENT's claim log.

1 misrepresentation of the labor rate. RESPONDENT's acts or practices are in violation of CIC
2 sections 790.03(b), (h)(1) (3) and (5).

3 **Department File No. CSB-6986202**

4 13. On January 16, 2015, the Department received a complaint by Alvaro Valencia of
5 A & B Collision. A & B Collision, which is located in Clearlake California, was the auto body
6 shop chosen by RESPONDENT's insured to repair his vehicle. The complainant alleged
7 RESPONDENT refused to pay the body shop's labor rate of \$95. Instead, RESPONDENT was
8 only willing to pay the labor rate at \$78.
9

10 14. After the Department intervened, RESPONDENT conducted a labor rate survey on
11 February 2, 2015 in the complainant's geographic area⁷ and the results of the survey caused
12 RESPONDENT to increase the labor rate payment from \$78 to \$82.
13

14 15. RESPONDENT contended that it declined to pay the body shop's labor rate
15 because it exceeded the fair and reasonable market rate. RESPONDENT, however, had not
16 conducted a labor rate survey prior to February 2, 2015 or provided any other credible evidence
17 that the initial capping and denying of the labor rate was reasonable. Under these circumstances,
18 RESPONDENT's initial capping and denying of complainant's labor rate was unsupported,
19 arbitrary and not reasonable. RESPONDENT's acts or practices are a violation of CIC sections
20 790.03(h)(1) & (5) and 10 CCR section 2695.7(g).
21

22 16. When the written estimate prepared by the claimant's body shop exceeded
23 RESPONDENT's initial estimate on labor rates, RESPONDENT had the option to either pay
24 the difference between the labor rates or reasonably adjust the estimates prepared by the body
25 shop of claimant's choice. (10 CCR section 2695.8(f).) RESPONDENT did not pay the repair
26 shop's estimate and failed to provide support in the form of an auto body repair labor rate
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28 ⁶ See RESPONDENT's letter dated January 14, 2014 to complainant.

1 survey or by any other data or evidence that the initial capping and denying the labor rate
2 charged by the complainant's shop was reasonable. By failing to comply with either option,
3 RESPONDENT's acts or practices are in violation of CIC Sections 790.03(h)(1) & (5) and 10
4 CCR section 2695.8(f).
5

6 17. There is no evidence that RESPONDENT sent the claimant a written denial for
7 the partial denial of labor rate difference. RESPONDENT's failure to send a written denial is a
8 violation of CIC sections 790.03(h)(2), (3) & (13) and 10 CCR section 2695.7(b)(1).
9

9 **Department File No. CSB-6988761**

10 18. On February 3, 2015, the Department received a complaint by Alvaro Valencia of
11 A & B Collison against RESPONDENT. A & B Collision, which is located in Clearlake
12 California, was the auto body shop chosen by RESPONDENT's insured to repair her vehicle. The
13 complainant alleged RESPONDENT refused to pay the body shop's labor rate of \$95. Instead,
14 RESPONDENT was only willing to pay a labor rate of \$75.
15

16 19. After the Department intervened, RESPONDENT relied on data from the labor
17 rate survey it performed on February 2, 2015 (same survey performed under Department file
18 number CSB-6986202) and increased the labor rate payment from \$75 to \$82.
19

20 20. RESPONDENT contended that it attempted to make a fair and reasonable
21 adjustment to the labor rates.⁸ RESPONDENT contended that it declined to pay the body shop's
22 labor rate because it exceeded rates charged by other shops in the area. RESPONDENT, however,
23 had not conducted a labor rate survey prior to February 2, 2015 or provided any other credible
24 evidence that the initial capping and denying of the labor rate was reasonable. Under these
25 circumstances, RESPONDENT's initial capping and denying of complainant's labor rate was
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28 ⁷ See RESPONDENT's letter dated March 7, 2015 to the Department.

⁸ See RESPONDENT's letter dated February 13, 2015 to complainant.

1 unsupported, arbitrary and not reasonable. RESPONDENT's acts or practices are a violation of
2 CIC sections 790.03(h)(1) & (5) and 10 CCR section 2695.7(g).

3 21. 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 repair shop's
7 estimate and failed to provide support in the form of an auto body repair labor rate survey or by
8 any other data or evidence that capping and denying the labor rate charged by the complainant's
9 chosen auto body repair shop was reasonable. By failing to comply with either option,
10 RESPONDENT is in violation of CIC sections 790.03(h)(1) & (5) and 10 CCR section
11 2695.8(f).
12

13
14 22. There is no evidence that RESPONDENT sent the claimant a written denial for
15 the partial denial of labor rate difference. RESPONDENT's failure to send a written denial is a
16 violation of CIC sections 790.03(h)(2), (3) & (13) and 10 CCR section 2695.7(b)(1).
17

18 **STATEMENT OF MONETARY PENALTY ORDER, AND STATEMENT OF**
19 **POTENTIAL LIABILITY, PURSUANT TO CIC § 790 et. Seq**

20 1. The facts alleged above in Paragraphs 6 through 22 show that RESPONDENT
21 knowingly committed acts of making statement known or should have be known to be untrue,
22 deceptive, or misleading in violation of CIC section 790.03(b), misrepresenting to claimants
23 pertinent facts or insurance policy provisions relating to any coverages at issue in violation of
24 CIC section 790.03(h)(1); failing to acknowledge and act reasonably promptly upon
25 communications with respect to claims arising under insurance policies, in violation of CIC
26 section 790.03(h)(2); failing to adopt and implement reasonable standards for prompt
27 investigation and processing of claims arising under insurance policies in violation of CIC section
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1 790.03(h)(3); not attempting in good faith to effectuate prompt, fair and equitable settlement of
2 claims in which liability had become reasonable clear, in violation of CIC section 790.03(h)(5);
3 and failing to provide a reasonable explanation of the basis relied on in the insurance policy for
4 the denial of a claim or for the offer of a compromise settlement in violation of CIC section
5 790.03(h)(13).
6

7 2. The facts alleged above in Paragraphs 6 through 22 constitute grounds, under CIC
8 Section 790.05, for the Commissioner to order RESPONDENT to cease and desist from engaging
9 in such unfair acts or practices and to pay a civil penalty not to exceed five thousand dollars
10 (\$5,000) for each act, or if the act or practice was willful, a civil penalty not to exceed ten
11 thousand dollars (\$10,000) for each act as set forth under CIC Section 790.035.
12

13 3. The facts alleged above in Paragraphs 6 through 22 show that RESPONDENT has
14 failed to carry out its contracts in good faith, constituting grounds for the Commissioner to
15 suspend the Certificate of Authority of Respondent for a period not to exceed one year pursuant
16 to CIC Section 704(b), or to impose a fine in an amount not exceeding \$55,000 in lieu of
17 suspension pursuant to the authority of CIC Section 704.7.
18

19 PETITION FOR DISCIPLINE AND ORDER

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

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

23 2. For acts in violation of CIC Section 790.03 and the regulations promulgated
24 pursuant to CIC Section 790.10, as set forth above, a civil penalty not to exceed five thousand
25 dollars (\$5,000) for each act or, if the act or practice was willful, a civil penalty not to exceed ten
26 thousand dollars (\$10,000) for each act.

27 For acts in violation of CIC Section 704(b), suspension of RESPONDENT's certificate of
28



1 authority for not exceeding one year or a fine in the amount fifty-five thousand dollars (\$55,000)
2 in lieu of suspension.

3 3. The California Department of Insurance reserves the right to amend this Notice
4 of Noncompliance, Order to Show Cause, Statement of Charges/Accusations, as new facts
5 become available.
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9 Dated: September 23, 2015

10 CALIFORNIA DEPARTMENT OF INSURANCE

11
12 BY

 
13 Ramon Cintron, Attorney III
Kevin W. Bush, Attorney III
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