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

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11 In the Matter of Sterling Casualty
Insurance,

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13 Respondent.
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File No.: Pending

OAH No. Pending

ORDER TO SHOW CAUSE AND NOTICE
OF HEARING
(Ins. Code §§790.03, 790.05);

STATEMENT OF
CHARGES/ACCUSATION
(10 CCR §§ 2695.1, et seq.); (Ins. Code §§
790.03(h)(1), (2), & (3))

and

NOTICE OF MONETARY PENALTY
(Ins. Code §§ 704.7, 790.03, 790.035, 790.05)

Date: On a date to be set.

Time:

Place: Office of Administrative Hearings, Los
Angeles, CA

26 **ORDER TO SHOW CAUSE**

27 WHEREAS, the Department has reason to believe that Sterling Casualty Insurance
28 ("RESPONDENT") has engaged in or is 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 (CIC)
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 CIC sections 704, subdivision (b), 704.7, and 790.035 and other relief as requested.
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15 JURISDICTION AND BACKGROUND

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

18 2. RESPONDENT is and at all relevant times has been holder of Certificate of
19 Authority issued (Certificate Number 0580-1) by the Commissioner and is authorized to transact
20 insurance business in the state of California.
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22 3. Pursuant to sections 12921.1(a) and 12921.3(a) of the CIC, the Department
23 conducts a program to receive and respond to consumer inquiries, receive and investigate
24 consumer complaints, and when warranted, bring enforcement actions against insurers.

25 4. Under this program, the Department has received at least one complaint against
26 RESPONDENT involving a refusal to pay labor rates charged by a body shop chosen by
27 claimant. As set forth in "Statement of Specific Charges/Accusation" below, the Department
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1 believes and thereby alleges that RESPONDENT's acts or practices of arbitrarily capping and
2 denying labor rates without support violate Section 790.03(h) of the CIC, and the following areas
3 of the California Code of Regulations, title 10, chapter 5, subchapter 7.5, entitled Fair Claims
4 Settlement Practices Regulations ("10 CCR"):

5 a) Failing to send a written denial of a claim, in violation of 10 CCR section 2695.7(b)(1)
6 and CIC sections 790.03(h)(2), (3) & (13); and

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

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

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

20 a) Misrepresenting to claimants pertinent facts or insurance policy provisions relating to
21 any coverages at issue in violation of CIC section 790.03(h)(1);

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

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

3 d) Not attempting in good faith to effectuate prompt, fair and equitable settlements of
4 claims in which liability has become reasonably clear, in violation of CIC section 790.03(h)(5);
5 and
6

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

10 **STATEMENT OF SPECIFIC CHARGES/ACCUSATION**

11 **Department File No. CSB-6975156**

12 6. On November 12, 2014, the Department received a complaint by Albert Alfaro
13 against RESPONDENT. The complainant had a first-party auto claim with RESPONDENT for
14 property damage. RESPONDENT prepared a written estimate for the repair and wrote the labor
15 rate at \$48 per hour. The complainant took his vehicle to a body shop of his choice, located in
16 Oxnard California, for the repair. The body shop charged a labor rate at \$65 per hour.
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18 RESPONDENT declined to pay the body shop's labor rate and instead, paid the body shop \$52
19 causing the complainant to pay the difference in labor rates.
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21 7. RESPONDENT contended its adjustment of labor rate was based on verbal
22 inquiries with other collision repair facilities in the geographic area where insured's body shop
23 was located.¹ However, with the exception of one body shop, RESPONDENT did not identify
24 the names or number of body shops that were included in the inquiry. Furthermore, notes in
25 RESPONDENT's claim log² show RESPONDENT called just one body shop in the area (the
26 same shop it identified in its letter to the Department) and then adjusted complainant's body
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¹ See RESPONDENT's Letter dated December 22, 2014 to the Department.

1 shop's labor rate in accordance with the labor rate reported by that body shop. In short, the
2 evidence shows RESPONDENT relied on one other body shop's labor rate prior to adjusting
3 complainant's body shop's labor rate from \$65 to \$52. Under these circumstances,
4 RESPONDENT's capping and denying of complainant's body shop's labor rate is not supported
5 by adequate data and thus, is not reasonable. RESPONDENT's acts or practices are a violation of
6 CIC sections 790.03(h)(1) & (5) and 10 CCR section 2695.7(g).
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8 8. When the written estimate prepared by claimant's body shop exceeded
9 RESPONDENT's estimate on labor rates, RESPONDENT had the option to either pay the
10 difference between the labor rates or reasonably adjust the estimates prepared by the body shop
11 of claimant's choice. (10 CCR section 2695.8(f).) RESPONDENT did not pay the repair shops
12 estimate and failed to provide support in the form of a credible auto body repair labor rate
13 survey or by any other credible data or evidence that capping and denying the labor rate charged
14 by the complainant's chosen auto body repair shop was reasonable. By failing to comply with
15 either option, RESPONDENT's acts or practices are in violation of CIC Sections 790.03(h)(1)
16 & (5) and 10 CCR section 2695.8(f).
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18 9. There is no evidence that RESPONDENT sent the insured a written denial for
19 the denial of the labor rate difference. RESPONDENT's failure to send a written denial is a
20 violation of CIC sections 790.03(h)(2), (3) & (13) and 10 CCR section 2695.7(b)(1).
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22 10. RESPONDENT did not submit the results of its de-facto labor rate survey to the
23 Department. CIC section 758(c) provides that, "any insurer that conducts an auto body repair
24 labor rate survey to determine and set a specified prevailing auto body rate in a specific
25 geographic area *shall* report the results...to the [D]epartment." (Italics added.) RESPONDENT's
26 acts or practices are a violation of CIC section 758(c).
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² See note entry in RESPONDENT's claim log dated September 30, 2014.

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

1. The facts alleged above in Paragraphs 6 through 10 show that RESPONDENT knowingly committed acts of misrepresenting to claimants pertinent facts or insurance policy provisions relating to any coverages at issue in violation of Insurance Code section 790.03(h)(1); failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies, in violation of Insurance Code section 790.03(h)(2); failing to adopt and implement reasonable standards for prompt investigation and processing of claims arising under insurance policies in violation of CIC section 790.03(h)(3); not attempting in good faith to effectuate prompt, fair and equitable settlement of claims in which liability had become reasonable clear, in violation of CIC section 790.03(h)(5); and failing to provide a reasonable explanation for the denial of a claim in violation of CIC section 790.03(h)(13).

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

3. The facts alleged above in Paragraphs 6 through 10 show that RESPONDENT has failed to carry out its contracts in good faith, constituting grounds for the Commissioner to suspend the Certificate of Authority of Respondent for a period not to exceed one year pursuant to CIC Section 704(b), or to impose a fine in an amount not exceeding \$55,000 in lieu of suspension pursuant to the authority of CIC Section 704.7.

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