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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Allstate Insurance Co.,	)	CV 08-3326-RSWL
	)	
Plaintiff,	)	
	)	Judgment Re: Declaratory
v.	)	Relief, Breach of
	)	Contract Claims, and §
	)	11580 Claim
Richard Thacher, et al.,	)	
	)	
	)	
Defendants.	)	
	)	
	)	
	)	

After consideration of all the arguments presented,  
**JUDGEMENT IS HEREBY ENTERED FOR** Defendants and Counter-  
claimants Richard Thacher, Valerie Thacher, and  
Guadalupe Trujillo as set forth below:

I. Judgment Regarding the CPL Policy

The jury found that Allstate Insurance Company did  
not mail a notice of non-renewal of the Comprehensive  
Personal Liability Policy to Richard and Valerie  
Thacher. Further, the jury found that the arbitration  
award was neither unreasonable nor the product of fraud

1 or collusion. Finding sufficient evidence to support  
2 the jury's findings, the Court will not pierce the  
3 jury's findings.

4 Accordingly, the Court finds that the CPL Policy  
5 remained in force at the time of the accident, and  
6 finds and declares that Allstate had a duty to defend  
7 and indemnify under the CPL Policy.

8 There is no dispute that Allstate denied coverage  
9 under the CPL Policy, refusing to defend or indemnify,  
10 and therefore, no conditions apply under the CPL  
11 Policy. The insureds, Valerie and Richard Thacher, had  
12 no duty to cooperate or provide additional notice or  
13 information and were entitled to enter into the  
14 arbitration agreement, to accept the covenant not to  
15 execute, to stipulate to liability and to agree to  
16 arbitrate the amount of damages.

17 Based on the above findings, the Court finds that  
18 Allstate breached the CPL Policy and is liable for the  
19 arbitration judgment award under Cal. Ins. Code §  
20 11580.

21 Therefore, judgment is hereby entered in the  
22 following amounts:

23 (1) Allstate owes to Defendant Thacher \$18,399.59,  
24 plus 10% interest per annum, for amounts expended  
25 in defense of the Trujillo claim.<sup>1</sup>

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28 <sup>1</sup> See Cal. Civil Code § 3289(b).

1 (2) Allstate owes \$100,000 (the CPL Policy limit)  
2 to Defendant Trujillo on the § 11580 claim, plus  
3 interest at 10% per annum.

4 (3) The interest shall be calculated as having  
5 begun accruing as of July 14, 2006. Pursuant to  
6 Cal. Code Civ. Proc. § 3291, the judgment shall  
7 bear interest from the date of the first offer  
8 pursuant to Section 998 of the Code of Civil  
9 Procedure. The Court finds that the § 998 offer of  
10 July 14, 2006 is the date from which interest shall  
11 accrue on this judgment.

12 (4) The Court denies Defendant's request to award  
13 \$100,000 to the Thachers for breach of the CPL  
14 Policy.<sup>2</sup>

15 II. Judgment Regarding the Umbrella Policy

16 The jury found that Allstate Insurance Company  
17 denied coverage under the Personal Umbrella Policy.  
18 Further, the jury found that the arbitration award was  
19 neither unreasonable nor the product of fraud or  
20 collusion. Finding sufficient evidence to support the  
21 jury's findings, the Court will not pierce the jury's  
22 findings.

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25 <sup>2</sup> Mr. and Mrs. Thacher's only loss traceable to Allstate's  
26 breach is the costs they expended to defend the Trujillo claim.  
27 It would create a windfall to award them the amount of the  
28 arbitration award when they have no obligation to pay it under  
the covenant not to execute and Allstate is already liable for  
that judgment under § 11580. Defendants present no authority to  
this Court allowing for such a double recovery.

1           Accordingly, the Court finds that no conditions  
2 apply under the Umbrella Policy. The insureds, Valerie  
3 and Richard Thacher, had no duty to cooperate or  
4 provide additional notice or information and were  
5 entitled to enter into the arbitration agreement, to  
6 accept the covenant not to execute, to stipulate to  
7 liability and to agree to arbitrate the amount of  
8 damages.

9           Based on the above findings, judgment is hereby  
10 entered in the following amount:

11           (1) Allstate owes \$415,093.78 to Defendant Trujillo  
12 on the § 11580 claim, plus interest at 10% per  
13 annum.<sup>3</sup>

14           The Court also finds that Allstate did not breach  
15 the Umbrella Policy. As explained in the Court's  
16 Summary Judgment Order, on this claim, Plaintiff must  
17 have actually refused to indemnify Defendant. The  
18 Court found that Allstate had not yet breached its duty  
19 to indemnify because it has not refused to pay the  
20 underlying judgment to Defendants.<sup>4</sup> (Order Granting in  
21 Part and Denying in Part Counter-Claimants' Motion for  
22 Partial Summary Judgment [76] at 33-35.) Further, the

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24           <sup>3</sup> See Cal. Code of Civil Procedure 685.010.

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26           <sup>4</sup> At the time of the "denial" no actual judgment was in  
27 existence or presented to Allstate. Further, Allstate's position  
28 as the excess insurer under the Umbrella Policy creates different  
implications for "denying coverage" than under its position as  
the primary insurer.

1 Court specified in its Order that "[e]ven if the trier  
2 of fact finds that Plaintiff's conduct in failing to  
3 respond to the claim asserted under the Umbrella Policy  
4 constitutes a denial of coverage, that finding is for  
5 the purposes of estopping Plaintiff from arguing  
6 Defendants did not give it notice and cooperation."  
7 (Id. at 35 n 18.) Additionally, the Court has already  
8 found that there was no breach of the duty to defend  
9 under the Umbrella Policy.

10 Nevertheless, this finding does not effect the  
11 result that Allstate now owes a duty to indemnify under  
12 the Umbrella Policy and is liable for the arbitration  
13 award under § 11580.<sup>5</sup>

14 III. Allstate's Equitable Defenses

15 Based on the above findings, the Court finds that  
16 Allstate's equitable defenses fail.

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27 <sup>5</sup> Even if there was a breach under the Umbrella Policy,  
28 Defendant's request for \$415,093.78 is denied for the same  
reasons stated above under the CPL Policy.

1 IV. Defendants' Request for a Jury Trial on Bad Faith

2 The Court denies Defendants' request for a jury  
3 trial on bad faith. Notwithstanding the jury's  
4 findings, the Court finds that its ruling dismissing  
5 these claims on Summary Judgment was the appropriate  
6 disposition for Defendants' bad faith claims. (See  
7 Order Granting in Part and Denying in Part Counter-  
8 Claimants' Motion for Partial Summary Judgment [76].)

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10 **IT IS SO ORDERED.**

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12 DATED: September 18, 2009

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**HONORABLE RONALD S.W. LEW**  
Senior, U.S. District Court Judge