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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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PET FOOD EXPRESS LTD., a
California corporation, on
behalf of itself and all
those similarly situated,

Plaintiff,

v.

APPLIED UNDERWRITERS, INC.;
APPLIED UNDERWRITERS CAPTIVE
RISK ASSURANCE COMPANY, INC.;
CALIFORNIA INSURANCE COMPANY,
INC.; and DOES 1 through 50
inclusive;

Defendants.

CIV. NO. 2:16-1211 WBS AC
ORDER RE: MOTION TO DISMISS

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Defendants have moved to dismiss plaintiff's claims "to
the extent that they seek to void [defendants' Reinsurance
Payment Agreement] on the theory that the RPA should have been
filed" with the California Department of Insurance before being
used. (Defs.' Mot., Mem. ("Defs.' Mem.") at iv (Docket No. 15).)
Defendants argue that use of an unfiled insurance rate is not
unlawful under California Insurance Code section 11735. (See id.

1 at 8.)

2 In response, plaintiff points out that it does not rely
3 in its Complaint on section 11735. (See Pl.'s Opp'n at 5 (Docket
4 No. 26).) Although there was some discussion at oral argument
5 about whether plaintiff could rely upon the failure to file a
6 form pursuant to section 11658, upon reviewing the record the
7 court notes that section was not part of plaintiff's motion,
8 Accordingly, the court will deny defendants' motion with respect
9 to section 11735 as moot.

10 IT IS THEREFORE ORDERED that defendants' motion to
11 dismiss plaintiff's Complaint to the extent the Complaint relies
12 upon California Insurance Code section 11735 be, and the same
13 hereby is, DENIED AS MOOT because plaintiff does not rely upon
14 that section.

15 Dated: October 18, 2016



16 **WILLIAM B. SHUBB**
17 **UNITED STATES DISTRICT JUDGE**

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