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10 *Counsel* for Amicus Curiae

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12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE EASTERN DISTRICT OF CALIFORNIA

14

15 ASSOCIATION OF AMERICAN ) Civil Action  
16 PHYSICIANS & SURGEONS, INC., ) No. 2:16-cv-02441-MCE-EFB  
17 )  
18 *Plaintiff,* ) **MOTION OF PHYSICIANS**  
19 ) **ADVOCACY COUNCIL,**  
20 v. ) **INC. (PAC), TO FILE**  
21 ) **BRIEF AMICUS CURIAE**  
22 JERRY BROWN, in his official ) **IN SUPPORT OF**  
23 capacity as Governor of the State ) **PLAINTIFF**  
24 of California and SHELLEY )  
25 ROUILLARD, in her official )  
26 capacity as the Director of the ) DATE: October 19, 2017  
27 California Department of ) TIME: 2 p.m.  
28 Managed Health Care )  
29 ) JUDGE: The Honorable  
30 *Defendants.* ) Morrison C. England, Jr.  
31 \_\_\_\_\_ )

32

33 Dated: September 22, 2017

1       **MOTION FOR LEAVE TO FILE BRIEF *AMICUS***  
2               ***CURIAE* IN SUPPORT OF PLAINTIFF**

3       Pursuant to Rule 29(a) of the Federal Rules of  
4       Appellate Procedure, the Physicians Advocacy  
5       Council, Inc. ("PAC") respectfully moves for leave to  
6       file the accompanying brief *amicus curiae* in support  
7       of the complaint filed by the American Association  
8       of Physicians & Surgeons, Inc.

9       PAC provided both parties with timely notice  
10       along with its request for consent to file its brief  
11       *amicus*. Plaintiff has given written consent.  
12       Defendants have not responded.

13       PAC was founded in 2013 and is a nonprofit  
14       corporation incorporated in California. No publicly  
15       traded company owns any stock in *amicus*. PAC  
16       represents physicians of a great variety of  
17       disciplines throughout California, who are directly  
18       affected by consequences and impacts of AB 72 (the  
19       "Act") upon the medical profession, and millions of  
20       patients in the State of California. The mission of  
21       PAC is, in part, to preserve, protect, and defend the  
22       individual and constitutional rights of physicians  
23       and patients.

24       PAC's activities on behalf of physicians and their  
25       patients include education (providing professional  
26       advice and guidance to assist practicing physicians  
27       deliver optimal care to patients) and advocacy  
28       (informing physicians about public policies as well

1 as formulating positions to improve the quality of  
2 medical care available to consumers).

3 PAC has a direct and vital interest in this litigation  
4 concerning the constitutional rights of physicians  
5 and their patients. PAC holds an important  
6 perspective on the doctor-patient relationship and  
7 wishes to present facts highlighting the adverse  
8 impact the Act has on this special bond.

9 The statutes stemming from the Act harm many  
10 California physicians, including targeted out-of-  
11 network ("OON") physicians who do not contract  
12 with patients' insurance companies. The Act  
13 unjustly supplants contracts between patients and  
14 their personal physicians by conscripting OON  
15 physicians to ad hoc, de facto "contracts" with  
16 insurance companies whereby targeted OON  
17 physicians must charge and collect from insurance  
18 companies delayed, discounted, and derisive  
19 payments – but get nothing in return. Subjugated  
20 physicians, who did not – or could not – contract  
21 with these insurance companies have only illusory  
22 or punitive recourses.

23 By implementing the Act, the State of California  
24 chose to benefit insurance companies and their  
25 related third parties including risk-bearing  
26 physician groups that compete with physicians who  
27 are harmed by the Act. The State of California  
28 insures many of its employees and therefore its

1 financial interests are aligned with those of  
2 insurance companies. The State is benefiting from  
3 the Act and thus cannot claim sovereign immunity.

4 Were state legislation seemingly not immune from  
5 anti-trust laws, the horizontal price-fixing scheme  
6 promoted by insurance companies and their related  
7 risk-bearing physician groups would constitute an  
8 illegal restraint of trade as a matter of federal law.

9 Because of the importance of the significant and  
10 complex physician/patient issues, and the multiple  
11 constitutional issues raised by the Act and this  
12 subject case, PAC respectfully requests that its  
13 motion for leave to file the accompanying brief  
14 *amicus curiae* be granted by the Court.

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16 Respectfully submitted,

17 /s/ Marc Del Piero, Attorney

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15 ASSOCIATION OF AMERICAN ) Civil Action  
16 PHYSICIANS & SURGEONS, INC., ) No. 2:16-cv-02441-MCE-EFB  
17 )  
18 *Plaintiff,* ) **ORDER ON**  
19 ) **MOTION OF**  
20 v. ) **PHYSICIANS**  
21 ) **ADVOCACY COUNCIL,**  
22 JERRY BROWN, in his official ) **INC. (PAC) TO FILE**  
23 capacity as Governor of the State of ) **BRIEF AMICUS CURIAE**  
24 California, and SHELLEY )  
25 ROUILLARD, in her official capacity ) DATE: October 19, 2017  
26 as director of the Department of ) TIME: 2 p.m.  
27 Managed Health Care )  
28 ) JUDGE: The Honorable  
29 *Defendants.* ) Morrison C. England, Jr.  
30 \_\_\_\_\_ )  
31

32 Dated: September 22, 2017

The Physicians Advocacy Council, Inc. has moved, pursuant to Rule 29(a) of the Federal Rules of Appellate Proceedings, for leave of the court to file a brief *amicus curiae* in this matter.

The court, with good cause appearing, hereby approves the Physicians Advocacy Council, Inc.'s motion and hereby orders same.

IT IS SO ORDERED.

Dated: September 29, 2017

  
MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE