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**United States District Court**  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE CALIFORNIA TITLE INSURANCE  
ANTITRUST LITIGATION

No. 08-01341 JSW

THIS DOCUMENT RELATES TO ALL  
ACTIONS

**NOTICE OF TENTATIVE  
RULING AND QUESTIONS FOR  
HEARING**

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE  
NOTICE OF THE FOLLOWING QUESTIONS FOR THE HEARING SCHEDULED ON  
OCTOBER 30, 2009 AT 9:00 A.M.:

The Court has reviewed the parties' memoranda of points and authorities and, thus, does not wish to hear the parties reargue matters addressed in those pleadings. If the parties intend to rely on legal authorities not cited in their briefs, they are ORDERED to notify the Court and opposing counsel of these authorities reasonably in advance of the hearing and to make copies available at the hearing. If the parties submit such additional authorities, they are ORDERED to submit the citations to the authorities only, with pin cites and without argument or additional briefing. Cf. N.D. Civil Local Rule 7-3(d). The parties will be given the opportunity at oral argument to explain their reliance on such authority. The Court suggests that associates or of counsel attorneys who are working on this case be permitted to address some or all of the Court's questions contained herein.

1 The Court **tentatively grants** the motions to dismiss the parent corporations, and  
2 **tentatively grants the motion to dismiss the Sherman Act and Cartwright Act claims and**  
3 **grants in part the** motion to dismiss the Section 17200 claim. The Court **reserves** issuing a  
4 tentative ruling on whether Plaintiffs shall be given leave to amend.

5 The parties each shall have fifteen (15) minutes to address the following questions:

- 6 1. a. In light of the fact that the Court must accept the allegations in the  
7 Second Amended Consolidated Class Action Complaint (“SACC”) as  
8 true, what is the parent corporations’ best argument that the allegations in  
9 paragraph 67, regarding the findings by the California Insurance  
10 Commissioner, are not sufficient to provide factual support for Plaintiffs’  
11 allegations that they have stated a claim against the parent corporations  
12 based on either an agency or an alter-ego theory?
- 13 b. Plaintiffs do not include any of the factual bases supporting the report’s  
14 conclusions. Why should the Court not treat the allegations in paragraph  
15 67 as a bare legal conclusion, which it is not required to accept as true?
- 16 2. a. If the Court stands by its tentative ruling on the Sherman Act and  
17 Cartwright Act claims, *i.e.* it concludes that Plaintiffs have not alleged  
18 sufficient facts to state a claim demonstrating a conspiracy among the  
19 Defendants, do Plaintiffs agree that they would only have standing to  
20 pursue a Section 17200 claim against those defendants from whom they  
21 purchased title insurance? If not, on what basis to Plaintiffs contend they  
22 have standing?
- 23 b. How do Plaintiffs distinguish *Schulz v. Neovi Data Corp.*, 152 Cal. App.  
24 4<sup>th</sup> 86 (2007), in which the court concluded that although the plaintiff  
25 may have set forth facts to state a claim under Section 17200 based upon  
26 liability for aiding and abetting, he did not have standing to pursue the  
27 claim against a certain defendant, because he did not use that defendant’s  
28 services?
- 29 c. Plaintiffs allege that they have paid more for title insurance than they  
30 would have but for Defendants’ allegedly wrongful conduct. Further,  
31 Plaintiffs allege that they have paid more for title insurance based, in  
32 part, on the fact that Defendants improperly include the cost of kickbacks  
33 and commissions in the cost of the premium. In light of those facts, what  
34 is Plaintiffs’ best argument that their Section 17200 claims are not related  
35 to rate setting?
- 36 3. What additional factual allegations, if any, would Plaintiffs seek to add to an  
37 amended complaint?
- 38 4. Are there any other issues the parties wish to address?

39 Dated: October 29, 2009

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE