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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

**ORDER GRANTING  
DEFENDANTS' JOINT MOTION  
FOR CERTIFICATION OF  
INTERLOCUTORY APPEAL  
PURSUANT TO 28 U.S.C. § 1292(b)  
AND FOR A STAY OF  
PROCEEDINGS**

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Now before the Court for consideration is Defendants' Joint Motion for Certification of Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) and for a Stay of Proceedings. The Court has considered the parties' papers, relevant legal authority, and the record in this case, and concludes that the matter is suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). For the reasons set forth in the remainder of this Order, Defendants' motion is GRANTED, and this matter is STAYED.

On November 6, 2009, the Court issued an order granting in part and denying in part Defendants' Joint Motion to Dismiss Plaintiffs' Second Amended Class Action Complaint ("SAC"). In that Order, the Court denied, in part, Defendants' motion to dismiss Plaintiffs' claim for relief under California Business and Professions Code § 17200 and rejected Defendants' argument that such a claim was not preempted by California Insurance Code § 12414.26. (*See* Docket 144 (Nov. 6, 2009 Order at 12:10-13:5).) Defendants now move to certify that ruling for interlocutory appeal.

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United States District Court  
For the Northern District of California

1 Pursuant to 28 U.S.C. § 1292(b), the Court has discretion to certify an interlocutory  
2 order for appeal when (1) the order involves a controlling issue of law; (2) there is substantial  
3 ground for differences of opinion as to that question; and (3) an immediate appeal may  
4 materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b). Certification  
5 for interlocutory appeal should be applied sparingly and only granted in exceptional situations  
6 in which allowing an interlocutory appeal would avoid protracted and expensive litigation. *See,*  
7 *e.g., Coopers & Lybrand v. Livesay*, 437 U.S. 463, 475 (1978); *In re Cement Antitrust*  
8 *Litigation*, 673 F.2d 1020, 1026 (9th Cir. 1982); *United States v. Woodbury*, 263 F.2d 784, 788  
9 n.11 (9th Cir. 1959). The party seeking certification of an interlocutory order has the burden of  
10 establishing the existence of such exceptional circumstances. *Coopers & Lybrand*, 437 U.S. at  
11 475. A court has substantial discretion to decide whether to grant a motion for certification.  
12 *Valdovinos v. McGrath*, 2007 WL 2023505 at \*2 (N.D. Cal. July 12, 2007) (citing *Brown v.*  
13 *Oneonta*, 916 F. Supp. 176, 180 (N.D.N.Y. 1996)). The Court concludes that Defendants have  
14 met their burden.

15 First, although Plaintiffs argue to the contrary, Defendants have identified a controlling  
16 issue of law. Specifically, whether, properly interpreted, California Insurance Code § 12414.26  
17 preempts Plaintiffs Section 17200 claim. Although resolution of that question may require an  
18 examination of the factual allegations set forth in the SAC, it is a purely legal issue.

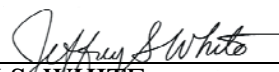
19 Second, there must be a substantial ground for difference of opinion on the issue. 28  
20 U.S.C. § 1292(b). “A substantial ground for difference of opinion is not established by a  
21 party’s strong disagreement with the court’s ruling; the party seeking an appeal must make  
22 some greater showing.” *Valdovinos*, 2007 WL 2023505 at \*2 (citing *Mateo v. M/S Kiso*, 805 F.  
23 Supp. 792, 800 (N.D. Cal. 1992)). There is dearth of precedent on the legal issue presented to  
24 the Court on the motion to dismiss Plaintiffs’ Section 17200 claims. In light of the lack of  
25 precedent bearing on the issue, the Court concludes that Defendants have shown a substantial  
26 ground for a difference of opinion exists. *See In re Cintas Corp. Overtime Pay Arb. Litig.*, 2007  
27 WL 1302496 at \*2 (N.D. Cal. May 2, 2007) (citing *APPC Servs., Inc. v. AT&T Corp.*, 297 F.  
28 Supp. 2d 101, 107 (D.D.C. 2003).

1 Third, an interlocutory appeal must be likely to advance the ultimate termination of the  
2 litigation. 28 U.S.C. § 1292(b). Whether an appeal may materially advance the termination of  
3 the litigation is “linked to whether an issue of law is ‘controlling’ in that the court should  
4 consider the effect of a reversal by the Ninth Circuit on the management of the case.”  
5 *Valdovinos*, 2007 WL 2023505 at \*2 (citing *Mateo*, 805 F. Supp. at 800). In this case, the  
6 Section 17200 claim is the only claim pending against the remaining Defendants. Moreover, as  
7 set forth above, if Plaintiffs’ claims are preempted by Section 12414.26, such a ruling would  
8 effectively resolve this litigation. Therefore, the Court concludes that Defendants also have met  
9 their burden to show that an interlocutory appeal is likely to advance the ultimate termination of  
10 the litigation.

11 Accordingly, the Court, in its discretion GRANTS Defendants’ motion for certification  
12 pursuant to 28 U.S.C. § 1292(b), AMENDS the Order dated November 6, 2009 to certify it for  
13 interlocutory appeal, and STAYS this matter pending a decision by the Ninth Circuit as to  
14 whether it will hear an interlocutory appeal and, if it accepts the appeal, pending resolution of  
15 that appeal. The parties shall update the Court by joint submission within five court days of  
16 resolution of the appeal, or every 120 days, whichever is sooner.

17 **IT IS SO ORDERED.**

18 Dated: March 3, 2010

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE

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