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 EMPLOYERS FIRE INSURANCE COMPANY

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 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA -**
 10 **SAN FRANCISCO DIVISION**

11 JAMES JARDINE, an individual, 12 Plaintiff, 13 v. 14 MARYLAND CASUALTY COMPANY, a corporation, and DOES 1 thorough 50, 15 Defendants. 16	Case No. 3:10-cv-03318 SC, consolidated with Case No. 3:10-cv-03319 SC; Case No. 3:10-cv-03335 SC and Case No. 3:10-cv-03336 SC
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17 JAMES JARDINE, an individual, 18 Plaintiff, 19 v. 20 EMPLOYERS FIRE INSURANCE COMPANY, a corporation, and DOES 1 21 thorough 50, 22 Defendants. 23	Case No. 3:10-cv-03335 SC; and Case No. 3:10-cv-03336 SC STIPULATION WITHDRAWING PLAINTIFF’S THIRD CAUSE OF ACTION FOR STATUTORY VIOLATION OF UNFAIR INSURANCE PRACTICES ACT; [Proposed] ORDER APPROVING STIPULATION
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 25 IT IS HEREBY STIPULATED by and between plaintiff, JAMES JARDINE
 26 (“Jardine”), and defendant EMPLOYERS FIRE INSURANCE COMPANY (“Employers”),
 27 by and through their attorneys of record that, under the holding of the California Supreme
 28 Court in *Moradi-Shalal v. Fireman’s Fund*, 46 Cal.3d 287 (1988), no private right of action

1.

exists under the Unfair Insurance Practices Act. In accordance with Federal Rules of Civil Procedure 11 and 12, plaintiff Jardine agrees to withdraw his third cause of action for violation of Unfair Insurance Practices Act alleged in both Case No. 3:10-cv-03335 SC; and the consolidated action, Case No. 3:10-cv-03336 SC..

IT IS SO STIPULATED.

Dated: September 13, 2011

SCHENONE & PECK

/s/ Ronald G. Peck

By: _____
Ronald G. Peck
Attorney for Plaintiff
JAMES JARDINE

Dated: September 13, 2011

WOLKIN • CURRAN, LLP

/s/ Dawn A. Silberstein

By: _____
Brandt L. Wolkin
Dawn A. Silberstein
Attorneys for defendant
EMPLOYERS FIRE INSURANCE
COMPANY

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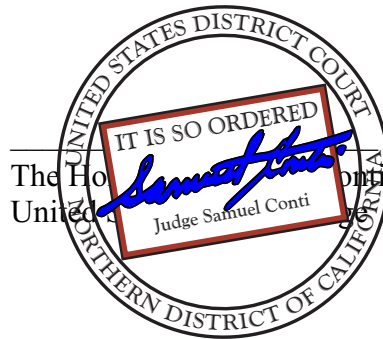
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[PROPOSED] ORDER

PURSUANT TO THE PARTIES' STIPULATION, the Court finds good cause to grant plaintiff's request to withdraw his Third Causes of Action for Violation of the Unfair Insurance Practices Act alleged in both Case No. 3:10-cv-03335 SC; and the consolidated action, Case No. 3:10-cv-03336 SC. The Third Cause of Action shall be deemed withdrawn and no further pleading shall be required by plaintiff. Defendant, Employers, may allege this stipulation and order withdrawing the Third Cause of Action in its answer to Plaintiff's First Amended (and Supplemental) Complaint for fraud, breach of the implied covenant of good faith and fair dealing, violation of fair claims settlement practices act, and complaint by judgment creditor against liability insurer on judgment filed in Case No. 3:10-cv-03336 SC.

IT IS SO ORDERED.

Dated: 9/13/11 _____



1 **DECLARATION OF SERVICE**

2 I, Angela Lee Rojas, declare as follows:

3 I am a citizen of the United States, over the age of eighteen years and not a party to
4 the within entitled action. I am employed at Wolkin · Curran, LLP, 555 Montgomery Street,
5 Suite 1100, San Francisco, California 94111.

6 On **13 September 2011** I served the attached document, **STIPULATION**
7 **WITHDRAWING PLAINTIFF'S THIRD CAUSE OF ACTION FOR STATUTORY**
8 **VIOLATION OF UNFAIR INSURANCE PRACTICES ACT; [Proposed] ORDER**
9 **APPROVING STIPULATION**, on the interested parties in said action, by placing a true
10 copy thereof in a sealed envelope(s) or package(s), with delivery fees or postage fully
11 prepaid, addressed as follows:

12 Jonathan Gross, Esq.

Counsel for *Maryland Casualty Company*

13 Vivian Leung Lerche, Esq.

14 Bishop Barry Drath

Watergate Tower III

15 2000 Powell Street, Suite 1425

Emeryville, CA 94608

16 Tel: 510/596-0888

17 Fax: 510/596-0899

E-mail: jgross@bishop-barry.com

E-mail: vlerche@bishop-barry.com

18 and served the named document in the manner(s) indicated below:

19 X **BY ELECTRONIC SERVICE:** I transmitted true and correct copy(ies) of the above document(s)
20 by electronic service from: "arojas@wolkincurran.com" on **13 September 2011** to the addressee(s)
21 listed above or on the attached service list on whom service is to be made at their respective e-mail
addresses as listed above or on the attached service list. A signed copy of this affidavit or certificate
of mailing accompanied the above named document(s).

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct and that I am employed in the office of a member of the bar of
24 this court at whose direction the service was made. Executed 13 September 2011, at San
25 Francisco, California.

26 */s/ Angela Lee Rojas*

27 _____
28 Angela Lee Rojas