

**FILED**  
LOS ANGELES SUPERIOR COURT

MAY 10 2018

SHERRI A. GUYER, EXECUTIVE OFFICER/CLERK  
BY *N. Navarro* Deputy  
NANCY NAVARRO

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

DANIELLE MARRUFO, an individual,  
ROBERT SCHULTZ, an individual,

Plaintiffs,

vs.

AUTOMOBILE CLUB OF SOUTHERN  
CALIFORNIA, a California company; and  
DOES 1 – 100, inclusive,

Defendants.

Case No.: BC597839

ORDER GRANTING PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT  
AND DENYING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT

Dept.: SSC 17

**I. INTRODUCTION**

Plaintiffs Danielle Marrufo and Robert Schultz (Plaintiffs) have or had homeowners' fire insurance policies issued by Defendant Interinsurance Exchange of the Automobile Club (the Exchange). The policies contain a "Wildfire Smoke Endorsement,"

1 enacted after the 2009 Station Fire in Los Angeles County.<sup>1</sup> Plaintiffs seek a declaration  
2 that this endorsement fails to meet the requirements imposed by Insurance Code §§ 2070  
3 and 2071<sup>2</sup> and is thus unenforceable. (FAC, ¶¶ 2, 19.) The Exchange, in contrast, argues  
4 that the endorsement is not governed by sections 2070 and 2071 because damage from  
5 smoke is not covered by those sections and is permitted “extended coverage” for a peril  
6 separate from fire, i.e. wildfire smoke. It further argues that even if governed by those  
7 sections it is free to set policy limits for smoke damage claims that differ from policy limits  
8 for claims from fire loss.

9 Having considered the undisputed facts, those limited matters which the Court may  
10 judicially notice,<sup>3</sup> the pleadings, and the oral argument of counsel on February 22, 2018,  
11 and for the reasons that follow, the Court grants judgment in favor of Plaintiffs.

12 //

13 //

14 \_\_\_\_\_  
15 <sup>1</sup> Plaintiffs have not made any claims to the Exchange relative to the Endorsement. They  
16 represent a certified class of similarly situated persons. In a related action, Plaintiff Astolfo  
17 Gomez brought class action claims against Defendant on behalf of a class of persons who  
18 *had* made claims pursuant to the Wildfire Endorsement, *Gomez v. Automobile Club of*  
19 *Southern California* (BC564641). The *Gomez* action contained two theories of liability.  
20 The first was that the Wildfire Smoke Endorsement is unenforceable in light of Insurance  
21 Code §§ 2070 and 2071. The second was that the endorsement was inadequately disclosed  
22 to policy holders. *Gomez* resulted in a class action settlement approved March 15, 2017.  
23 Under the terms of the settlement the second claim in *Gomez* was settled, with the proviso  
24 that the first claim would be resolved in this action, with *Gomez* class members preserving  
25 the right to a potential future payment. The rulings here will necessitate further  
26 proceedings in *Gomez*.

27 <sup>2</sup> Except as otherwise noted all statutory references are to Cal. Ins. Code.

28 <sup>3</sup> Rulings on the evidentiary objections and requests for judicial notice are appended .

1           **II. LEGAL STANDARD**

2           Cal. Code Civ. Pro. §437c(a)(1) provides for summary judgment where either an  
3 action has no merit or where there is no defense to the action. The parties do not have any  
4 material undisputed facts and concur that this matter should be adjudicated by way of cross  
5 motions.

6           The provisions of the Insurance Code applicable here are two:

7           Section 2070 provides that all fire policies shall be in the form prescribed by statute  
8 or, if not, must provide coverage that is “substantially equivalent to or more favorable to  
9 the insured” than what is contained in the standard statutory form.

10          Section 2071 contains the standard form language:

11          “In consideration of the provisions and stipulations herein or added hereto  
12 and of \_\_\_ dollars premium this company, for the term of \_\_\_\_\_ to  
13 \_\_\_\_\_ at location of property involved, to an amount not exceeding  
14 \_\_\_\_\_ dollars, does insure \_\_\_\_\_ and legal representatives, to the extent  
15 of the actual cash value of the property at the time of loss, but not  
16 exceeding the amount which it would cost to repair or replace the property  
17 with material of like kind and quality within a reasonable time after loss,  
18 without allowance for any increased cost of repair or reconstruction by  
19 reason of any ordinance or law regulating construction or repair, and  
20 without compensation for loss resulting from interruption of business or  
21 manufacture, nor in any event for more than the interest of the insured,  
22 against all LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM  
23 PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN  
24 THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the  
25 property described hereinafter while located or contained as described in  
26 this policy, or pro rata for five days at each proper place to which any of the  
27 property shall necessarily be removed for preservation from the perils  
28 insured against in this policy, but not elsewhere.”

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1 (Emphasis in original)

2 Section 2071 requires the insured to give written notice “without unnecessary  
3 delay,” and “within sixty days after the loss.” It requires any “suit” for recovery “within  
4 12 months” after inception of the loss.

5 It is well established that:

6 “In California, fire insurance policies are regulated by the Insurance Code.

7 Section 2070 provides: ‘All fire policies ... shall be on the standard form,  
8 and, except as provided by this article shall not contain additions thereto.

9 No part of the standard form shall be omitted therefrom except that any  
10 policy providing coverage against the peril of fire only, or in combination  
11 with coverage against other perils, need not comply with the provisions of  
12 the standard form of fire insurance policy ...; *provided, that coverage with*

13 *respect to the peril of fire, when viewed in its entirety, is substantially*

14 *equivalent to or more favorable to the insured than that contained in such*  
15 *standard form fire insurance policy.’ (Italics added.) Provisions of the*

16 standard form fire policy are set forth in section 2071. Thus, a policy that  
17 does not conform to section 2071's standard provisions must provide total  
18 fire coverage that is at least ‘substantially equivalent’ to coverage provided  
19 by the standard form. (§ 2070; see *Julian v. Hartford Underwriters Ins. Co.*  
20 (2005) 35 Cal.4th 747, 754, 27 Cal.Rptr.3d 648, 110 P.3d 903 [policy  
21 exclusions are unenforceable to the extent they conflict with the Insurance  
22 Code].)”

23 *Century-National Ins. Co. v. Garcia* (2011) 51 Cal.4<sup>th</sup> 564, 567.

24 //

25 //

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1 **III. ANALYSIS**

2 **A. The Policy Terms**

3 The policies contain the following relevant coverage language:

4 *“Part I Property Coverages*

5 Dwelling Coverage A

6 Other Structures Coverage B

7 Unscheduled Personal Property Coverage C

8 Loss of Use Other Coverages 1. (20% of the amount of  
9 Coverage A)

10 Building Code Upgrade Other Coverages 5. (10% of the amount of  
11 Coverage A)

12 (Declarations page, Page 005, 007.)<sup>4</sup>

13 **WHAT LOSSES ARE COVERED – COVERAGE A AND COVERAGE B**

14 Except as excluded under WHAT LOSSES ARE NOT COVERED – PART  
15 I, we cover:

16 1. all loss from FIRE AND LIGHTNING; and

17 2. accidental direct physical loss from other causes of loss;

18 to the property described under WHAT PROPERTY IS COVERED –  
19 COVERAGE A and COVERAGE B.

20 **WHAT PROPERTY IS COVERED – COVERAGE C**

21 Except as excluded under WHAT LOSSES ARE NOT COVERED – PART  
22 I, we cover the following losses to personal property described under WHAT  
23 PROPERTY IS COVERED – COVERAGE C:

24  
25  
26 <sup>4</sup> In citing to Bates page numbers, the Court is referencing the Marrufo (Trenzini)  
27 policy attached to the Declaration of Mary Vidal (Supervisor in the Exchange’s Insurance  
28 Business Processing Unit).

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1 1. all loss from FIRE AND LIGHTNING; and

2 2. accidental direct physical loss from...:

3 f. SUDDEN AND ACCIDENTAL DAMAGE FROM SMOKE

4 We do not cover loss caused by smoke from agricultural smudging or  
5 industrial operations.

6 (Pages 025-026).

7 In the section captioned, "Your Duties After Loss," the policy provides, "You must,  
8 within 60 calendar days after the loss, submit to us your signed, sworn proof of loss."

9 (Page 029).

10 Plaintiffs do not dispute that these provisions comply with the requirements of  
11 Insurance Code §2071. It is also undisputed that the policy contains no definition of either  
12 "FIRE" or "SMOKE."

13 The disputed Wildfire Smoke Endorsement contains the following relevant  
14 language:

15 For purposes of this endorsement and subject to all the provisions of your  
16 Homeowners policy, it is agreed that the coverage provided under PART I-  
17 PROPERTY COVERAGES of your policy has been changed as follows:

18 A. DEFINITIONS

19 Under DEFINITIONS the following definitions are added:

20 **Wildfire** – means a fire predominantly fueled by timber, scrub, brush, grass,  
21 or any other type of vegetation.

22 **Wildfire smoke** – means any smoke, soot, ash, char, odor, dust, particulate or  
23 other material (all whether or not settled, airborne, wind-borne or wind-  
24 driven) that is produced, discharged, emitted or released by, or otherwise  
25 caused by or resulting from, a *wildfire*.

26 **Wildfire smoke loss** – means accidental direct physical loss to property  
27 covered under PART I which is caused by *wildfire smoke* and the loss:

28 a. occurs; and

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1 b. is reported to us;

2 no later than 90 calendar days following the start date of the *wildfire*.

3 **B. PART I – PROPERTY COVERAGES**

4 **OTHER COVERAGES – PART I**

5 Under OTHER COVERAGES – PART I, provision 15 is added:

6 **15. WILDFIRE SMOKE**

7 We will pay up to \$5,000 for the total of all loss payable under PART I as a result of  
8 accidental direct physical loss to property covered under PART I which is caused by  
9 *wildfire smoke* that is not a *wildfire smoke loss*. The amount payable under this  
10 provision includes:

11 a. the cost required to repair or replace covered damaged or destroyed property;

12 b. the cost of testing the air or property to confirm the absence, presence, or level of  
13 any *wildfire smoke*;

14 c. any amount payable under OTHER COVERAGES – PART I, provision 1. LOSS  
15 OF USE;

16 d. any amount payable under OTHER COVERAGES – PART I, provision 7.

17 **REMOVAL OF DEBRIS AND VOLCANIC ASH.**

18 This coverage does not increase the amount of the limit of liability applicable to the  
19 property damaged or destroyed.

20 (Page 014).

21 **B. The Parties' Agreement Regarding Interpretation**

22 At the commencement of the litigation the parties had differing understandings as to  
23 the effect of the Endorsement. At oral argument, however, counsel agreed that under their  
24 respective interpretations of the Endorsement an insured whose home was damaged only  
25 by wildfire smoke (but not fire) and who reported that loss within 90 days of the "start of  
26 the wildfire" would be entitled to coverage up to the policy's full limits. If the insured had  
27 no loss from a wildfire itself but reported loss from wildfire smoke *after* 90 days of the  
28 start of the fire, the limits of the policy would be \$5,000. Based on that understanding, the

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1 Court now considers whether the Endorsement, functioning in such a fashion, violates  
2 sections 2070 and 2071 of the Insurance Code.

3 **C. Wild Fire Smoke Damage Is Covered By Sections 2070 and 2071**

4 The parties disagree as to whether Sections 2070 and 2071 apply to the  
5 Endorsement. The Exchange contends that the Endorsement is “extended coverage” that is  
6 not governed by section 2071 because wildfire smoke is a peril separate from the peril of  
7 “FIRE” as intended by the statute and that, in any event, under the statute it may limit the  
8 *amount* of coverage for a particular peril. Plaintiffs contend that smoke is a by-product of  
9 fire and is a peril of fire covered by the statutory provisions. This is a question of first  
10 impression on which there is little evidence of legislative intent other than the language of  
11 the statutes themselves. For the reasons that follow, the Court finds the Plaintiffs’  
12 arguments the more persuasive.

13 **1. The Language of the Statute**

14 Read together Insurance Code sections 2070 and 2071 provide that the policy must  
15 insure against not only fire itself but the “peril” of fire. Section 2071 requires coverage for  
16 “all LOSS BY FIRE.” Section 2070 states that a policy that covers: “the *peril* of fire only,  
17 or in combination with coverage against other *perils*, need not comply with the provisions  
18 of the standard form of fire insurance policy ... provided, that coverage with respect to the  
19 *peril* of fire, when viewed in its entirety, is substantially equivalent to or more favorable to  
20 the insured than that contained in such standard form fire insurance policy.” (§2070,  
21 emphasis added.) The question that must thus be answered is: Is smoke from a wildfire a  
22 “peril” separate from the fire itself? Or, put another way, when an insurer is required to  
23 cover “all loss by fire” does the term “all” include smoke from a fire causing loss?

24 “The term ‘perils’ or ‘risks’ in traditional property insurance parlance ‘refers to  
25 fortuitous, active, physical forces such as lightning, wind, and explosion, which bring  
26 about the loss.’ Croskey, Heeseman, Ehrlich & Klee, CAL. PRAC. GUIDE: INSURANCE  
27 LITIGATION (The Rutter Group 2017) 6:275, citing *Garvey v. State Farm Fire & Cas.*  
28 *Co.* (1989) 48 Cal. 3d 395, 406. In some technical contexts “peril” may mean “cause of

1 loss.” However, there is no indication that the Legislature meant “peril” in a technical way  
2 when it adopted the statute. See *Doherty W. Homeowners' Ass'n v. Am. Guar. & Liab. Ins.*  
3 *Co.* (1997) 60 Cal.App.4th 400, 405, fn. 4 (citing *Croskey* and noting that although “peril”  
4 may in some technical or special contexts mean “cause of loss,” the ordinary meaning is  
5 “fortuitous, active, physical forces.”)

6 Wildfire smoke is not an active force on its own. It occurs because of the wildfire.  
7 It thus appears from the language of the statutes and the ordinary definition of “peril” that  
8 when a carrier is required by the Legislature to insure against “all” loss “by fire” that  
9 included is the requirement to cover damage from smoke caused by any accidental fire  
10 other than those caused by particular sources detailed in the statute (“(a) enemy attack by  
11 armed forces, including action taken by military, naval or air forces in resisting an actual or  
12 an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e)  
13 revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of  
14 destruction at the time of and for the purpose of preventing the spread of fire, provided that  
15 the fire did not originate from any of the perils excluded by this policy; (i) neglect of the  
16 insured to use all reasonable means to save and preserve the property at and after a loss, or  
17 when the property is endangered by fire in neighboring premises; .....” Ins. Code, § 2071).<sup>5</sup>

## 18 **2. The Exchange’s Authorities Are Not Persuasive**

19 The Exchange cites Insurance Code §10091 (governing FAIR plan policies) and  
20 Insurance Code §9095 (governing fraternal fire insurers) as evidence of the Legislature’s  
21 understanding that smoke damage is distinct from standard fire coverage and is part of  
22  
23

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24 <sup>5</sup> That the policies exclude coverage for cover loss caused by smoke from agricultural  
25 smudging or industrial operations does not change the analysis. These exclusions relate to  
26 smoke from fires intentionally set and, in the case of the smudging operation, intended to  
27 cause smoke so as to raise the air temperature to prevent crop loss.  
28

1 “extended” coverage that is not subject to section 2070 and that “loss by Fire” was not  
2 intended by the Legislature to include smoke from a fire.

3 Section 10091 defines “Basic property insurance” to mean insurance  
4 against “direct loss . . . from perils insured under the standard fire policy and  
5 extended coverage endorsement and vandalism and malicious mischief.” While  
6 this section makes clear that the Legislature distinguishes between perils insured  
7 under the standard fire policy and other perils insured against under extended  
8 coverage endorsements, the language does not illuminate whether smoke caused  
9 by a fire constitutes a peril insured against under the standard policy or is a  
10 separate peril that may be covered by extended coverage endorsements.

11 Insurance Code §9095, applicable to certain fraternal associations, provides  
12 that if the association has issued a policy against fire, it may endorse the policy to  
13 extend coverage to include, “windstorm, cyclone, tornado and hail, explosion, riot,  
14 riot attending a strike, aircraft, vehicles and smoke.” In this context it does appear  
15 that the Legislature considered “smoke” to be a peril distinct from “fire.”  
16 However, there is no indication that the same considerations apply to fire policies  
17 issued by insurers subject to Sections 2070 and 2071.

18 Likewise, Cal. Code Regs., tit. 10, §2670.13 is a regulation adopted by the  
19 *Insurance Commissioner* to implement the provisions of section 779.36 of the  
20 Insurance Code regarding rates that may be charged for certain credit insurance. It  
21 does not reflect *legislative* intent. The regulation provides that where a carrier  
22 issues “dual interest” credit property insurance on a closed end plan of  
23 indebtedness for personal property purchased by the certificate holder and insuring  
24 the interests of both the lender whose loan is secured by the personal property and  
25 the certificate holder (borrower), the perils insured against include coverage for  
26 “direct loss or damage...by fire and lightning... as well as... extended coverage  
27 covering...smoke.”

28

1 The language for credit insurance is not the same as the language for fire  
2 insurance and the concerns of the Legislature regarding the proper coverages  
3 under a fire insurance policy are not shown to be the same as those for credit  
4 insurance. Moreover, the fact that the Insurance Commissioner referenced “*direct*  
5 loss by fire” and treated a loss by smoke covered by “extended coverage”  
6 provisions suggests that when the Legislature requires coverage for “*all* loss by  
7 fire” (as opposed to “direct” loss), that it intended loss caused by smoke to be  
8 included in the coverage and not part of “extended coverage.”

9 **3. Rate Approval by the Department of Insurance is Not Dispositive**

10 Defendant points out that its Wildfire Smoke Endorsement, and that of other  
11 insurers, was approved by the California Department of Insurance. The short answer to  
12 this argument is that the Insurance Commissioner’s approval of a rate does not govern the  
13 trial court’s determination of whether the policy conforms to the requirements of the  
14 Insurance Code. *Frenzer v. Mutual Benefit Health & Acc. Ass’n* (1938) 27 Cal.App.2d 406,  
15 414; *Rand v. American Nat. Ins. Co.* (2010) 717 F.Supp.2d 948, 955.

16 **4. Conclusion**

17 The Court recognizes that wildfires are prevalent in California and that  
18 claims for smoke loss from same may be more difficult to evaluate than claims for  
19 damage from fire itself (See Dec. of Daly). The Court nonetheless concludes that  
20 the Legislature intended, under a plain English reading of the term “ALL LOSS  
21 BY FIRE” and the usual meaning of the word “peril,” to include smoke loss in the  
22 coverages to be provided under section 2071. Should carriers desire to limit their  
23 exposure to such claims their remedy lies with the Legislature.

24 **D. The Endorsement Violates Section 2071**

25 The Exchange contends that under Section 2071 it has the right to set policy limits,  
26 including different policy limits for different kinds of losses, citing *St. Cyr v. California*  
27 *FAIR Plan Assn.* (2014) 223 Cal.App.4th 786. *St. Cyr* confirms that Section 2071 requires  
28 payment of policy limits and not actual cash value of lost property. The statute, however,

1 prescribes a *single* policy limit for loss by fire. It does not permit a separate limit for some  
2 losses by fire (the “sublimit”) and a more generous limit for others. Thus, to the extent the  
3 endorsement provides only \$5,000 in coverage for a wildfire smoke loss for claims  
4 reported more than 90 days after the start of a wildfire it violates the statute.

5 Further, the requirement that the claim must be reported within 90 days of the “start  
6 of the wildfire” rather than 60 days “after the loss,” as required by section 2071 (insured to  
7 give written notice “without unnecessary delay,” and “within sixty days *after the*  
8 *loss*”)(emphasis added), is not permitted.

9 As discussed at oral argument, the Court takes judicial notice, pursuant to Cal. Evid.  
10 Code §§ 452(g) and (h), that wildfires in California often begin many miles from where  
11 they end and burn for many weeks before they are extinguished. By way of example only,  
12 the Station Fire, which preceded the Exchange’s Endorsement, began August 26, 2009 and  
13 was not contained until October 16, 2009, burning some 160,577 acres in the process.

14 ([http://cdfdata.fire.ca.gov/pub/cdf/images/incidentstatsevents\\_178.pdf](http://cdfdata.fire.ca.gov/pub/cdf/images/incidentstatsevents_178.pdf)) The recent Thomas  
15 Fire began December 4, 2017 in Ventura County, burned over 281,000 acres, and was not  
16 contained until at least January 12, 2018.

17 <https://inciweb.nwcg.gov/incident/article/5670/42432/>. In both fires, those who suffered  
18 wildfire smoke damage during the last days of the fire (more than 30 days after it  
19 commenced) would, under the Exchange’s endorsement, be required to report any loss  
20 within ninety days after commencement of the fire, even if their losses were not incurred  
21 until well after the fire commenced, or suffer a diminution in the amount of their coverage.  
22 The statute does not permit this.

### 23 **E. The Rule of Lenity Does Not Bear On the Analysis**

24 Defendant alternatively argues that the Court should apply the rule of lenity.  
25 (Defendant’s Reply at 12:16-13:5.) The rule of lenity essentially holds that penal statutes  
26 are to be construed and applied as favorably to the defendant as the language of the statute  
27 and the circumstances reasonably permit. *Walsh v. Department of Alcoholic Beverage*  
28 *Control* (1963) 59 Cal.2d 757, 765. The basis for the rule is to prevent courts from

1 enlarging penal statutes. Id. at 764. “[S]tatutes which impose a new and unusual liability  
2 which partakes of the nature of a penalty must be strictly construed in favor of the persons  
3 sought to be subjected to their operation. However, the intent of the Legislature prevails  
4 over the strict letter of the statute and the letter will, if possible, be read to conform to the  
5 spirit of the act and to effectuate the purpose of the law.” *Tos v. Mayfair Packing Co.*  
6 (1984) 160 Cal.App.3d 67, 75, internal quotes and citations omitted.

7 This rule potentially applies in the insurance context, as noted in *Interinsurance*  
8 *Exchange of Automobile Club v. Superior Court* (2007) 148 Cal.App.4<sup>th</sup> 1218, 1237, FN  
9 15, as Insurance Code §2083 makes it a misdemeanor for an insurer to issue a fire policy  
10 that varies from the standard form of policy. The Court here makes no ruling expanding  
11 any provision of the Penal Code. The rule is thus inapplicable.

#### 12 IV. CONCLUSION

13 In requiring that the carrier insure against “ALL LOSS BY FIRE” and there being  
14 no indication that the term “peril” as used in section 2070 was intended to have other than  
15 a non-technical meaning, the Legislature appears to have intended that smoke from a fire  
16 be included in the coverages in Section 2071’s standard form. The endorsement at issue,  
17 by limiting coverage to \$5,000 for smoke loss reported more than ninety days after the  
18 commencement of a wildfire, potentially provides the insured with less coverage than that  
19 required by section 2071. Judgment, accordingly, shall be entered for Plaintiffs.

20 Counsel for Plaintiffs shall prepare a judgment in this action consistent with this  
21 ruling and lodge it on or before June 1, 2018.

22 The Court sets a further status conference for June 27 2018 at 9:00 a.m. to discuss  
23 further steps in this action and the related *Gomez* action. Counsel shall file a joint status  
24 report 5 court days in advance of that hearing.

25  
26  
27 Dated: 5/10/18

Maren E. Nelson  
MAREN E. NELSON  
JUDGE OF THE SUPERIOR COURT

1 **Evidentiary Objections**

2 Plaintiffs' objection to the Declaration of Clark A. Keller (attaching a copy of the  
3 Department of Insurance's approval of Exchange's application for approval of the Wildfire  
4 Smoke Endorsement) and of Jared K LeBeau (supporting Defendant's Request for Judicial  
5 Notice of the California Department of Insurance's approval of similar wildfire smoke  
6 endorsements by other insurers): Overruled. Although certain statements therein may be  
7 hearsay, page and line references were not given.

8 Defendants' request for judicial notice of the documents authenticated by LeBeau  
9 is granted pursuant to Evidence Code §452(c). The documents represent official acts of the  
10 Department of Insurance.

11 Defendant's Supplemental Request for Judicial Notice and Supplemental  
12 Declaration of LeBeau were filed February 2, 2018. This is additional evidence of CDI  
13 approval of a wildfire smoke endorsement. For the same reasons, judicial notice of the acts  
14 of CDI is granted.

15 Plaintiffs' Request for Judicial Notice of two demurrer rulings is denied. The  
16 rulings on demurrers are not relevant to the issues before the Court.

17 **Documents Considered**

18 **Filed July 21, 2017 by Plaintiffs**

19 Plaintiffs' Notice of Motion and Motion for Summary Judgment  
20 Plaintiffs' Separate Statement  
21 Plaintiffs' Request for Judicial Notice  
22 Declaration of Shant A. Karnikian  
23 Plaintiffs' Compendium of Non-California Authorities

24 **Filed July 21, 2017 by Defendant**

25 Defendant's Notice of Motion and Motion for Summary Judgment  
26 Brief in Support of Defendant's Motion for Summary Judgment  
27 Defendant's Separate Statement  
28 Declaration of Clark Keeler  
Declaration of John Brooks  
Declaration of Mary Vidal  
Declaration of Jared LeBeau  
Defendant's Request for Judicial Notice

1 **Filed August 10, 2017 by Defendant**

2 Brief in Opposition to Plaintiff's Motion for Summary Judgment

3 Defendant's Response to Plaintiffs' Separate Statement

4 Declaration of Brian P. Daly

5 Defendant's Opposition to Plaintiffs' Request for Judicial Notice

6 **Filed August 10, 2017 by Plaintiffs**

7 Plaintiffs' Opposition to Defendant's Motion for Summary Judgment

8 Plaintiffs' Response to Defendant's Separate Statement

9 Plaintiffs' Request for Judicial Notice

10 Plaintiffs' Objections to Defendant's Evidence

11 Plaintiffs' Objections to Defendant's Request for Judicial Notice

12 Plaintiffs' Compendium of Non-California Authority

13 **Filed September 7, 2017 by Plaintiffs**

14 Plaintiffs' Reply Brief in Support of Motion for Summary Judgment

15 **Filed September 7, 2017 by Defendant**

16 Reply Brief in Support of Defendant's Motion for Summary Judgment

17 Defendant's Response to Plaintiffs' Objections to Defendant's Evidence

18 Defendant's Opposition to Plaintiffs' Request for Judicial Notice

19 Defendant's Response to Plaintiffs' Objections to Defendant's Request for Judicial Notice

20 Defendant's Request for Judicial Notice re Its Reply

21 **Filed February 2, 2018 by Defendant**

22 Defendant's Supplemental Request for Judicial Notice

23 Supplemental Declaration of Jared LeBeau

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