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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

15 JANET BECKFORD,
16 Plaintiff,
17 v.
18 INTERINSURANCE EXCHANGE OF THE
AUTOMOBILE CLUB; AUTOMOBILE
19 CLUB OF SOUTHERN CALIFORNIA; and
DOES 1 to 10,
20 Defendants.
21

Case No. 30-2012-00556081-CU-IC-CJC
HONORABLE MARY FINGAL SCHULTE
DEPT. C06
**NOTICE OF RULING ON THOMAS V.
McKERNAN'S MOTION TO DISMISS
(BARROWS MOTION) AND DEMURRER
TO SECOND AMENDED COMPLAINT**
Action Filed: March 21, 2012
Trial Date: July 21, 2014

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
05/22/2014 at 01:40:00 PM
Clerk of the Superior Court
By e Clerk, Deputy Clerk

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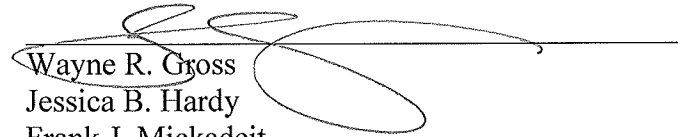
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 22, 2014, at 10:00 a.m. in Department C06 of the above-captioned Court, the motion of Thomas V. McKernan to dismiss with prejudice all causes of action alleged against him in the Second Amended Complaint and demurrer to the Second Amended Complaint came on regularly for hearing. The Court issued a tentative ruling, attached hereto as Exhibit A. The tentative ruling became the order of the Court. The motion to dismiss was granted. All causes of action against Thomas McKernan are dismissed with prejudice. The demurrer to the Second Amended Complaint was denied as moot.

DATED: May 22, 2014

GREENBERG GROSS LLP

By:



Wayne R. Gross
Jessica B. Hardy
Frank J. Mickadeit
Attorneys for Thomas V. McKernan

EXHIBIT A

12-0556081

BECKFORD V AUTO
CLUB

DEMURRER

Moot, given ruling on motion to dismiss.

MOTION TO DISMISS

Defendant Thomas V. McKernan's Motion to Dismiss is granted and the action is dismissed as to him. Defendant's demurrer is moot.

A *Barrows* motion is an evidence-based motion that may be used by a defendant named in an action by a Doe amendment under Code of Civil Procedure section 474 to challenge the amendment on the ground plaintiff "unreasonably delayed" in filing it. The defendant bears the burden of establishing plaintiff knew of its identity and the facts suggesting its liability earlier than claimed by plaintiff. Moreover, the defendant "must show not only that the plaintiff was dilatory but also 'that defendant suffered prejudice from any such delay.'" (*Barrows, supra*, 144 Cal.App.3d at p. 9; *A.N., supra*, at p. 1067.)

Defendant has sustained his burden. It is clear from the original complaint alone, filed 3-21-2012, and Ex. A attached thereto, that Plaintiff knew of the identify of facts suggesting liability against Defendant's CEO, Thomas V. McKernan since 2012.

Furthermore, the homeowners insurance renewal offer letter of 7-28-2009 was signed by Mr. McKernan and attached as Ex.A to the original Complaint.

Defendant was not served with this lawsuit until March 2014, and he is prejudiced in that trial is now less than 2 months away, he has not been able to obtain evidence or prepare his defense, unlike Plaintiff who has had 4 years to prepare for the case.

Plaintiff's opposition was read, but not given much weight by the Court. First of all, it is untimely, having been filed on 5/14 for a 5/22 hearing. CCP§1005 required it be filed and served quickest method within 9 Court days of the hearing. 5/14 was just 6 court days before the hearing. Furthermore, there is no POS attached to the Opposition, so it is unclear if Plaintiff's counsel even served it on Defendant. Also, the opposition violates CRC, Rule 3.1113(d)

in that it is 21 pages long and should have been only 15 pages. Finally, it violates CRC, Rule 3.1113(a) & (b) in that there are no points and authorities. It is just a 20 page rambling declaration. Since the Reply addressed the opposition on the merits (and addressed the many procedural defects that the Court had already noticed), the Court does not strike the opposition.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 650 Town Center Drive, Suite 1750, Costa Mesa, CA 92626.

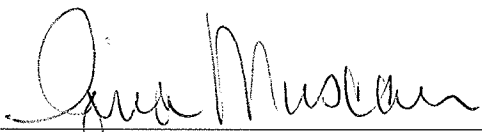
On May 22, 2014, I served true copies of the following document(s) described as **NOTICE OF RULING ON THOMAS V. McKERNAN'S MOTION TO DISMISS (BARROWS MOTION) AND DEMURRER TO SECOND AMENDED COMPLAINT** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Greenberg Gross llp for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Costa Mesa, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 22, 2014, at Costa Mesa, California.



Gina Muscari

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SERVICE LIST
Beckford v. Interinsurance Exchange of the Automobile Club
30-2012-0556081

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AUTOMOBILE CLUB OF SOUTHERN
CALIFORNIA; ACSC MANAGEMENT
SERVICES, INC.; AMERICAN AUTOMOBILE
ASSOCIATION; THE AMERICAN
AUTOMOBILE ASSOCIATION, INC.