



**Entity Name:** PROVIDENCE PUBLICATIONS, LLC

**Jurisdiction:** CA

**Date:** 11/25/2015

**Receipt Method:** Process Server

**Case Number:** 2:15-CV-02445-GRB-CKD

**Plaintiff:** APPLIED UNDERWRITERS, INC.

**Defendant:** LARRY J. LICHTENEGGER

**Document Type:** Notice & Order



## NOTICE OF AVAILABILITY

### VOLUNTARY DISPUTE RESOLUTION

Pursuant to the findings and directives of Congress in 28 U.S.C. §§ 651 *et seq.*, and in recognition of the economic burdens and delay in the resolution of disputes that can be imposed by full formal litigation, Local Rule 271 governs the referral of certain actions to the Voluntary Dispute Resolution Program ("VDRP") at the election of parties. Plaintiff or removing party is to provide all other parties with copies of the notice at the time service is effected or, for parties already served, no more than fourteen (14) days after receiving notice from the Court. After filing of the original complaint or removal action, any party who causes a new party to be joined in the action shall promptly serve a copy of the notice on the new party.

It is the Court's intention that the VDRP shall allow the participants to take advantage of a wide variety of alternative dispute resolution methods. These methods may include, but are not limited to, mediation, negotiation, early neutral evaluation and settlement facilitation. The specific method or methods employed will be determined by the Neutral and the parties.

**PLEASE TAKE NOTICE** that pursuant to Local Rule 271, *this Local Rule applies to* all civil actions pending before any District Judge or Magistrate Judge in the District except that actions in the following categories are exempt from presumptive inclusion: (i) prisoner petitions and actions, including habeas corpus petitions, (ii) actions in which one of the parties is appearing *pro se*, (iii) voting rights actions, (iv) social security actions, (v) deportation actions, (vi) Freedom of Information Act actions, and (vii) actions involving the constitutionality of federal, state or local statutes or ordinances. The fact that a case falls in a category that is exempt from the presumptive applicability of this Local Rule neither (1) precludes the parties to such a case from agreeing to participate in an Alternative Dispute Resolution ("ADR") process, nor (2) deprives the Court of authority to compel participation in an appropriate ADR proceeding.

Parties may elect Voluntary Dispute Resolution with the Court indicating that all parties to the action agree to submit the action to VDRP pursuant to Local Rule 271. Actions may not be assigned to VDRP over the objection of a party. (Copy of sample stipulation attached hereto.) **At the time of filing, a copy of the stipulation shall be provided to the VDRP Administrator designated below:**

#### Sacramento Cases

Voluntary Dispute Resolution  
Program Administrator  
United States District Court  
501 "I" Street, Suite 4-200  
Sacramento, CA 95814  
(916) 930-4278

#### Fresno Cases

Voluntary Dispute Resolution  
Program Administrator  
United States District Court  
2500 Tulare Street, Suite 1501  
Fresno, CA 93721  
(559) 499-5600

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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 **APPLIED UNDERWRITERS, INC.,**

**NO: 2:15-CV-02445-GEB-CKD**

12 Plaintiff(s)

13 v.

14 **LARRY J. LICHTENEGGER, ET AL.,**

STIPULATION TO ELECT REFERRAL  
OF ACTION TO VOLUNTARY DISPUTE  
RESOLUTION PROGRAM (VDRP)  
PURSUANT TO LOCAL RULE 271

15 Defendant(s)

16  
17 Pursuant to Local Rule 271, the parties hereby agree to submit the above-entitled action to  
18 the Voluntary Dispute Resolution Program.  
19

20 DATED: **NOVEMBER 24, 2015**  
21

22 \_\_\_\_\_  
Name:  
Attorney for Plaintiff(s)

23  
24  
25 \_\_\_\_\_  
Name:  
Attorney for Defendant(s)  
26

## **Certificate of Admission To the Bar of Illinois**

I, Carolyn Taft Grosboll, Clerk of the Supreme Court of Illinois, do hereby certify that

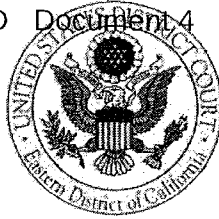
Mark K. Suri

has been duly licensed and admitted to practice as an Attorney and Counselor of Law within this State; has duly taken the required oath to support the CONSTITUTION OF THE UNITED STATES and of the STATE OF ILLINOIS, and also the oath of office prescribed by law, that said name was entered upon the Roll of Attorneys and Counselors in my office on November 10, 1988 and is in good standing, so far as the records of this office disclose.

In Witness Whereof, I have hereunto placed my hand and affixed the seal of said Supreme Court, at Springfield, in said State, this Monday, November 23, 2015.

*Carolyn Taft Grosboll*

Clerk



**PRO HAC VICE APPLICATION,  
ECF REGISTRATION AND CONSENT  
TO ELECTRONIC SERVICE,  
PROPOSED ORDER**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

APPLIED UNDERWRITERS, INC.,  
a Nebraska corporation,

Plaintiff(s),

v.

Case No.

LARRY J. LICHTENEGGER, J. DALE  
DEBBER, both Individuals, and  
PROVIDENCE PUBLICATIONS, LLC, a  
California limited liability company,

Jury Trial Demanded

Defendant(s).

I, Mark K. Suri, attorney for Plaintiff Applied Underwriters, Inc., a Nebraska corporation, hereby petitions for admission to practice Pro Hac Vice under the provision of Local Rule 180(b)(2). I understand and consent to ECF Registration and Electronic Service as detailed below and I have submitted payment in the amount of \$200.00 to the Clerk, U.S. District Court.

In support of this petition, I state under penalty of perjury that:

My business address is:

Firm Name: Hinshaw & Culbertson LLP

Address: 222 North LaSalle Street, Suite 300

City: Chicago

State: Illinois ZIP Code: 60601-1081

Voice Phone: (312) 704-3518

FAX Phone: (312) 704-3001

Internet E-mail: msuri@hinshawlaw.com

Additional E-mail: dbacso@hinshawlaw.com

I reside in City: Deerfield State: Illinois

I was admitted to practice in the Illinois Supreme Court on November 10, 1988. I am presently in good standing and eligible to practice in said court. A certificate of good standing from the court in my state of primary practice is attached to this application. I am not currently suspended or disbarred in any other court.

I have not concurrently or within the year preceding this application made a pro hac vice application to this court. (If you have made a pro hac vice application to this court within the last year, list the name and case number of each matter in which an application was made, the date of application and whether granted or denied.)

I hereby designate the following member of the Bar of this Court who is registered for ECF with whom the Court and opposing counsel may readily communicate regarding the conduct of the case and upon whom electronic notice shall also be served via the court's ECF system:

Name: Peter J. Felsenfeld

Firm Name: Hinshaw & Culbertson LLP

Address: One California Street, 18<sup>th</sup> Floor

City: San Francisco

State: California ZIP Code: 94111

Voice Phone: (415) 362-6000

FAX Phone: (415) 834-9070

E-mail: pfelsenfeld@mail.hinshawlaw.com

Dated: November 25, 2015

Petitioner: 

**ORDER**

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE, U.S. DISTRICT COURT



Beginning January 3, 2005, all cases filed and pending in the Eastern District of California are subject to electronic filing, service (ECF) and electronic case storage procedures (CM). This form shall be used to register for accounts on the Court's Electronic Case File (ECF) system which permits electronic filing.

By submitting this Petition to Appear Pro Hac Vice and ECF Registration Form, I understand:

1. Registration herein is for ECF use only in cases proceeding in the U.S. District Court for the Eastern District of California.

2. Each attorney who wishes to appear in the Eastern District pro hac vice must complete and sign an Attorney Registration Form. An attorney's password issued by the court combined with the attorney's identification (login), serves as and constitutes the attorney signature. Therefore, an attorney/participant must protect and secure the password issued by the court. If there is any reason to suspect the password has been compromised in any way, such as resignation or reassignment of the person with authority to use the password, it is the duty and responsibility of the attorney/participant to immediately notify the court. The court will immediately delete the password from the electronic filing system and issue a new password.

3. Unless an attorney expressly declines to consent (see below) registration as a Filing User constitutes: (1) consent to receive service electronically and waiver of the right to receive service by first class mail pursuant to Federal Rule of Civil Procedure 5(b)(2)(D); (2) consent to electronic service and waiver of the right to service by personal service or first class mail pursuant to Federal Rule of Civil Procedure 5(b)(2)(D). **Note: Service of Summons and Complaint pursuant to Federal Rule of Civil Procedure 4 are not encompassed by electronic service.** Waiver of service and notice by first class mail applies to notice of the entry of an order or judgment. Service by electronic means is complete upon transmission of the Notice of Electronic Filing.

4. A user accesses court information via the court's Internet site or through the Public Access to Court Electronic Records ("PACER") Service Center. **PACER involves a separate, free registration.** Although the court manages the procedures for electronic filing, all electronic public access to case file documents occurs through PACER. A PACER login is required, in addition to, the password issued by the court. To register for PACER, a user must complete the online form or submit a registration form, available on the PACER website (<http://pacer.psc.uscourts.gov>).

5. By this registration, I understand that the specific procedures which control electronic filing can be found in the Local Rules and CM/ECF User's Manual, all of which can be accessed on the Court's website. Please periodically access these Rules and Manual in order to understand electronic filing requirements, and any changes which may be later implemented. Serious and/or sustained failure to abide by those procedures may result in a termination of electronic filing privileges which are a prerequisite to practice in the Eastern District.

**Notice Regarding Non-Consent to Electronic Service.** An attorney may expressly forego consenting to service and receipt of filed documents by electronic service pursuant to Federal Rule of Civil Procedure 5(b)(2)(D). This decision not to consent must be by separate document in writing addressed to the Office of the Clerk. Parties not consenting to electronic service must serve by the other methods specified in Rule 5.

The court strongly urges that all attorneys consent to serve and receive service of filed documents by means of electronic service. There is no significant downside to such consent and universal participation in electronic service will benefit all concerned. **Failure to consent to electronic service does not relieve attorneys of the obligation to file documents electronically when required to do so or otherwise abide by CM/ECF procedures.**



TO:  <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING PATENT OR TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Eastern California on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. 2:15-CV-02445-GEB-CKD	DATE FILED 11/24/15	US District Court Eastern California Sacramento
PLAINTIFF  APPLIED UNDERWRITERS, INC.,		DEFENDANT  LARRY J. LICHTENEGGER, ET AL.,
<b>PATENT OR TRADEMARK NO.</b>	<b>DATE OF PATENT OR TRADEMARK</b>	<b>HOLDER OF PATENT OR TRADEMARK</b>
1 2,651,867	November 19, 2002	Applied Underwriters, Inc.
2 2,777,687	October 28, 2003	Applied Underwriters, Inc.
3 2,777,688	October 28, 2003	Applied Underwriters, Inc.
4 2,781,677	November 11, 2003	Applied Underwriters, Inc.
5 2,812,457	February 10, 2004	Applied Underwriters, Inc.

In the above-entitled case the following patents(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleadings		
<b>PATENT OR TRADEMARK NO.</b>	<b>DATE OF PATENT OR TRADEMARK</b>	<b>HOLDER OF PATENT OR TRADEMARK</b>	
1			
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In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT
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CLERK	(BY) DEPUTY CLERK	DATE
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**NOTICE OF AVAILABILITY OF A MAGISTRATE JUDGE  
TO EXERCISE JURISDICTION AND APPEAL INSTRUCTIONS**

You are hereby notified in accordance with 28 U.S.C §636(c), F.R.Civ.P.73 and Local Rule 305, the United States Magistrate Judges sitting in Sacramento and Fresno are available to exercise the court's case dispositive jurisdiction and to conduct any or all case despositive proceedings in this action, including motions to dismiss, motions for summary judgment, a jury or non jury trial, and entry of a final judgment. Exercise of this jurisdiction by a Magistrate Judge is however, permitted only if all parties voluntarily consent. You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's case dispositive jurisdiction from being exercised by a Magistrate Judge.

Any appeal from a judgment entered by a Magistrate Judge is taken directly to the United States Court of Appeals for the Ninth Circuit or, where appropriate, for the Federal Circuit in the same manner as an appeal from any other judgment of a District Court.

Whether or not the parties consent pursuant to 28 U.S.C. § 636(c), the assigned Magistrate Judge will hear all motions except those case dispositive motions set forth in 28 U.S.C. § 636(b)(1)(A).

A copy of the Form for "Consent to / Decline of Jurisdiction of United States Magistrate Judge" is attached hereto for pro per use and attorney information. This form is available in fillable .pdf format on the court's web site at [www.caed.uscourts.gov](http://www.caed.uscourts.gov) for all attorney ECF filers. This form may be filed through CM/ECF or by pro se litigants at the appropriate Clerk's Office location.

Office of the Clerk  
501 I Street, Room 4-200  
Sacramento, CA 95814

Office of the Clerk  
2500 Tulare Street, Suite 1501  
Fresno, CA 93721

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

APPLIED UNDERWRITERS, INC. ,  
Plaintiff(s)/Petitioner(s),

vs.

CASE NO. 2:15-CV-02445-GEB-CKD

LARRY J. LICHTENEGGER, ET AL. ,  
Defendant(s)/Respondent(s).

**IMPORTANT**

**IF YOU CHOOSE TO CONSENT OR DECLINE TO CONSENT TO JURISDICTION OF  
A UNITED STATES MAGISTRATE JUDGE, CHECK AND SIGN THE APPROPRIATE  
SECTION OF THIS FORM AND RETURN IT TO THE CLERK'S OFFICE.**

☐ **CONSENT TO JURISDICTION OF UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of Title 28, U.S.C Sec. 636(c)(1), the undersigned hereby voluntarily consents to have a United States Magistrate Judge conduct all further proceedings in this case, including trial and entry of final judgment, with direct review by the Ninth Circuit Court of Appeals, in the event an appeal is filed.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

( ) Plaintiff/Petitioner ( ) Defendant/Respondent

Counsel for \_\_\_\_\_ \*

☐ **DECLINE OF JURISDICTION OF UNITED STATES MAGISTRATE JUDGE**

Pursuant to Title 28, U.S.C. Sec 636(c)(2), the undersigned acknowledges the availability of a United States Magistrate Judge but hereby declines to consent.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

( ) Plaintiff/Petitioner ( ) Defendant/Respondent

Counsel for \_\_\_\_\_ \*

*\*If representing more than one party, counsel must indicate the name of each party responding.*

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

APPLIED UNDERWRITERS, INC.,

Plaintiff,

V.

LARRY J. LICHTENEGGER, ET AL.,

Defendants.

NO. 2:15-CV-02445-GEB-CKD

ORDER SETTING STATUS  
(PRETRIAL SCHEDULING)  
CONFERENCE

This action has been assigned to Judge Garland E. Burrell, Jr. Pursuant to the provisions of Federal Rule of Civil Procedure 16, IT IS ORDERED that:

1. A status (pretrial scheduling) conference is set for February 1, 2016 at 09:00 AM, before Judge Burrell in Courtroom 10 of the above-entitled court;

2. All parties to the action shall appear by counsel (or in person if acting without counsel; however, pursuant to Local Rule 183, a corporate party or other entity may not appear in propria persona and must appear through counsel);

3. Concurrently with the service of process, or as soon thereafter as possible, plaintiff(s) shall serve upon each of the parties named herein, and upon all parties subsequently joined by plaintiff, a copy of this order, and shall file with the Clerk of Court a certificate reflecting such service. Any party who impleads a third party defendant shall serve upon that party a copy of this order, and shall file with the Clerk of Court a certificate reflecting such service;

4. In the event this action was originally filed in a state court and was thereafter removed to this court, the removing party or parties shall, immediately following such removal, serve upon each of the other parties named herein and upon all parties subsequently joined, a copy of this order and shall file with the Clerk of Court a certificate reflecting such service;

5. At least twenty-one (21) calendar days before the scheduling conference is held, the parties shall confer and develop a proposed discovery plan, as required by Federal Rule of Civil Procedure 26(f);

6. The parties shall file a Joint Status Report with the court not later than fourteen (14) days prior to the scheduling conference.<sup>1</sup> The report shall briefly set forth the views of each party on the following matters:

a) Status of service of process on parties not yet served;

b) Possible joinder of additional parties;<sup>2</sup>

c) Anticipated amendment of pleadings;

d) The basis for jurisdiction and venue;

e) Anticipated motions with suggested dates;

f) Anticipated and outstanding discovery;<sup>3</sup>

g) A written report outlining the proposed discovery plan required by Federal Rule of Civil Procedure 26(f). The discovery plan shall indicate the parties' views and proposals concerning:

<sup>1</sup> The failure of one or more of the parties to participate in the preparation of the Joint Status Report does not excuse the other parties from their obligation to timely file a status report in accordance with this Order. In the event a party fails to participate as ordered, the party timely submitting the status report shall include a declaration explaining why it was unable to obtain the cooperation of the other party or parties.

<sup>2</sup> Plaintiff(s) shall indicate in the Joint Status Report a date by when the identities of any "Doe" defendants are expected to be discovered. Failure to set forth specific information regarding the time Plaintiff(s) needs to identify any "Doe" defendants will be deemed an abandonment of any claims against such defendants, and a dismissal order will follow.

<sup>3</sup> Federal Rule of Civil Procedure 26 requires, absent a contrary stipulation, initial disclosures to be made as provided in that Rule. Any objection to the initial disclosures and the basis therefor must be included in the Joint Status Report.

(1) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement as to when disclosures under subdivision (a) (1) were made or will be made;

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues; and

(3) what changes should be made in the limitations on discovery imposed under the Federal Rules of Civil Procedure or the Local Rules, and what other limitations should be imposed;

h) Scheduling of future proceedings, including suggested timing of the disclosures of expert witnesses and information required by Rule 26(a)(2), completion dates for discovery and law and motion, and dates for final pretrial conference and trial;<sup>4</sup>

i) Estimate of trial time;

j) Appropriateness of special procedures such as reference to a special master or agreement to try the matter before a magistrate judge pursuant to 28 U.S.C. § 636(c);

k) Modification of standard pretrial procedures because of the simplicity or complexity of the case;

l) Whether the case is related to any other case on file in this district, including the bankruptcy courts of this district;

m) Prospects for settlement, including whether a settlement conference should be scheduled and whether the parties will stipulate to the trial judge acting as settlement judge;

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<sup>4</sup> In completing this portion of the status report, the parties are advised that Judge Burrell's typical pretrial scheduling procedures require: 1) that initial expert disclosures be made 150 days prior to the completion of discovery; 2) that rebuttal expert disclosures be made 120 days prior to the completion of discovery; 3) that discovery be completed 90 days prior to the final pretrial conference; 4) that law and motion is cut off 60 days before the final pretrial conference; and 5) that the final pretrial conference will be held 90 days before the trial.

Case 2:15-cv-02445-GEK-CKD Document 3 Filed 11/24/15 Page 4 of 4  
n) Any other matter that may be conducive to the just and expeditious disposition of the case.

7. Following the status conference, a formal order will be issued regarding future proceedings in the case. Requests to modify or vacate any date set forth in the order are not favored and will not be granted absent good cause.

8. The parties are advised that failure to file a Joint Status Report in accordance with this order may result in the imposition of sanctions.

9. The parties are required to immediately notify the courtroom deputy and chambers of any settlement or other disposition of the case. L.R. 160. In addition to notifying chambers orally, the parties shall file a notice of settlement in the Clerk's Office within three (3) days which sets forth a date by which dispositional documents will be filed.

10. Motions shall be filed in accordance with Local Rule 230(b). Opposition papers shall be filed in accordance with Local Rule 230(c). Any party that does not oppose the granting of the motion shall file a statement of non-opposition as required by Local Rule 230(c). The failure to file an opposition or statement of non-opposition in accordance with Local Rule 230(c) may be deemed consent to the granting of the motion and the Court may dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651, 652-53 (9th Cir. 1994).

IT IS SO ORDERED.

DATE: November 24, 2015

GARLAND E. BURRELL, JR.  
UNITED STATES DISTRICT JUDGE

by: /s/ M. Marciel  
Deputy Clerk



**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

**APPLIED UNDERWRITERS, INC. ,**

**V.**

**SUMMONS IN A CIVIL CASE**

**LARRY J. LICHTENEGGER, ET AL. ,**

**CASE NO: 2:15-CV-02445-GEB-CKD**

**TO: J. Dale Debber; Larry J. Lichtenegger;**  
**Providence Publications, LLC**  
Defendant's Address:

**YOU ARE HEREBY SUMMONED** and required to serve on

**Spencer Kook**  
**Hinshaw & Culbertson LLP**  
**633 West 5th Street, 47th Floor**  
**Los Angeles, CA 90071-2043**

an answer to the complaint which is served on you with this summons, within **21** days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

**MARIANNE MATHERLY**

CLERK

**/s/ M. Marciel**

(By) DEPUTY CLERK



ISSUED ON 2015-11-24 13:53:12.0, Clerk  
USDC EDCA



**RETURN OF SERVICE**

Service of the Summons and complaint was made by me(1)	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served: \_\_\_\_\_
- \_\_\_\_\_
- ☐ Left copies thereof at the defendant's dwelling house or usual place of bode with a person of suitable age and discretion then residing therein.
- ☐ Name of person with whom the summons and complaint were left: \_\_\_\_\_
- ☐ Returned unexecuted: \_\_\_\_\_
- \_\_\_\_\_
- ☐ Other (specify) : \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**STATEMENT OF SERVICE FEES**

TRAVEL	SERVICES	TOTAL
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**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on

\_\_\_\_\_

Date

\_\_\_\_\_

Signature of Server

\_\_\_\_\_

Address of Server

SPENCER Y. KOOK (SBN 205304)  
HINSHAW & CULBERTSON LLP  
633 West 5th Street, 47th Floor  
Los Angeles, CA 90071-2043  
Telephone: 213-680-2800  
Facsimile: 213-614-7399

Travis Wall (SBN 191662)  
Peter J. Felsenfeld (SBN 260433)  
HINSHAW & CULBERTSON LLP  
One California Street, 18th Floor  
San Francisco, CA 94111  
Telephone: 415-362-6000  
Facsimile: 415-834-9070

Attorneys for Plaintiff APPLIED UNDERWRITERS, INC.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

APPLIED UNDERWRITERS, INC., a  
Nebraska corporation,

Plaintiff,

vs.

LARRY J. LICHTENEGGER, J. DALE  
DEBBER, both Individuals, and  
PROVIDENCE PUBLICATIONS, LLC, a  
California limited liability company,

Defendants.

Case No.

**PLAINTIFF APPLIED UNDERWRITERS,  
INC.'S COMPLAINT FOR (1) FEDERAL  
TRADEMARK INFRINGEMENT, (2)  
VIOLATION OF LANHAM ACT, (3)  
UNFAIR COMPETITION, (4) FEDERAL  
TRADEMARK DILUTION, (5)  
VIOLATION OF CAL. BUS. & PROF.  
CODE § 17200, et. seq.**

COMPLAINT

Case No. \_\_\_\_\_

**COMPLAINT**

Plaintiff Applied Underwriters, Inc. (“Applied Underwriters” or “Plaintiff”), by and through its attorneys, complains as follows against defendants Larry Lichtenegger, J. Dale Debber, and Providence Publications, LLC (collectively, “Defendants”) as follows.

**NATURE OF THE ACTION**

1. This is a five-count complaint to redress violations of federal trademark infringement, the Lanham Act, unfair competition and violation of California’s Unfair Competition Act, resulting from Defendants’ wrongful and unauthorized use of Plaintiff’s federally registered trademarks APPLIED UNDERWRITERS and EQUITYCOMP.

2. In March 2001, Applied Underwriters adopted the name and mark APPLIED UNDERWRITERS in connection with offering and providing certain financial services relating to insurance and employee benefit plans. Applied Underwriters has registered the service mark “APPLIED UNDERWRITERS” with the United States Patent and Trademark Office.

3. In October 2002, Applied Underwriters adopted the name and mark EQUITYCOMP in connection with offering and providing certain financial services relating to insurance and employee benefit plans. Applied Underwriters has registered the service mark “EQUITYCOMP” with the United States Patent and Trademark Office.

4. Through these trademark registrations and related common law and other intellectual property rights (collectively, the “APPLIED UNDERWRITERS IP”), Applied Underwriters has built a valuable business and good will, with the APPLIED UNDERWRITERS IP being famous as a source identifier in connection with Applied Underwriters’ providing of certain financial services relating to insurance and employee benefit plans to the public.

5. As described more fully below, beginning in at least November 2015, Defendants wrongfully, willfully, and recklessly began using the APPLIED UNDERWRITERS IP to market and promote their own unrelated services related to insurance and employee benefit plans.

6. Defendants’ wrongful and unauthorized use of the APPLIED UNDERWRITERS IP creates a likelihood of confusion and results in the dilution of Applied Underwriters’ valuable intellectual property rights. Applied Underwriters seeks, *inter alia*, injunctive relief, compensatory

1 damages, restitution, punitive damages, corrective advertising, attorneys' fees and costs incurred by  
2 reason of Defendants' conduct, and all other appropriate relief.

### 3 JURISDICTION AND VENUE

4 7. This Court has jurisdiction over the subject matter of this action under 15 U.S.C. §§  
5 1121 and 1125(a), and under 28 U.S.C. §§ 1331, 1337, and 1338. This Court has jurisdiction over  
6 Applied Underwriters' state law claims under 28 U.S.C. §§ 1338(a) and 1367(a), as well as general  
7 principles of supplemental and pendent jurisdiction. Finally, this Court has jurisdiction over all  
8 claims pursuant to 28 U.S.C. § 1332 because the amount in controversy is in excess of \$75,000,  
9 excluding interest and costs, and there is complete diversity between Applied Underwriters and  
10 Defendants.

11 8. This Court has personal jurisdiction over the Defendants because they reside in this  
12 District and/or do business in this District and because many of the events giving rise to the claims  
13 herein occurred in this District.

14 9. Venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial  
15 portion of the property that is the subject of this action (Applied Underwriters' trademarks, etc.) is  
16 situated in this District, and the Defendants reside and/or do business in this District.

### 17 THE PARTIES

18 10. Plaintiff Applied Underwriters is a Nebraska corporation with its principal place of  
19 business located in Omaha, Nebraska. Applied Underwriters is a financial services company that  
20 provides payroll processing services and, through affiliated insurance companies, offers programs  
21 through which workers' compensation insurance is offered and provided to employers throughout  
22 the United States, including in this District. Applied Underwriters is an indirect subsidiary of  
23 Berkshire Hathaway, Inc. Since its inception in 1994, Applied Underwriters has grown in number of  
24 customers and revenues. Applied Underwriters' affiliated insurance carriers are rated 'A+'  
25 (Superior) by A.M. Best Company.

26 11. On information and belief, Defendant Larry J. Lichtenegger is an individual who  
27 resides in Carmel, California and does business in this District wrongfully using the APPLIED  
28 UNDERWRITERS IP. Defendant Lichtenegger is an attorney and licensed to practice law in

1 California.

2 12. On information and belief, Defendant J. Dale Debber is an individual who resides in  
3 this District, does business in this District wrongfully using the APPLIED UNDERWRITERS IP and  
4 is the Chief Executive Officer and publisher of Defendant Providence Publications LLC.

5 13. On information and belief, Defendant Providence Publications, LLC, is a California  
6 limited liability company located in this District and does business in this District under the name  
7 Workers' Comp Executive with the moniker "Credible Authoritative Trustworthy" wrongfully using  
8 the APPLIED UNDERWRITERS IP including through various on-line publications it publishes,  
9 including without limitation the Workers' Comp Executive ([www.wcexec.com](http://www.wcexec.com)).





#### 10 BACKGROUND FACTS

11 14. Applied Underwriters first began using its name and mark APPLIED UNDERWRITERS  
12 in October 2001. Applied Underwriters offered financial services relating to workers' compensation  
13 insurance and employee benefit plans. Since that time, Applied Underwriters has continuously used  
14 the name and mark "APPLIED UNDERWRITERS" to identify its services.

15 15. Beginning in October 2002, Applied Underwriters began offering, through its  
16 affiliates, workers' compensation program services in connection with the mark EQUITYCOMP. Since  
17 that time, Applied Underwriters has continuously used the name and mark "EQUITYCOMP" to  
18 identify those workers' compensation insurance services.

19 16. Applied Underwriters' customers are independent brokers and their clients, which are  
20 business organizations that use the insurance services offered by Applied Underwriters and its  
21 affiliates.

22 17. In recognition of Applied Underwriters' rights in the APPLIED UNDERWRITERS  
23 IP, the United States Patent and Trademark Office has issued to it numerous federal trademark  
24 registrations, including the following:

Mark	Registration No.	Services	Date of Registration
APPLIED UNDERWRITERS	2,651,867	(Class 36) Financial services for business, namely, administration of insurance and employee benefits plans for business organizations	November 19, 2002
	2,777,687	(Class 36) Financial services for business, namely, administration of insurance and employee benefits plans for business organizations	October 28, 2003
	2,781,677	(Class 36) Financial services for business, namely, administration of insurance and employee benefits plans for business organizations	November 11, 2003
	2,777,688	(Class 36) Financial services for business, namely, administration of insurance and employee benefits plans for business organizations	October 28, 2003
	2,812,457	(Class 36) Financial services for business, namely, administration of insurance and employee benefits plans for business organizations	February 10, 2004

1 True and correct copies of the foregoing trademark registration certificates are attached as  
2 Ex. A.

3 18. Each of these trademark registrations are incontestable under 15 U.S.C. § 1065 and  
4 serve as conclusive evidence of the validity of these trademarks and registrations, and of Applied  
5 Underwriters' exclusive right to use these trademarks in connection with the services set forth in  
6 these registrations.

7 19. Applied Underwriters aggressively advertises and promotes its marks and its services.  
8 Applied Underwriters has spent millions of dollars advertising its marks and its services. In 2015  
9 alone, Applied Underwriters has spent nearly \$4 million to advertise its APPLIED UNDERWRITERS  
10 and/or EQUITYCOMP marks and the services offered in connection therewith.

11 20. Through the extensive and widespread use of the APPLIED UNDERWRITERS IP,  
12 the Applied Underwriters' trademarks, related common law and other intellectual property rights  
13 have acquired significant and extensive good will. The marks are famous and distinctive as a source  
14 identifier in connection with Applied Underwriters' providing of services relating to workers'  
15 compensation insurance and employee benefit plans.

16 21. Applied Underwriters' marks are entitled to a broad scope of protection.

#### 17 **DEFENDANTS' INFRINGING ACTIVITIES**

18 22. Defendants have recently begun using the APPLIED UNDERWRITERS and EQUITYCOMP  
19 marks to market and promote their services, without Applied Underwriters' authority or permission  
20 and in reckless disregard of Applied Underwriters' federal trademark registrations and its rights.

21 23. Defendants are offering a "webcast" and DVD, presumably that will contain a copy  
22 of the webcast, that uses the APPLIED UNDERWRITERS and EQUITYCOMP marks in the title of the  
23 webcast, through the Workers' Comp Executive. A copy of Defendants' infringing offering is  
24 attached as Ex. B.

25 24. On information and belief, Defendants' have sent out emails promoting this webcast  
26 and DVD. These emails contain the APPLIED UNDERWRITERS and EQUITYCOMP name and marks,  
27 including as the title of the webcast. Defendants have promoted the webcast on websites they  
28 control at [www.wcexec.com](http://www.wcexec.com) and [www.provpubs.com](http://www.provpubs.com).



1       25. Defendants are specifically and intentionally targeting their marketing and advertising  
2 that wrongfully uses the APPLIED UNDERWRITERS and EQUITYCOMP marks to independent brokers  
3 and the business organizations that they serve who use Plaintiff's services.

4       26. Defendants' improper use of the APPLIED UNDERWRITERS IP has caused, and  
5 will continue to cause, damaging and actual confusion among the public. This actual confusion is  
6 certainly understandable, and will undoubtedly continue, given the identity of the marks at issue and  
7 the confusing way in which Defendants' market their services.

8       27. As a result of the likelihood of confusion caused by Defendants' unauthorized use of  
9 the APPLIED UNDERWRITERS IP, Defendants are able to attract customers who mistakenly  
10 believe that they will attend a program sponsored or affiliated with Applied Underwriters.  
11 Defendants will not only wrongfully benefit from Applied Underwriters' valuable and hard-earned  
12 goodwill, but also jeopardize Applied Underwriters' reputation, as well as dilute and detract from the  
13 distinctiveness of the APPLIED UNDERWRITERS IP.

14       28. Applied Underwriters is entitled to protect the goodwill and reputation inherent in the  
15 APPLIED UNDERWRITERS IP, and is likewise entitled to exclusive enjoyment of that intellectual  
16 property. Unless Defendants' continued unlawful use of the name and marks APPLIED  
17 UNDERWRITERS and EQUITYCOMP is restrained by this Court, Applied Underwriters will suffer  
18 substantial irreparable injury for which it has no adequate remedy at law.

19                                   **COUNT I**

20                                   **FEDERAL TRADEMARK INFRINGEMENT**

21       29. Applied Underwriters repeats and realleges the allegations contained in preceding  
22 paragraphs as if fully set forth herein.

23       30. Defendants' use of the name and marks APPLIED UNDERWRITERS and EQUITYCOMP is  
24 in violation of 15 U.S.C. §1114 and constitutes federal trademark infringement.

25       31. Defendants' use of the name and marks APPLIED UNDERWRITERS and EQUITYCOMP  
26 has been in interstate commerce or has had a substantial affect on interstate commerce.

27       32. Unless restrained by this Court, Defendants' use of the name and marks APPLIED  
28 UNDERWRITERS and EQUITYCOMP will irreparably damage Applied Underwriters, for which Applied



Underwriters has no adequate remedy at law.

## COUNT II

### VIOLATION OF SECTION 43(A) OF THE LANHAM ACT

33. Applied Underwriters repeats and realleges the allegations contained in preceding paragraphs as if fully set forth herein.

34. Defendants' unauthorized use of the name and marks APPLIED UNDERWRITERS and EQUITYCOMP falsely designates the origin of Defendants' services and tends falsely to represent Defendants as being legitimately sponsored by, affiliated or connected with Applied Underwriters.

35. By reason of the foregoing, Defendants have violated Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

36. As a direct and proximate result of Defendants' unlawful conduct, Applied Underwriters has suffered, and unless Defendants are enjoined by this Court, will continue to suffer, substantial irreparable injury for which there is no adequate remedy at law.

## COUNT III UNFAIR COMPETITION

37. Applied Underwriters repeats and realleges the allegations contained in preceding paragraphs as if fully set forth herein.

38. In view of its first, continuous, prominent and exclusive use of the name and marks APPLIED UNDERWRITERS and EQUITYCOMP, Applied Underwriters has acquired a protectable interest in the APPLIED UNDERWRITERS IP.

39. By reason of the confusion and the likelihood of continued confusion engendered by Defendants' use of the name and marks APPLIED UNDERWRITERS and EQUITYCOMP, Defendants have infringed, and will continue to infringe, upon Applied Underwriters' rights in the APPLIED UNDERWRITERS IP. Defendants have engaged in this infringing conduct intentionally and willfully, and with full knowledge of Applied Underwriters' rights.

40. As a direct and proximate result of Defendants' repeated and persistent acts of unfair competition, Applied Underwriters has suffered, and unless Defendants are enjoined by this Court, will continue to suffer, substantial and irreparable injury for which it has no adequate remedy at law.

**COUNT IV**  
**FEDERAL TRADEMARK DILUTION**

41. Applied Underwriters repeats and realleges the allegations contained in preceding paragraphs as if fully set forth herein.

42. Applied Underwriters' name and marks APPLIED UNDERWRITERS and EQUITYCOMP are famous marks, entitled to protection under the federal Lanham Act (15 U.S.C. §§ 1051, et seq.). Among other things, (a) these service marks are inherently highly distinctive and have a high degree of acquired distinctiveness; (b) Applied Underwriters has advertised and publicized its marks for a considerable amount of time throughout the United States; (c) the marks have an extremely high degree of recognition among consumers; and (d) the marks are currently registered under the Lanham Act on the Principal Register.

43. The acts of Defendants as described above dilute, tarnish, blur and detract from the distinctiveness of Applied Underwriters' famous marks, with consequent damage to Applied Underwriters and the business and goodwill symbolized by the marks, in violations of the Federal Trademark Dilution Act of 1995, codified at 15 U.S.C. §1125.

44. As a proximate result of Defendants' above-described willful conduct, Applied Underwriters is informed and believes and based thereon alleges that it has been damaged in an unascertained amount.

45. The above described acts of Defendants have caused and are continuing to cause irreparable injury to Applied Underwriters, for which Applied Underwriters has no adequate remedy at law, and Defendants will continue to do so unless enjoined by this Court.

**COUNT V**  
**VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION ACT**

46. Applied Underwriters repeats and realleges the allegations contained in preceding paragraphs as if fully set forth herein.

47. Defendants' actions and practices constitute a continuing and ongoing fraudulent and/or deceptive activity prohibited by the California Business & Professions Code §17200 *et seq.* in that the aforementioned website and emails are likely to deceive and have in fact deceived

1 individuals.

2 48. Additionally, Defendant Lichtenegger – an attorney practicing law in California – has  
3 engaged in conduct that constituted, and constitutes, an unlawful, unfair and/or fraudulent business  
4 act or practice, and unfair, deceptive, untrue and/or misleading advertisements, within the meaning  
5 of California Business & Professions Code § 17200 *et seq.*

6 49. As a result of such unlawful, unfair and/or fraudulent business acts or practices and  
7 such unfair, deceptive, untrue and/or misleading advertisements, Applied Underwriting has been  
8 injured, and continues to be injured, and has suffered financial loss for which it is entitled to relief.

9 50. Defendants' unlawful, unfair and/or fraudulent business acts or practices, and unfair,  
10 deceptive, untrue and/or misleading advertisements have caused, and if not enjoined will continue to  
11 cause, irreparable harm, injury and damage in an amount that will be difficult to ascertain.

12 51. Plaintiff has no adequate remedy at law for the wrongful actions of Defendants.  
13 Pursuant to California Business & Professions Code § 17203, Defendants should be enjoined and  
14 restrained from committing further unlawful, unfair and/or fraudulent business acts or practices  
15 against Plaintiff, and from further unfair, deceptive, untrue and/or misleading advertisements,  
16 including but not necessarily limited to the continued misleading use of Plaintiff's APPLIED  
17 UNDERWRITERS and EQUITYCOMP name and marks.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff Applied Underwriters respectfully requests this Court to:

20 1. Preliminary and permanently enjoin Defendants, and any person associated with  
21 Defendants, from (1) directly or indirectly using the name and mark APPLIED UNDERWRITERS or any  
22 name or mark confusingly similar thereto that includes that mark, (2) directly or indirectly using the  
23 mark EQUITYCOMP or any mark confusingly similar thereto that includes that mark, and (3) directly  
24 or indirectly using any other name or mark likely to dilute the distinctive quality of Plaintiff's  
25 intellectual property or injure its business reputation;

26 2. Direct Defendants to deliver up for destruction or other disposition within thirty days  
27 of the entry of judgment all advertising and other materials in their actual or constructive possession  
28 that violate the terms of any injunction entered herein or which bear any designation in violation

hereof;

3. Direct Defendants to recall all advertising or other materials not yet disseminated to the trade or consumers that violate the terms of any injunction entered herein, or bear any designation in violation thereof;

4. Direct Defendants to account for all profits derived from their wrongful activities and to turn them over, trebled, to Plaintiff;

5. Order Defendants to pay Plaintiff all of Plaintiff's damages, trebled, resulting from Defendants' misconduct, including full compensation for the injury to Plaintiff's goodwill and business reputation;

6. Order Defendants to pay Plaintiff punitive damages for Defendants' intentional acts of infringement and unfair competition;

7. Award Plaintiff the fees, costs and disbursements of this action, including reasonable attorneys' fees; and

8. Grant such other and further relief as this Court deems just and proper.

**JURY DEMAND**

Plaintiff hereby demands trial by jury.

Dated: November 24, 2015

HINSHAW & CULBERTSON LLP

By: /s/ Spencer Y. Kook  
SPENCER Y. KOOK  
TRAVIS WALL  
PETER J. FELSENFELD  
Attorneys for Plaintiff APPLIED  
UNDERWRITERS, INC.



# EXHIBIT “A”

**Int. Cl.: 36**

**Prior U.S. Cls.: 100, 101 and 102**

**United States Patent and Trademark Office**

**Reg. No. 2,651,867**

**Registered Nov. 19, 2002**

**SERVICE MARK  
PRINCIPAL REGISTER**

**APPLIED UNDERWRITERS**

APPLIED UNDERWRITERS, INC. (NEBRASKA  
CORPORATION)  
5 THOMAS MELLON CIRCLE  
SUITE 365  
SAN FRANCISCO, CA 94134

FIRST USE 3-2-2001; IN COMMERCE 3-2-2001.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "UNDERWRITERS", APART FROM  
THE MARK AS SHOWN.

FOR: FINANCIAL SERVICES FOR BUSINESS,  
NAMELY ADMINISTRATION OF INSURANCE  
AND EMPLOYEE BENEFITS PLANS FOR BUSI-  
NESS ORGANIZATIONS , IN CLASS 36 (U.S. CLS.  
100, 101 AND 102).

SER. NO. 76-357,695, FILED 1-11-2002.

BORIS UMANSKY, EXAMINING ATTORNEY

A SEMIMONTHLY PUBLICATION FOR THE WORKERS' COMP EXECUTIVE

Ex. A

Int. Cl.: 36

Prior U.S. Cls.: 100, 101 and 102

**United States Patent and Trademark Office**

**Reg. No. 2,777,687**

Registered Oct. 28, 2003

**SERVICE MARK  
PRINCIPAL REGISTER**

**APPLIED**  
**UNDERWRITERS** 

APPLIED UNDERWRITERS, INC. (NEBRASKA  
CORPORATION)  
5 THOMAS MELLON CIRCLE SUITE 365  
SAN FRANCISCO, CA 94134

FIRST USE 10-15-2002; IN COMMERCE 10-15-2002.

FOR: FINANCIAL SERVICES FOR BUSINESS,  
NAMELY ADMINISTRATION OF INSURANCE  
AND EMPLOYEE BENEFIT PLANS FOR BUSINESS  
ORGANIZATIONS, IN CLASS 36 (U.S. CLS. 100, 101  
AND 102).

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "UNDERWRITERS", APART FROM  
THE MARK AS SHOWN.

SER. NO. 76-468,498, FILED 11-20-2002.

JAMES A. RAUEN, EXAMINING ATTORNEY

A SEMIMONTHLY PUBLICATION FOR THE WORKERS' COMP EXECUTIVE

Ex. A

Int. Cl.: 36

Prior U.S. Cls.: 100, 101 and 102

**United States Patent and Trademark Office**

**Reg. No. 2,777,688**  
Registered Oct. 28, 2003

SERVICE MARK  
PRINCIPAL REGISTER

Equity   
Comp

APPLIED UNDERWRITERS, INC. (NEBRASKA  
CORPORATION)  
5 THOMAS MELLON CIRCLE SUITE 365  
SAN FRANCISCO, CA 94134

ORGANIZATIONS, IN CLASS 36 (U.S. CLS. 100, 101  
AND 102).

FIRST USE 10-15-2002; IN COMMERCE 10-15-2002.

FOR: FINANCIAL SERVICES FOR BUSINESS,  
NAMELY ADMINISTRATION OF INSURANCE  
AND EMPLOYEE BENEFIT PLANS FOR BUSINESS

SER. NO. 76-468,499, FILED 11-20-2002.

JAMES A. RAUEN, EXAMINING ATTORNEY

WORKERS' COMP  
EXECUTIVE™  
A SEMIMONTHLY PUBLICATION FOR THE WORKERS' COMP EXECUTIVE

Ex. A



**Int. Cl.: 36**

**Prior U.S. Cls.: 100, 101 and 102**

**United States Patent and Trademark Office**

**Reg. No. 2,781,677**

**Registered Nov. 11, 2003**

**SERVICE MARK  
PRINCIPAL REGISTER**

**EQUITY COMP**

APPLIED UNDERWRITERS, INC. (NEBRASKA  
CORPORATION)  
5 THOMAS MELLON CIRCLE SUITE 365  
SAN FRANCISCO, CA 94134

ORGANIZATIONS , IN CLASS 36 (U.S. CLS. 100, 101  
AND 102).

FIRST USE 10-15-2002; IN COMMERCE 10-15-2002.

FOR: FINANCIAL SERVICES FOR BUSINESS,  
NAMELY ADMINISTRATION OF INSURANCE  
AND EMPLOYEE BENEFIT PLANS FOR BUSINESS

SER. NO. 76-471,070, FILED 11-25-2002.

RONALD AIKENS, EXAMINING ATTORNEY



Ex. A

Int. Cl.: 36

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,812,457

**United States Patent and Trademark Office**

Registered Feb. 10, 2004

**SERVICE MARK  
PRINCIPAL REGISTER**

**Applied  
Underwriters**

APPLIED UNDERWRITERS, INC. (NEBRASKA  
CORPORATION)  
5 THOMAS MELLON CIRCLE SUITE 365  
SAN FRANCISCO, CA 94134

OWNER OF U.S. REG. NO. 2,651,867.

FOR: FINANCIAL SERVICES FOR BUSINESSES,  
NAMELY ADMINISTRATION OF INSURANCE  
AND EMPLOYEE BENEFIT PLANS FOR BUSINESS  
ORGANIZATIONS, IN CLASS 36 (U.S. CLS. 100, 101  
AND 102).

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "UNDERWRITERS", APART FROM  
THE MARK AS SHOWN.

SER. NO. 76-471,376, FILED 11-25-2002.

FIRST USE 10-15-2002; IN COMMERCE 10-15-2002.

TRACY CROSS, EXAMINING ATTORNEY

Ex. A



# EXHIBIT “B”

**Subject:**

FW: FW: Applied Underwriters' EquityComp(R) Program Like it, Leave it, or Let it be?

**From:** <[newsdesk@wcexec.com](mailto:newsdesk@wcexec.com)>

**Date:** November 6, 2015 at 10:21:25 AM PST

**To:** Sidney Ferenc <[sferenc@applieduw.com](mailto:sferenc@applieduw.com)>

**Subject:** Applied Underwriters' EquityComp® Program Like it, Leave it, or Let it be?



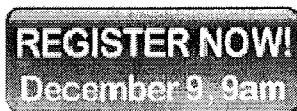
## Applied Underwriters' EquityComp® Program Like it, Leave it, or Let it be?

Learn the best strategies for selling, competing  
with, or helping a prospect out of EquityComp®  
mid-term

### A Two Hour Intensive + Q&A

CA State Bar MCLE 2 hours approved and CDI credits pending

Cost: \$139.00 DVD+50 = \$189 10% discount for WCE  
subscribers



**You will learn:**

- What you must know and do before you sell the program
- What are the agreements Employers have to sign and why is it vital that you – and the clients lawyers – review them with the Employer in advance of signing the Request to Bind?

### Webcast Details

December 9th @ 9:00  
am



Professional Commercial lines producers who are on either side of a transaction with Applied, as a broker or as the competition. Placers learn what questions to ask, and commercial lines underwriters and marketing types who want to understand the competition.

Regulators and legislators and lawyers who want to understand this sophisticated yet controversial program

- Is the Reinsurance Participation Agreement legal in California? And is there any profit sharing and if so when?
- What to look for in the proposal?
- What are the impacts of the exposure group factor and runoff LDFs
- Is EquityComp a loss sensitive program ?
- Are the promised minimums and maximums real? Can an employer really get to the minimum?
- How much should an Employer be prepared to pay and when?
- Are there patterns as to how Employers are treated, billed, and sued that we've seen and what are they?
- Why is venue an issue?
- If you have a client in the program who is unhappy, should you get them out and if so, how to know when?
- How to compete against the program – at the start and mid-term
- What are the liability issues for the brokers and perhaps how to avoid getting sued
- Why you should never consider or sell only the minimum price– and is the maximum price really the most an Employer can pay? You'll be surprised. Dale: this is in here twice
- Why do the monthly “pay-ins” differ so much even if payroll doesn't?
- What happens if you don't renew after 3 years?
- What is the legal concept of *unconscionability*?

**REGISTER NOW!**  
December 9, 9am

What you will get:

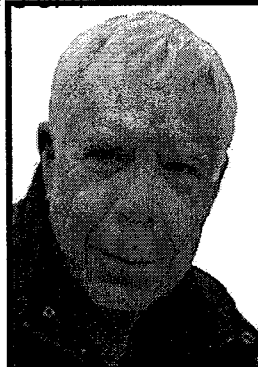
A Heck of a lot of information you can use to make money  
A checklist to use before you sell the program

A checklist to use to show the insured if you're competing against EquityComp

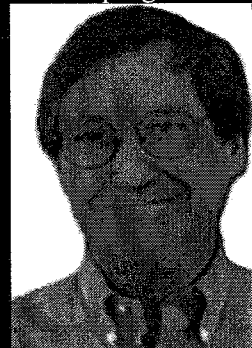
**REGISTER NOW!**  
December 9, 9am

EquityComp is the registered trademark of Applied Underwriters, Inc

Share:



Larry has a J.D. from Green Hall School of Law at the University of Kansas, a degree in International Law from McGill University, and a Masters in Taxation from Golden Gate University. He's been Lead Trial Counsel for the Monterey County District Attorney, senior partner in a law firm, and for 15 years has specialized in Investment and Commercial Fraud recovery. Larry represents a panoply of employers vs Applied and is well versed in their math and how their program works.



Father of Compline and Publisher of Workers' Comp Executive it was Dale who broke the recent spate of stories about Applied Underwriters' EquityComp Program. Only that other mild mannered reporter, Clark Kent, exceeds Dale's commitment to "Truth, Justice and the American Way." Dale's brand of journalism is

hard hitting honest and to the point. He understands workers' comp and this program. That what makes him the most widely read journalist in workers comp.

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WORKERS' COMP  
**EXECUTIVE**<sup>TM</sup>  
A SEMIMONTHLY PUBLICATION FOR THE WORKERS' COMP EXECUTIVE

## CIVIL COVER SHEET

Case 2:15-at-01227 Document 1-3 Filed 11/24/15 Page 1 of 1

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

APPLIED UNDERWRITERS, INC., a Nebraska corporation,

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

SPENCER Y. KOOK, et al. HINSHAW &amp; CULBERTSON, LLP, One California Street, 18th Floor, San Francisco, CA 94111, 415-361-6000

**DEFENDANTS**

LARRY J. LICHTENEGGER, J. DALE DEBBER, both Individuals, and PROVIDENCE PUBLICATIONS, LLC., a California limited liability company,

County of Residence of First Listed Defendant Placer County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable Sat TV <input type="checkbox"/> 850 Securities Commodities Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 USC 1114 et seq., Trademark Infringement

Brief description of cause

Plaintiff alleges unauthorized use of trademarks.

**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/24/2015

SIGNATURE OF ATTORNEY OF RECORD

/s/ Spencer Y. Kook

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**TEMPORARY RESTRAINING ORDER  
(TRO)  
CHECKLIST**

**NOTE:** When filing a Motion for a TRO with the court, you must choose Motion for TRO. You must complete this document and attach it to your motion as an attachment in CM/ECF. If you have questions, please call the CM/ECF Help Desk at 1-866-884-5525 (Sacramento) or 1-866-884-5444 (Fresno).

- (A) *Check one.* Filing party is represented by counsel ☒  
Filing party is acting in pro se ☐

- (B) Has there been actual notice, or a sufficient showing of efforts to provide notice to the affected party?  
*See Local Rule 65-231 and FRCP 65(b).*

**Notice has not yet been given, because the parties have not been served, and we await a hearing date on the TRO from the judge. Immediately upon receipt of that time and date, we will notify the parties via hand service.**

Did applicant discuss alternatives to a TRO hearing?

**No.**

Did applicant ask opponent to stipulate to a TRO?

**No.**

Opposing Party: **Larry Lichtenegger; J. Dale Debber; Providence Publications, LLC**

Telephone No.: **Unknown**

- (C) Has there been undue delay in bringing a TRO?

**No.**

Could this have been brought earlier?

Yes: ☐ No: ☒



(D) What is the irreparable injury?

**In this trademark infringement case, the harm caused to Plaintiff's reputation and its lack of control of its marks and its reputation are causing irreparable injury.**

Why the need for an expedited hearing?

**Defendants are currently advertising and intend to conduct a program on December 9, 2015 that infringes upon Plaintiff's rights in its trademarks. Plaintiff seeks an order immediately stopping further infringement of its marks.**

(E) Documents to be filed and (unless impossible) served on affected parties/counsel:

- ☒ (1) Complaint
- ☒ (2) Motion for TRO
- ☒ (3) Brief on all legal issues presented by the motion
- ☐ (4) Affidavit detailing notice, or efforts to effect notice, or showing why it should not be given
- ☒ (5) Affidavit in support of existence of irreparable harm
- ☒ (6) Proposed order with provision for bond
- ☒ (7) Proposed order with blanks for fixing:
  - ☒ Time and date of hearing for motion for preliminary injunction
  - ☒ Date for filing responsive papers
  - ☒ Amount of bond, if any
  - ☒ Date and hour of issuance
- ☐ (8) For TROs requested *ex parte*, proposed order shall notify affected parties they can apply to the court for modification/dissolution on 2 days notice or such shorter notice as the court may allow. See *Local Rule 65-231 and FRCP 65(b)*

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Attorneys for Plaintiff APPLIED UNDERWRITERS, INC.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

APPLIED UNDERWRITERS, INC., a  
Nebraska corporation,

Plaintiff,

vs.

LARRY J. LICHTENEGGER, J. DALE  
DEBBER, both Individuals, and  
PROVIDENCE PUBLICATIONS, LLC, a  
California limited liability company,

Defendants.

) Case No. 2:15-cv-02445-GEB-CKD

)  
) **PLAINTIFF APPLIED UNDERWRITERS,**  
) **INC.'S MEMORANDUM OF LAW IN**  
) **SUPPORT OF NOTICE OF MOTION AND**  
) **MOTION FOR TEMPORARY**  
) **RESTRAINING ORDER**

) Jury Trial Demanded

) Date: TBD

) Time: TBD

) Courtroom 10, 13<sup>th</sup> Floor

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1  
2 **I. INTRODUCTION**

3 Plaintiff Applied Underwriters, Inc. (“Applied Underwriters”) is a financial services  
4 company that provides payroll processing services and, through affiliated insurance companies,  
5 offers programs through which workers’ compensation insurance is offered and provided to  
6 employers throughout the United States. It is an indirect subsidiary of Berkshire Hathaway, Inc.  
7 Since its inception in 1994, Applied Underwriters has grown in number of customers and revenues.  
8 Applied Underwriters’ affiliated insurance carriers are rated ‘A+’ (Superior) by A.M. Best  
9 Company.

10 **II. FACTUAL BACKGROUND**

11 **A. APPLIED UNDERWRITERS’ APPLIED UNDERWRITERS® AND EQUITYCOMP®**  
12 **MARKS**

13 Applied Underwriters brings this motion to stop the infringement of its valuable trademark  
14 rights. Defendants have intentionally begun using two of Applied Underwriters’ valuable trademarks  
15 in a blatant attempt to trade off the fame, name recognition and good will Applied Underwriters has  
16 built up in its marks over the last 13 years.

17 Applied Underwriters first began using its name and mark APPLIED UNDERWRITERS in  
18 October 2001 in connection with financial services relating to workers’ compensation insurance.  
19 Declaration of Jeffrey Silver (“Silver Dec.”) ¶ 4. Since that time, Applied Underwriters has  
20 continuously used the name and mark “APPLIED UNDERWRITERS” to identify its services. *Id.*



21 Beginning in October 2002, Applied Underwriters began offering, through its affiliates,  
22 workers’ compensation insurance services in connection with the mark EQUITYCOMP. Silver Dec. ¶  
23 5. Since that time, Applied Underwriters has continuously used the name and mark “EQUITYCOMP”  
24 to identify those workers’ compensation insurance services. *Id.*

25 Applied Underwriters’ customers are independent brokers and their clients, which are  
26 business organizations that use the insurance services offered by Applied Underwriters and its  
27 affiliates. *Id.* ¶ 6.

28 In recognition of Applied Underwriters’ rights in the APPLIED UNDERWRITERS and



EQUITYCOMP trademarks, the United States Patent and Trademark Office has issued to it numerous federal trademark registrations, including the following:

Mark	Registration No.	Services	Date of Registration
APPLIED UNDERWRITERS	2,651,867	(Class 36) Financial services for business, namely, administration of insurance and employee benefits plans for business organizations	November 19, 2002
<b>APPLIED</b> UNDERWRITERS 	2,777,687	(Class 36) Financial services for business, namely, administration of insurance and employee benefits plans for business organizations	October 28, 2003
EQUITYCOMP	2,781,677	(Class 36) Financial services for business, namely, administration of insurance and employee benefits plans for business organizations	November 11, 2003
	2,777,688	(Class 36) Financial services for business, namely, administration of insurance and employee benefits plans for business organizations	October 28, 2003
	2,812,457	(Class 36) Financial services for business, namely, administration of insurance and	February 10, 2004

Mark	Registration No.	Services	Date of Registration
Applied Underwriters		employee benefits plans for business organizations	

True and correct copies of the foregoing trademark registration certificates are attached as Ex. A to the Silver Dec.; *id.* ¶¶ 7-8.

Each of these trademark registrations are current, in force and are incontestable under 15 U.S.C. § 1065. *Id.* ¶ 9. Each of these trademark registrations serve as conclusive evidence of the validity of these trademarks and registrations, and of Applied Underwriters' exclusive right to use these trademarks in connection with the services set forth in these registrations.

Applied Underwriters aggressively advertises and promotes its marks and its services. Applied Underwriters has spent millions of dollars advertising its marks and its services. For example, in 2015 alone, Applied Underwriters has already spent over \$4 million to advertise its APPLIED UNDERWRITERS and/or EQUITYCOMP marks and the services offered in connection therewith. *See* Silver Dec. ¶ 10.

Applied Underwriters has extensively advertised its APPLIED UNDERWRITERS and EQUITYCOMP name and marks and associated services in media marketed towards independent brokers and their clients. Some samples of recent advertisements published in such magazines are attached as Ex. B to the Silver Dec. *Id.* ¶¶ 10-12.

Through the extensive and widespread use of the APPLIED UNDERWRITERS and EQUITYCOMP, the related common law and other intellectual property rights have acquired significant and extensive good will. The marks are famous and distinctive as a source identifier in connection with Applied Underwriters' providing of services relating to workers' compensation insurance. *Id.* ¶13.

Applied Underwriters' marks are entitled to a broad scope of protection.

### III. DEFENDANTS' USE OF THE MARKS "APPLIED UNDERWRITERS" AND "EQUITYCOMP"

On information and belief, earlier this month, Defendants began offering a "webcast" and

1 DVD, presumably that will contain a copy of the webcast, that uses the APPLIED UNDERWRITERS and  
2 EQUITYCOMP marks in the title of the webcast (the “Program”). Silver Dec. ¶ 14. Defendants do not  
3 have Applied Underwriters’ authority or permission to use the APPLIED UNDERWRITERS and  
4 EQUITYCOMP name and marks, and are using the marks in the Program in reckless disregard of  
5 Applied Underwriters’ federal trademark registrations and its rights. *Id.*

6 Defendants have begun an extensive advertising campaign to promote the Program; again,  
7 using the APPLIED UNDERWRITERS and EQUITYCOMP name and marks in several ways: Defendants  
8 have widely distributed an email advertising the Program. Silver Dec. ¶ 15 and Ex. C. Defendants  
9 are advertising the Program on Providence Publications’ Worker’s Comp Executive, in a banner  
10 advertisement at [www.wcexec.com](http://www.wcexec.com). Silver Dec. ¶ 15 and Ex. D. On the same webpage that the  
11 banner advertisement appears, Defendants also have an advertisement for the Program through a  
12 pseudo-article published on the Providence Publications/Workers Comp Executive website. Silver  
13 Dec. ¶ 15 and Ex. E. It is a “pseudo-article” because it is really an advertisement designed to look  
14 like a factual, unbiased article; as if they were reporting on “news.” In fact, of course, it is simply  
15 more advertising for the Program using the APPLIED UNDERWRITERS and EQUITYCOMP name and  
16 marks. *Id.* Defendants are advertising the Program on the Providence Publications’ website at  
17 [www.provpubs.com](http://www.provpubs.com). Silver Dec. ¶ 15 and Ex. F.

18 Defendants are specifically and intentionally targeting their marketing and advertising for the  
19 Program that wrongfully uses the APPLIED UNDERWRITERS and EQUITYCOMP marks to independent  
20 brokers and businesses and employers they serve who use Applied Underwriters and its affiliates’  
21 services. *Id.* ¶ 16.

22 Defendant’s Program prominently and conspicuously uses both the APPLIED UNDERWRITERS  
23 and EQUITYCOMP name and marks in its title of the Program and throughout the advertising for it.  
24 See Silver Dec. ¶ 17 and Ex. C-F. Defendants’ advertising and marketing nowhere mentions that  
25 Defendants are not affiliated with or sponsored by Applied Underwriters. See Silver Dec. ¶ 17 and  
26 Ex. C-F. Indeed, in at least one of the offending advertisements that Defendants published and  
27 disseminated, they used a “trademark legend” stating “EQUITYCOMP is the registered trademark of  
28 Applied Underwriters.” See Silver Dec. ¶ 17 and Ex. C. This makes the material even more

1 confusing, because the legend appears to have been written by the owner of the trademark. Thus, the  
2 trademark legend adds to the general impression that the Program is put on by, or at least affiliated  
3 with or sponsored by, Applied Underwriters.

4 Defendants' improper use of the APPLIED UNDERWRITERS and EQUITYCOMP name and marks  
5 has caused, and will continue to cause, damaging and actual confusion among the public. Within  
6 days of Defendants' email being sent out, at least two brokers contacted Applied Underwriters,  
7 asking about the Program. *See* Silver Dec. ¶ 18. This actual confusion is certainly understandable,  
8 and will undoubtedly continue, given the identity of the marks at issue and the confusing and  
9 deceptive manner in which Defendants advertise and market their services.

10 As a result of the confusion caused by Defendants' unauthorized use of the APPLIED  
11 UNDERWRITERS and EQUITYCOMP name and marks, Defendants are able to attract customers who  
12 mistakenly believe that they will attend a program conducted by, sponsored or affiliated with  
13 Applied Underwriters. Defendants will not only wrongfully benefit from Applied Underwriters'  
14 valuable and hard-earned goodwill, but also jeopardize Applied Underwriters' reputation, as well as  
15 dilute and detract from the distinctiveness of the APPLIED UNDERWRITERS and EQUITYCOMP name  
16 and marks.

17 Applied Underwriters is entitled to protect the goodwill and reputation inherent in the  
18 APPLIED UNDERWRITERS and EQUITYCOMP name and marks, and is likewise entitled to exclusive  
19 enjoyment of that intellectual property. Unless Defendants' continued unlawful use of the name and  
20 marks APPLIED UNDERWRITERS and EQUITYCOMP is restrained by this Court, Applied Underwriters  
21 will suffer substantial irreparable injury for which it has no adequate remedy at law.

#### 22 **IV. ARGUMENT**

##### 23 **A. LEGAL STANDARD**

24 The Lanham Act gives the Court the power to grant injunctive relief "according to the  
25 principles of equity and upon such terms as the court may deem reasonable, to prevent the violation  
26 of any right of the registration of a mark registered in the Patent and Trademark Office . . . ." 15  
27 U.S.C. § 1116(a).  
28

1 Because there is no adequate legal remedy at law for damage caused by trademark  
2 infringement, injunctive relief is the only option to prevent irreparable injury to a trademark owner.  
3 *Century 21 Real Estate Corp. v. Sandlin*, 846 F.2d 1175, 1180 (9<sup>th</sup> Cir. 1988). “[A] preliminary  
4 injunction is an appropriate remedy for infringement of a registered trademark.” *Charles Schwab &*  
5 *Co., Inc. v. Hibernia Bank*, 665 F.Supp. 800, 803 (N.D. Cal. 1987).

6 A temporary restraining order is designed to preserve the status quo until there is an  
7 opportunity to hold a hearing on the application for a preliminary injunction. *See* 11A Charles A.  
8 Wright *et al.*, Federal Practice and Procedure: Civil 2d § 2951, at 253 (2d Ed. 1995). A temporary  
9 restraining order is restricted to its “underlying purpose of preserving the status quo and preventing  
10 irreparable harm just so long as is necessary to hold a hearing, and no longer.” *Granny Goose Foods,*  
11 *Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 439, 94 S.Ct. 1113, 39  
12 L.Ed.2d 435 (1974) (footnote omitted).

13 The standard for issuing a temporary restraining order is identical to the standard for issuing  
14 a preliminary injunction. *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7  
15 (9th Cir. 2001). “A plaintiff seeking a preliminary injunction must establish that he is likely to  
16 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,  
17 that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v.*  
18 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 129 S.Ct. 365, 374, 172 L. Ed. 2d 249 (2008).

19 “Alternatively, ‘a preliminary injunction could issue where the likelihood of success is such  
20 that serious questions going to the merits were raised and the balance of hardships tips sharply in  
21 plaintiff’s favor, so long as the plaintiff demonstrates irreparable harm and shows that the injunction  
22 is in the public interest.” *Sunearth, Inc. v. Sun Earth Solar Power Co., Ltd.*, 846 F.Supp.2d 1063,  
23 1073 (N.D. Cal. February 3, 2012) (*quoting Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,  
24 1131 (9th Cir. 2011)).

25 “A court employs a sliding scale when considering a plaintiff’s showing as to the likelihood  
26 of success on the merits and the likelihood of irreparable harm.” *Id.* “Under this approach, the  
27 elements of the preliminary injunction test are balanced, so that a stronger showing of one element  
28 may offset a weaker showing of another.” *Cottrell*, 632 F.3d at 1131.

**B. APPLIED UNDERWRITERS IS LIKELY TO SUCCEED ON THE MERITS OF ITS TRADEMARK INFRINGEMENT CLAIM**

To prevail on a trademark infringement action, Applied Underwriters must establish that (i) it has a valid and protectable mark; and (ii) that Defendants' use of a similar mark is likely to cause confusion, mistake, or deception. 15 U.S.C. § 1114(1) (Lanham Act §32(1)); 15 U.S.C. § 1125(a) (Lanham Act §43(a)); *Brookfield Communications, Inc. v. West Coast Entertainment Corp.*, 174 F.3d 1036, 1046 (9th Cir. 1999).

**1. Applied Underwriters' Incontestable Federally Registered Marks Are Valid And Protectable**

Applied Underwriters owns the APPLIED UNDERWRITERS and EQUITYCOMP marks. Silver Dec. ¶ 7. Applied Underwriters has been using the APPLIED UNDERWRITERS name and mark openly, nationally and exclusively since 2001. *Id.* ¶ 4. Applied Underwriters has been using the EQUITYCOMP mark openly, nationally and exclusively since 2002. *Id.* ¶ 5. The Applied Underwriters and EQUITYCOMP name and marks are inherently distinctive. In recognition of Applied Underwriters' rights in these marks, the United States Patent and Trademark Office has issued to it numerous federal trademark registrations. *See id.* ¶ 7 and Ex. A. A federal trademark registration certificate is "prima facie evidence of the validity of the registration, registrant's ownership of the mark, and of registrant's exclusive right to use the mark in commerce." 15 U.S.C. § 1057(b). As registered trademarks, the APPLIED UNDERWRITERS and EQUITYCOMP trademarks are "presumed to be distinctive and should be afforded the utmost protection." *Americana Trading Inc. v. Russ Berrie & Co.*, 966 F.2d 1284, 1287 (9th Cir. 1992) (citations omitted).

Thus, Applied Underwriters owns the rights to the APPLIED UNDERWRITERS and EQUITYCOMP name and marks, and they are valid and protectable

**2. Defendants' Unauthorized Use of Identical Marks for Closely Related Services is Likely to Cause Confusion, Mistake and Deception**

The central factor in determining liability in a trademark infringement action is whether the Defendants' use of their trademark is likely to cause confusion. 15 U.S.C. § 1114(1); 15 U.S.C. §



1 1125(a); *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1205 (9th Cir. 2000). Thus, at this early  
2 stage, Applied Underwriters must establish that it is “likely to be able to show ... a likelihood of  
3 confusion” based upon the Defendants use of the APPLIED UNDERWRITERS and EQUITYCOMP name  
4 and marks. *Id.* (quoting *Brookfield Communications*, 174 F.3d at 1052 fn. 15). The Ninth Circuit has  
5 established an eight-factor test to determine likelihood of confusion. The factors are as follows: (1)  
6 Strength of the mark; (2) Relatedness or proximity of the goods; (3) Marketing channels used; (4)  
7 Similarity of the marks; (5) Evidence of actual confusion; (6) Degree of care likely to be exercised  
8 by purchaser; (7) Defendants’ intent in selecting the mark; and (8) Likelihood of expansion of the  
9 product. *AMF, Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-49 (9th Cir. 1979).

10 When conducting a *Sleekcraft* analysis, courts need not consider all the factors, as the eight-  
11 factor analysis is “best understood as simply providing helpful guideposts” rather than providing a  
12 “scorecard” or “checklist.” *Fortune Dynamic, Inc. v. Victoria’s Secret Stores Brand Mgmt., Inc.*,  
13 618 F.3d 1025, 1031 (9<sup>th</sup> Cir. 2010). Nonetheless, here, almost all factors weigh in Applied  
14 Underwriters’ favor.

15 Analysis of the facts of this case under the *Sleekcraft* test leads to the clear conclusion that  
16 Defendants’ use of the APPLIED UNDERWRITERS and EQUITYCOMP marks to offer, conduct, advertise  
17 and promote the Program related to workers’ compensation insurance services is likely to cause  
18 confusion in that brokers/consumers of Applied Underwriters’ services are likely to believe that  
19 Defendants services are affiliated with, related to or sponsored by Applied Underwriters.

20 (a) **Applied Underwriters’ APPLIED UNDERWRITERS and EQUITYCOMP**  
21 **Name and Marks are Strong Marks Entitled to The Widest Scope**  
22 **of Protection**

23 As discussed above, Applied Underwriters owns five incontestable federal trademark  
24 registrations for the APPLIED UNDERWRITERS and EQUITYCOMP marks. *See* Silver Dec. ¶ 7 and Ex.  
25 A. The registrations are *prima facie* evidence of the validity of Applied Underwriters’ marks, and  
26 they establish its exclusive rights to the mark in commerce and serve as constructive notice of its  
27 claim of ownership of the mark. *See* 15 U.S.C. §§ 1057(b), 1072, and 1115(b).

28 The Ninth Circuit measures the strength of a mark by examining the inherent strength of a

1 mark, based on how “conceptually distinctive” the mark is by itself, as well as its acquired strength,  
2 based on the mark’s “actual marketplace recognition.” *Brookfield Communications, Inc. v. West*  
3 *Coast Entertainment Corp.*, 174 F.3d 1036, 1058 (9th Cir. 1999).

4 The APPLIED UNDERWRITERS and EQUITYCOMP marks meet these measures of a strong mark.  
5 Applied Underwriters has used both of its marks for over 13 years. *See* Silver Dec. ¶¶ 4-5.  
6 Throughout those 13 years, Applied Underwriters has expended substantial resources in promoting  
7 the marks in connection with insurance and employee benefits plans of the highest quality. *Id.* ¶ 10.  
8 Applied Underwriters spends millions of dollars per year to advertise its APPLIED UNDERWRITERS  
9 and EQUITYCOMP marks. In the last year alone, Applied Underwriters has spent over \$4 million to  
10 advertise these marks and services. In the last ten years, it has spent over \$20 million advertising  
11 these marks and services. *See id.* ¶ 10. Applied Underwriters has sold approximately \$700 million in  
12 insurance premiums in the last 2 years, with nearly \$500 million of those premiums being sold in  
13 connection with the EquityComp mark. *Id.* ¶ 11. Thus, with this level of spending on advertising,  
14 and the amount of sales of products in connection with the marks, the marks have significant  
15 marketplace recognition. *Id.* ¶ 11.

16 Thus, this factor weighs in favor of Applied Underwriters.

17 **(b) The Services the Parties Offer Are Closely Related**

18 The greater the similarity between the services offered by Applied Underwriters and the  
19 Defendants, the more likelihood there is of consumer confusion. *Miss World (UK) Ltd. v. Mrs. Am.*  
20 *Pageants, Inc.*, 856 F.2d 1445, 1450 (9th Cir. 1988). Here, Applied Underwriting offers services  
21 relating to workers’ compensation insurance in connection with its marks. Defendants are offering  
22 services relating to insurance in connection with their use of the marks. Thus, both parties’ marks are  
23 being used in connection with services relating to insurance.

24 Specifically, in connection with its APPLIED UNDERWRITERS and EQUITYCOMP marks,  
25 Applied Underwriters and its affiliates offer programs through which workers’ compensation  
26 insurance is offered and provided to employers. What Defendants are offering is a webcast, DVD or  
27 program about workers’ compensation insurance services, such as those that Applied Underwriters  
28



1 and its affiliates offer. *See* Silver Dec. ¶ 14. A webcast, DVD or program about workers'  
2 compensation insurance services is just the sort of educational program that Applied Underwriters  
3 itself might offer to market and promote its services. In fact, it has. For example, Applied  
4 Underwriters travels to trade shows around the country to put on educational programs that explain  
5 and market its products including those offered in connection with its EQUITYCOMP mark. *See* Silver  
6 Dec. ¶ 12.

7 Some samples of recent advertisements published in magazines marketed towards Applied  
8 Underwriters' potential customers are attached as Ex. B to the Silver Declaration. Applied  
9 Underwriters operates a website at [www.auw.com](http://www.auw.com). This website features information about Applied  
10 Underwriters and its EQUITYCOMP program, among other things.

11 Thus, the Program is exactly the sort of educational program that Applied Underwriters'  
12 brokers/customers would expect it to put on, particularly when the name of the program includes  
13 both the APPLIED UNDERWRITERS and EQUITYCOMP marks.

14 Thus, this factor weighs in favor of Applied Underwriters.

15 **(c) The Marketing Channels for the Services Are Identical**

16 "Convergent marketing channels increase the likelihood of confusion." *Official Airline*  
17 *Guides v. Goss*, 6 F.3d 1385, 1393 (9th Cir. 1993).

18 Applied Underwriters maintains and operates a website through which it markets its Equity  
19 Comp products, [www.auw.com](http://www.auw.com). *See* Silver Dec. ¶ 12. Defendants operate at least two websites  
20 where they market their services, including [www.wcexec.com](http://www.wcexec.com) and [www.provpubs.com](http://www.provpubs.com). An  
21 interested broker/consumer seeking information about Applied Underwriters who uses a popular  
22 search engine like Google searching for Applied Underwriters is likely to find Defendants' Program  
23 offered in connection with Applied Underwriters' name and marks.

24 Thus, this factor weighs in favor of Applied Underwriters.

25 **(d) Actual Confusion Exists Between the Parties' Respective Uses of**  
26 **Their Marks**

27 Evidence of actual confusion is not necessary to a finding of likelihood of confusion. *See*,  
28

1 *Rodeo Collection v. West Seventh*, 812 F.2d 1215, 1219 (9<sup>th</sup> Cir. 1987). However, when present,  
2 “[e]vidence of actual confusion constitutes persuasive proof that future confusion is likely.” *Thane*  
3 *Intern., Inc. v. Trek Bicycle Corp.*, 305 F.3d 894, 901 (9<sup>th</sup> Cir. 2002); *see also In re Majestic*  
4 *Distilling Co., Inc.*, 315 F.3d 1311, 1317 (Fed. Cir. 2003) (“A showing of actual confusion would of  
5 course be highly probative, *if not conclusive*, of a high likelihood of confusion.” (emphasis added)).

6 As far as Applied Underwriters knows, Defendants began marketing their program on  
7 November 6, 2015, through an email blast. *See* Silver Dec. ¶ 23 and Ex. C. Within a very short time  
8 after that, two brokers had contacted Applied Underwriters asking about the Program, as the  
9 Defendants’ marketing materials so prominently used Applied Underwriters’ trademarks in its title  
10 and to promote the Program. *See* Silver Dec. ¶ 18.

11 While actual confusion is not required to be shown to prevail in a trademark infringement  
12 case, its existence is a very strong indicator of the likelihood of confusion. Where at least two  
13 brokers made the effort to contact Applied Underwriters because of the confusion, it is virtually  
14 certain that there are numerous other brokers who did not make the effort to contact Applied  
15 Underwriters, but who are also confused.

16 Thus, this factor weighs in favor of Applied Underwriters.

17 **(e) The Parties’ Marks Are Identical**

18 Similarity of trademarks is based on three factors – sight, sound, and meaning. *AMF, Inc.*,  
19 599 F.2d at 351. Here, there can be no dispute that the marks are identical. *See* Silver Dec., Ex. A  
20 and C-F. There can be no dispute that Defendants are using Applied Underwriters’ marks to market  
21 their services. *id.* at Ex. C-F. Defendants appear to recognize that they are using Applied  
22 Underwriters’ marks: In one of their advertisements, they say: “Equity Comp is the registered  
23 trademark of Applied Underwriters, Inc.” *See id.* at Ex. C. Additionally, Defendants use the ® in  
24 connection with the EquityComp mark. *See id.*, Ex. C and D. So, either Defendants are recognizing  
25 that they are using the Applied Underwriters marks or their use of the marks amounts to  
26 counterfeiting. In either event, Defendants are using marks identical to those owned by Applied  
27 Underwriters.  
28

Thus, this factor weighs in favor of Applied Underwriters.

**(f) The Typical Insurance Broker May Not use Enough Care To Avoid Confusion**

While two brokers contacted Applied Underwriters to inquire about the Defendants' Program, many brokers who received the Defendants advertising may be confused but not take the time to resolve their confusion. They may see the relatively low price of Defendants' Program, and believe that it is being offered by Applied Underwriting as an educational program about its services. Only after they attend the Program or purchase the DVD will the truth be revealed to them.

**(g) Defendants Intend to Trade Upon the Fame and Goodwill in the APPLIED UNDERWRITERS and EQUITYCOMP Marks**

"[W]hen the alleged infringer knowingly adopts a mark similar to another's, the Court can presume that he intended to deceive the public." *Meeker v. Meeker*, 2004 WL 2457793, \*9 (N.D. Cal. 2004) citing *Sleekcraft*, 599 F.2d at 354); see also *Interstellar Starship Services, Ltd. v. Epix Inc.*, 184 F.3d 1107, 1111 (9th Cir. 1999), *cert denied*, 528 U.S. 1155, 120 S.Ct. 1161, 145 L.Ed.2d 1073 (2000).

"[P]urposeful copying indicates that the alleged infringer, who has at least as much knowledge as the trier of fact regarding the likelihood of confusion, believes that his copying may divert some business from the senior user." *Daddy Junky Music Stores, Inc. v. Big Daddy's Family Music Ctr.*, 109 F.3d 275, 286 (6th Cir. 1997). As demonstrated by the actual confusion in this case, such diversion is already occurring. Therefore, the intent factor strongly supports a finding of likelihood of confusion.

Defendants are well aware of Applied Underwriters and its EQUITYCOMP products and services. Defendant Larry J. Lichtenegger is an attorney involved in various matters. Silver Dec. ¶ 19. Mr. Lichtenegger is the featured speaker in the Program. *Id.* ¶ 19, Ex. C. Defendant Lichtenegger is very familiar with Applied Underwriters, having handled several matters adverse to it relating to certain Equity Comp products. See Silver Dec. ¶ 19. He currently is adverse to Applied Underwriters in at least two matters. *Id.* Each of these matters relate to the Equity Comp services. *Id.* As a result of his involvement in these matters, there can be no doubt about his familiarity with Applied

1 Underwriters' trademark rights in both its APPLIED UNDERWRITERS and EQUITYCOMP name and  
2 marks.

3 Likewise, the other Defendants are also very familiar with Applied Underwriters and its  
4 trademarks. Defendant Providence Publications publishes various on-line publications including a  
5 website under the name the Workers' Comp Executive ([www.wcexec.com](http://www.wcexec.com)). *See id.* ¶ 21. Providence  
6 Publications has written and published numerous articles about Applied Underwriters, including  
7 about its Equity Comp services. *Id.* As a result, Defendant Providence Publications is believed to be  
8 very familiar with Applied Underwriters' trademark rights in both its APPLIED UNDERWRITERS and  
9 EQUITYCOMP name and marks.

10 Defendant Debber is the Chief Executive Officer and publisher of Defendant Providence  
11 Publications. *Id.* ¶ 20. As the Chief Executive Officer and publisher of Defendant Providence  
12 Publications, Mr. Debber has been responsible for publishing numerous articles about Applied  
13 Underwriters, including about its Equity Comp services. *Id.* Thus Mr. Debber is very familiar with  
14 Applied Underwriters' trademark rights in both its APPLIED UNDERWRITERS and EQUITYCOMP name  
15 and marks.

16 Because of this familiarity with Applied Underwriters' trademark rights in its APPLIED  
17 UNDERWRITERS and EQUITYCOMP name and marks, Defendants' intent certainly appears to be to  
18 trade off the widespread name recognition, fame and good will in the APPLIED UNDERWRITERS and  
19 EQUITYCOMP name and marks.

20 In addition, it appears that Defendants are doing everything they can to make their use of  
21 Applied Underwriters' name and marks more confusing and deceptive. On the initial email that  
22 Defendants sent out, they used both the APPLIED UNDERWRITERS and EQUITYCOMP name and mark  
23 in the subject or Re line of their email. *See Silver Dec. Ex. C.* They repeated this use in their first  
24 line of the email, using the Applied Underwriters' marks most conspicuously and prominently in  
25 very large text. *Id.* They used the ® in connection with EQUITYCOMP. *Id.* They used the  
26 EQUITYCOMP mark six (6) times throughout the email. *Id.* Their use of the trademark legend –  
27 without a statement that the mark is used without permission – makes it look like the trademark  
28 owner is either conducting the Program or at least is sponsoring or is otherwise affiliated with it. *Id.*

Thus, this factor weighs in favor of Applied Underwriters.

**(h) Expansion of Services**

Where Plaintiff and Defendants are currently in the same business in the same geographical area, the expansion of services factor takes on little importance. *Guess?, Inc. v. Tres Hermanos*, 993 F.Supp. 1277, 1284 (C.D.Cal.1997). Since Applied Underwriters and Defendants already directly compete with their services, or their services are closely related, the expansion of services factor either weighs in favor of Applied Underwriters or is neutral.

**(i) Weighing the *Sleekcraft* Factors Demonstrates Likelihood of Confusion**

Seven of the eight *Sleekcraft* factors strongly suggest that there is a likelihood of confusion between the parties' marks. Accordingly, in balancing the factors, Applied Underwriters has demonstrated a strong likelihood of success on the merits of the infringement claim.

**V. APPLIED UNDERWRITERS WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF PRELIMINARY RELIEF**

To be entitled to injunctive relief, the trademark owner must also demonstrate a likelihood that absent the injunction, it will be irreparably harmed by the defendant's alleged infringing conduct. *eBay Inc. v. MercExchange, L.L.C.* 547 U.S. 388, 126 S.Ct. 1837, 164 L.Ed.2d 641 (2006); *Winter*, 129 S.Ct. at 375–76. In the Ninth Circuit, irreparable injury can be shown if the trademark holder can show that it will potentially lose the ability to control its reputation. *See CytoSport, Inc. v. Vital Pharmaceuticals, Inc.*, 617 F.Supp.2d 1051, 1080 (E.D. Cal. 2009). (“[I]f another person infringes [a plaintiff’s] marks, that person borrows the owner’s reputation, whose quality no longer lies within the owner’s control. A trademark owner’s loss of the ability to control its marks, thus, creates the potential for damage to its reputation.”)

Intangible injuries, such as damage to goodwill, can constitute irreparable harm. *See Rent-A-Center, Inc. v. Canyon Television and Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir.1991) ; *see also, Stuhlbarg Int’l Sales Co. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 841 (9th Cir.2001) (“Evidence of threatened loss of prospective customers or goodwill certainly supports a finding of

1 the possibility of irreparable harm.”); *eBay, Inc. v. Bidder’s Edge, Inc.*, 100 F.Supp.2d 1058, 1066  
2 (N.D.Cal.2000) (“Harm resulting from lost profits and lost customer goodwill is irreparable because  
3 it is neither easily calculable, nor easily compensable and is therefore an appropriate basis for  
4 injunctive relief.”).

5 Trademarks serve as the identity of their owners and in them resides the reputation and  
6 goodwill of their owners. Thus, if another person infringes the marks, that person borrows the  
7 owner’s reputation, whose quality no longer lies within the owner’s control. *Opticians Ass’n of Am.*  
8 *v. Indep. Opticians of Am.*, 920 F.2d 187, 195 (3rd Cir.1990) . A trademark owner’s loss of the  
9 ability to control its marks, thus, creates the potential for damage to its reputation. *Id.* at 196.  
10 “Potential damage to reputation constitutes irreparable injury for the purpose of granting a  
11 preliminary injunction in a trademark case.” *Id.*; *See also, Apple Computer, Inc. v. Formula Int’l*  
12 *Inc.*, 725 F.2d 521, 526 (9th Cir.1984) (finding irreparable injury where “district court could  
13 reasonably have concluded that continuing infringement would result in loss of control over Apple’s  
14 reputation and loss of good will”).

15 Here, Applied Underwriters’ will lose the ability to control its reputation if Defendants are  
16 allowed to offer, promote, advertise and/or conduct services including webcasts or seminars using  
17 the marks APPLIED UNDERWRITERS or EQUITYCOMP. *See* Silver Dec. ¶ 22. The quality of those  
18 webcasts, DVD or seminars, solely controlled by Defendants, are beyond Applied Underwriters’  
19 control. *Id.* ¶ 22. Thus, this wrongful use of Applied Underwriters’ marks constitutes a loss of  
20 control of Applied Underwriters reputation, and thus, irreparably harms it.

21 Indeed, on the same page Defendants advertise the Program, they advertise a webcast/DVD  
22 program entitled “Zombie Apocalypse: Preparing for the Inevitable.” *See* Silver Dec. ¶ 22, Ex. F.  
23 Applied Underwriters’ reputation should not be allowed to be hijacked and be subject to such  
24 association.

25 **VI. THE BALANCE OF HARDSHIPS TIPS STRONGLY IN APPLIED**  
26 **UNDERWRITERS’ FAVOR**

27 In order for an injunction to issue, the threatened injury to the trademark owner must  
28 outweigh whatever damage the proposed injunction may cause the accused infringers. However, the



1 Court should only consider legitimate interests of the defendants, and should not consider harm to an  
2 illegitimate use of trademarks. *SmithKline Beecham Consumer Healthcare, L.P. v. Watson*  
3 *Pharmaceuticals, Inc.* 63 F.Supp.2d 467, 472 (S.D.N.Y. 1999) *order dissolved*, (S.D.N.Y., Dec. 22,  
4 1999, 99 CIV. 9214 (DC) 1999 WL 1243894 *aff'd*, (2d Cir. 2000) 211 F.3d 21 and *amended sub*  
5 *nom. SmithKline Beecham Consumer Healthcare, L.P. v. Watson Pharmaceuticals, Inc.* (S.D.N.Y.,  
6 Sept. 20, 1999, 99 CIV. 9214 (DC)) 1999 WL 1122478 (where harm was created by defendant's  
7 infringement, it was harm of its own doing and the balance weighed in favor of granting injunction).  
8 Here, Defendants' interest is only an illegitimate interest in trading off the fame, name recognition  
9 and good will of the APPLIED UNDERWRITERS and EQUITYCOMP name and marks. As discussed at  
10 length above, Applied Underwriters' reputational harm is ongoing and beyond compensation. As the  
11 legitimate owner of the marks, the damage to Applied Underwriters' outweighs any damage an  
12 injunction may cause Defendants.

13 **VII. THE PUBLIC INTEREST CLEARLY COMPELS THE ISSUANCE OF THE**  
14 **REQUESTED INJUNCTION**

15 There is a strong public interest in fair and truthful advertising. Courts have noted that the  
16 public has a right not to be deceived or confused. *See, e.g. CytoSport, Inc. v. Vital Pharmaceuticals,*  
17 *Inc.* 617 F.Supp.2d 1051, 1081 (E.D. Cal. 2009) . In trademark cases, an injunction favors the public  
18 interests because it "avoid[s] confusion to brokers/consumers." *Internet Specialties West, Inc. v.*  
19 *Milton-DiGiorgio Enters, Inc.*, 559 F.3d 985, 993 (9th Cir. 2009; *see also Clamp-Swing Pricing Co.*  
20 *v. Super Mkt. Merch. And Supply, Inc.*, 2013 WL 6199155 at \*5 (N.D. Cal. 2013).

21 As noted elsewhere, relevant consumers are already being confused and misled by  
22 Defendants unauthorized use of Applied Underwriters' name and marks APPLIED UNDERWRITERS  
23 and EQUITYCOMP. *See Silver Dec.* ¶ 18. Accordingly, the issuance of the requested preliminary  
24 relief is in the public interest.

25 **VIII. APPLIED UNDERWRITERS BROUGHT THIS CASE AND ITS REQUEST FOR**  
26 **IMMEDIATE INTERIM RELIEF AS PROMPTLY AS POSSIBLE**

27 Applied Underwriters first learned about Defendants' wrongful use of Applied Underwriters'  
28 name and marks on November 6, 2015. *See Silver Dec.* ¶ 23. Applied Underwriters promptly

1 investigated and analyzed the situation before rushing into court. *Id.* After its investigation, did  
2 Applied Underwriters take the regrettable but necessary step of bringing this action and filing the  
3 present motion. *Id.* Thus, Applied Underwriters did not delay in seeking interim relief.

4 **IX. BOND**

5 While Applied Underwriters does not believe that any bond should be necessary, it stands  
6 ready to post a bond in whatever reasonable amount the Court may order.

7 **X. CONCLUSION**

8  
9 For all the foregoing reasons, Applied Underwriters respectfully requests that the Court issue  
10 a temporary restraining order and preliminary injunction in the form attached hereto enjoining  
11 Defendants from promoting, marketing, advertising, offering and/or conducting any webcasts,  
12 seminars, conferences and/or DVDs or other products or services using the marks APPLIED  
13 UNDERWRITERS or EQUITYCOMP and ordering Defendants to provide written notification to the  
14 solicited attendees of the scheduled December 9, 2015 program of the order of this Court and print  
15 such notice in the Workers' Comp Executive Publication within three (3) calendar days following  
16 entry of the order.

17  
18  
19 Dated: November 25, 2015

HINSHAW & CULBERTSON LLP

20 By: /s/ Spencer Y. Kook  
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Attorneys for Plaintiff APPLIED UNDERWRITERS, INC.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

APPLIED UNDERWRITERS, INC., a  
Nebraska corporation,

Plaintiff,

vs.

LARRY J. LICHTENEGGER, J. DALE  
DEBBER, both Individuals, and  
PROVIDENCE PUBLICATIONS, LLC, a  
California limited liability company,

Defendants.

) Case No. 2:15-cv-02445-GEB-CKD

) **PLAINTIFF APPLIED UNDERWRITERS,**  
) **INC.'S NOTICE OF MOTION AND**  
) **MOTION FOR TEMPORARY**  
) **RESTRAINING ORDER**

) Jury Trial Demanded

) Date: TBD

) Time: TBD

) Courtroom 10, 13<sup>th</sup> Floor

PLEASE TAKE NOTICE THAT at \_\_\_\_ a.m. on November \_\_\_, 2015 or as soon thereafter as counsel may be heard, in the Courtroom of Judge Garland E. Burrell, Jr., in Courtroom 10, 13th Floor the Robert T. Matsui United States Courthouse, 501 I Street, Sacramento, California 95814, Plaintiff, Applied Underwriters, Inc., a Nebraska corporation (“Applied Underwriters”) by and through their attorneys, Spencer Y. Kook and Mark K. Suri of HINSHAW & CULBERTSON, LLP, and pursuant to Fed. R. Civ. P. 65, respectfully move this Court to enter a Temporary Restraining Order pending a hearing for a preliminary injunction against Defendants Larry J. Lichtenegger and J. Dale Debber, both individuals, and Providence Publications, LLC, a California limited liability company (collectively “Defendants”) restraining and enjoining Defendants, their officers, agents, servants, employees and attorneys and all those in active concert or participation with them from:

1. directly or indirectly using the name and mark Applied Underwriters or any mark confusingly similar thereto;

2. directly or indirectly using the name and mark EquityComp or anything confusingly similar thereto;

3. advertising, promoting and/or marketing webcasts, programs and/or seminars that include either the names or marks Applied Underwriters or EquityComp;

4. offering, conducting or providing any webcasts, programs and/or seminars, that include either the names or marks Applied Underwriters or EquityComp, which includes the December 9, 2015 webcast, currently entitled “Applied Underwriters’ EquityComp® Like it, Leave it, or Let it be?”;

5. manufacturing, selling, offering for sale or distributing any materials in any media including without limitation DVDs, CDs or streaming over the Internet that include either of the names or marks Applied Underwriters or EquityComp;

6. making any oral or written statements that indicates, suggests or implies any connection to or affiliation with Plaintiff; and

7. using any other trade practices whatsoever including those complained of herein that tend to unfairly compete with or injure Plaintiff’s business, reputation and the goodwill appertaining thereto.

1 This motion is made on the grounds that immediate and irreparable injury will result to  
2 Plaintiff unless the activities described above are enjoined pending trial of this action. This motion  
3 is based on the Notice of Motion and Motion, the accompanying Memorandum of Law, the  
4 Declaration of Jeffrey Silver and the Complaint filed contemporaneously herewith and on all other  
5 papers on file in this action.

6  
7 Dated: November 25, 2015

HINSHAW & CULBERTSON LLP

8 By: /s/ Spencer Y. Kook  
9 SPENCER Y. KOOK  
10 TRAVIS WALL  
11 PETER J. FELSENFELD  
12 MARK K. SURI  
13 Attorneys for Plaintiff APPLIED  
14 UNDERWRITERS, INC.

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WORKERS' COMP  
EXECUTIVE™  
A SEMIMONTHLY PUBLICATION FOR THE WORKERS' COMP EXECUTIVE

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**From:** caed\_cmecf\_helpdesk@caed.uscourts.gov  
**Sent:** Wednesday, November 25, 2015 3:31 PM  
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**Subject:** Activity in Case 2:15-cv-02445-GEB-CKD Applied Underwriters, Inc. v. Lichtenegger Motion for TRO.

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**U.S. District Court**

**Eastern District of California - Live System**

**Notice of Electronic Filing**

The following transaction was entered by Kook, Spencer on 11/25/2015 at 1:30 PM PST and filed on 11/25/2015

**Case Name:** Applied Underwriters, Inc. v. Lichtenegger

**Case Number:** 2:15-cv-02445-GEB-CKD

**Filer:** Applied Underwriters, Inc.

**Document Number:** 5

**Docket Text:**

**MOTION for TEMPORARY RESTRAINING ORDER by Applied Underwriters, Inc.. Motion Hearing set for 11/30/2015 at 09:00 AM in Courtroom 10 (GEB) before Judge Garland E. Burrell Jr.. (Attachments: # (1) Points and Authorities, # (2) Declaration of Jeffrey Silver, # (3) Exhibit A to Silver Declaration, # (4) Exhibit B to Silver Declaration, # (5) Exhibit C to Silver Declaration, # (6) Exhibit D to Silver Declaration, # (7) Exhibit E to Silver Declaration, # (8) Exhibit F to Silver Declaration, # (9) Proposed Order, # (10) TRO Checklist)(Kook, Spencer)**

**2:15-cv-02445-GEB-CKD Notice has been electronically mailed to:**

Peter J. Felsenfeld pfelsenfeld@mail.hinshawlaw.com

Spencer Y. Kook skook@mail.hinshawlaw.com, dbacso@hinshawlaw.com, msuri@hinshawlaw.com, pfelsenfeld@mail.hinshawlaw.com, smclean@mail.hinshawlaw.com, twall@mail.hinshawlaw.com, vmontero@mail.hinshawlaw.com

**2:15-cv-02445-GEB-CKD Electronically filed documents must be served conventionally by the filer to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1064943537 [Date=11/25/2015] [FileNumber=7795432-0] [3d2930ccd908d73fc67241a354a3bd0b2571c35f8bfcae948a310316d9efcaacd3bad76988f585a4cf95560f0eceb8df8214f5549554651bc6409b75e1687af7]]

**Document description:**Points and Authorities

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1064943537 [Date=11/25/2015] [FileNumber=7795432-1] [96a6b3cb625ef42c5668c2ad9373885a15139047030a912c6a77d15431422ffcf3de412906ad2bc7e727e05c7f8d9c19e14eff5e1891cf8b4a45a3f76afd367]]

**Document description:**Declaration of Jeffrey Silver

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1064943537 [Date=11/25/2015] [FileNumber=7795432-2] [752eedeedf6c151e2e0aa4cad0a0d3a9a7e1fe5c34312685bff592c34d51c61e47a676301d5a469ecfbaf1b17d72bf051b4cf862375a26defbda306673045ee9]]

**Document description:**Exhibit A to Silver Declaration

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1064943537 [Date=11/25/2015] [FileNumber=7795432-3] [34a7f411a5d5cbl1e07788473f00f01ded20e440bdb93de8eed361d34064e398317f197e66d9d46655ac3e09ff77cd114eb12935123377a28badb955cca453b0b]]

**Document description:**Exhibit B to Silver Declaration

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1064943537 [Date=11/25/2015] [FileNumber=7795432-4] [749c9bf905b268f13773a6352cefd082d68246cf484c43f0347408d80ebd88f84431aced7fbf8332b4e5b36c8db82ac6e20b6a1559e2d5e56df163a237dde539]]

**Document description:**Exhibit C to Silver Declaration

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1064943537 [Date=11/25/2015] [FileNumber=7795432-5] [5a5ff9216a8c7fa46810164215888ce71456e13acc7cb9644ad40370ef3479150a7b7b1d3bfb2b06d571be6662d613f8139346f9b977f6bbf39e1222d590b0]]

**Document description:**Exhibit D to Silver Declaration

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1064943537 [Date=11/25/2015] [FileNumber=7795432-6] [751a4180436fec011bfea0e41d81689633644225d0bd0035040898a919b65c9d0142b36ee61e6534fb335f0167c1afdf72e166300bbe1ed6ba0eb6d2cf6ad466]]

**Document description:**Exhibit E to Silver Declaration

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1064943537 [Date=11/25/2015] [FileNumber=7795432-7] [5dce5dfd4ecb99a3e8eeb3656f2cdf9093b398196c10eb2943e4fce50db56d7cdc0669e532733fcac7cc5c314abfcf63fb81f6bb7eedd696e761691f9b01120d]]

**Document description:**Exhibit F to Silver Declaration

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1064943537 [Date=11/25/2015] [FileNumber=7795432-8] [650608864337fb5e6de5f50a82eef2e0cc419c378e840fb2e3cfe77f9aab14b65c75ec4e21072f03cfb7b31e38b50b262b55fc6271f812116bd4b8ba5780da44]]

**Document description:**Proposed Order

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1064943537 [Date=11/25/2015] [FileNumber=7795432-9] [9122fac16d37459721e4475d3a8ebd9bbdabc01598a2caa3a117ce69e21836cd21297c4f5132fdc988e95076e4ff742ddda52d7fa899181d970f44b8e110be21]]

**Document description:** TRO Checklist

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1064943537 [Date=11/25/2015] [FileNumber=7795432-10] [53ed31c3839e722cb1091315a5bbbf36b04461c0cd6658a3216638b85205b704085f8448e086d17f7854524c12109f1ded18c92d85885754ed2d976b26f85645]]



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Chicago, Illinois 60601  
Telephone: (312) 704-3000  
Facsimile: (312) 704-3001  
*Pro Hac Vice Pending*

Attorneys for Plaintiff APPLIED UNDERWRITERS, INC.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

APPLIED UNDERWRITERS, INC., a  
Nebraska corporation,

Plaintiff,

vs.

LARRY J. LICHTENEGGER, J. DALE  
DEBBER, both Individuals, and  
PROVIDENCE PUBLICATIONS, LLC, a  
California limited liability company,

Defendants.

) Case No. 2:15-cv-02445-GEB-CKD

) **TEMPORARY RESTRAINING ORDER**

) Jury Trial Demanded

) Date: TBD

) Time: TBD

) Courtroom 10, 13<sup>th</sup> Floor

1 This Cause, coming on for hearing upon the application of Plaintiff Applied Underwriters,  
2 Inc. for a temporary restraining order as prayed for in the Complaint on file herein, and it appearing  
3 from the allegations of said Complaint, and from the Declaration of Jeffrey Silver, attached to and  
4 incorporated in Plaintiff's Motion for Temporary Restraining Order, that Plaintiff is entitled to such  
5 relief, it is hereby

6 ORDERED, that Defendants Larry J. Lichtenegger, J. Dale Debber and Providence  
7 Publications LLC, and each of them and their agents, servants, employees, attorneys and all persons  
8 in active concert and in participation with them be restrained for a period of ten (10) days from the  
9 date hereof from:

10 1. directly or indirectly using the name and mark Applied Underwriters or any mark  
11 confusingly similar thereto;

12 2. directly or indirectly using the name and mark EquityComp or anything confusingly  
13 similar thereto;

14 3. advertising, promoting and/or marketing webcasts and/or seminars that include either  
15 the names or marks Applied Underwriters or EquityComp;

16 4. offering, conducting or providing any webcasts, program or seminars, that include  
17 either the names or marks Applied Underwriters or EquityComp, which includes the December 9,  
18 2015 webcast, currently entitled "Applied Underwriters' EquityComp® Like it, Leave it, or Let it  
19 be?";

20 5. manufacturing, selling, offering for sale or distributing any materials in any media  
21 including without limitation DVDs, CDs or streaming over the Internet that include either of the  
22 names or marks Applied Underwriters or EquityComp;

23 6. making any oral or written statements that indicates, suggests or implies any  
24 connection to or affiliation with Plaintiff; and

25 7. using any other trade practices whatsoever including those complained of herein that  
26 tend to unfairly compete with or injure Plaintiff's business, reputation and the goodwill appertaining  
27 thereto.  
28



ENTERED: November \_\_\_\_, 2015, \_\_\_\_\_ p.m. PCT

JUDGE, UNITED STATES DISTRICT COURT



# EXHIBIT “F”

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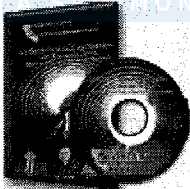
*Live and on DVD, we are devoted to providing you with an exceptional educational experience. Not only do we cover newsworthy, timely and compliance-related topics, we also staff our webcasts with subject matter experts who know the regulations, have practical industry experience and understand how business works in California.*

### Upcoming Webcasts:

#### **Applied Underwriters' EquityComp® Program Like it, Leave it, or Let it be?**

Learn the best strategies for selling, competing with, or helping a prospect out of EquityComp® mid-term *For more information* [click Here](#).

#### **Confined Space Awareness**

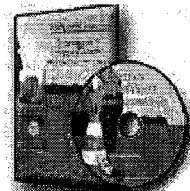


Learn how to not turn a routine job into a rescue or recovery. FACT:

Cal/OSHA has placed special emphasis on confined space—In every inspection inspectors look at companies who may have confined spaces and fines are rising. Learn directly from Cal/OSHA what they are looking for, what their goals are and how to comply and avoid

fines. *For more information* [click Here](#).

#### **Emergency Preparedness**



Avoid Cal/OSHA fines and citations while keeping your workers safe in an emergency. This how-to, emergency action plan development webcast is led by seasoned experts knowledgeable in Title 8 and California emergency preparedness. In addition to their presentation, you'll also get tools you can use with handouts and

Case 2:15-cv-02445-GEB-CKD Document 5-8 Filed 11/25/15 Page 3 of 5

easy-to-incorporate checklists to help you need to comply and take action if and when disaster hits. *For more information* [click here](#). **ORDER NOW**

Have an idea for a Webcast? We'd love to know what you would like to see, please email your suggestions to [helpdesk@provpubs.com](mailto:helpdesk@provpubs.com).

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### **X-Mods X-plained**

Learn X-Mod Strategies Including – Calculation, Dealing with the Bureau, Special Circumstances, Helping Employers A Two- Hour Intensive webcast. Employers' Workers' Comp Attorney Heywood Friedman is joined by our own Dale Debber along with broker Colin Baird their extraordinary knowledge skills and experience to bring you the information you need to understand X-Mod calculation, theory and practice. *For more information* [click Here](#).

### **Win with W/Comp! Learn Successful Sales Strategies from Two W/Comp Top Guns**



This is a truly **career-changing opportunity**. Follow the insights provided by this in-depth, comprehensive Live Streaming Video Webcast and you'll learn the strategies you need to increase your sales and dramatically **improve your personal compensation**

bottom line. *For more information* [click here](#). **ORDER NOW**

Ex. F

### **Employee W/Comp Fraud: Spot It and Stop It!**



A class both for employees and producers who want to learn how to spot and stop employee workers' comp claim fraud. Producers – Help your important clients prevent employee W/Comp fraud. Employers should include appropriate staff and brokers should include important clients – Join us as high powered subject matter experts teach you how to spot and stop employee workers' comp fraud. For more information [click here](#). **ORDER NOW**

### **The Commissioner's Hearing on the Proposed 2012 Workers' Comp Rates**



Stay up-to-date on the proposed 2012 Workers' Compensation rates by viewing the entire hearing and receive analysis from Workers' Comp Executive editors. See the Worker's Compensation Insurance Rating Bureau (WCIRB) present its case while Insurance Commissioner Dave Jones and his panel question their proposal. For more information [click Here](#). **ORDER NOW**

### **AB 2774 – The IFs, the ANDs, and the BUTs**



For California businesses, AB 2774 is arguably the biggest development in the issuance of serious violations, yet is still confusing to many safety and health professionals. Do you complete the 1BY or leave it blank? Is your IIPP considered "cookie cutter" or will it stand up under a Cal/OSHA Compliance Officer scrutiny? For more information [click here](#). **ORDER NOW**

### **Zombie Apocalypse: Preparing for the Inevitable**



Sometimes humor can go a long way in getting the attention you need for your safety program! And what

Case 2:15-cv-02445-GEB-CKD Document 5-8 Filed 11/25/15 Page 5 of 5



gets more attention than ZOMBIES! Our talented interns have written, filmed and starred in this one-of-a-kind webcast designed to introduce you to our educational methodologies for our video training as well as help you learn how to protect yourself from a Zombie onslaught. For more information [click here](#). **ORDER NOW**

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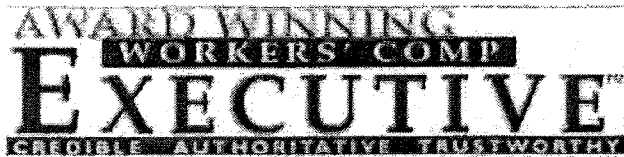
23

Ex. F



# EXHIBIT “E”





## EquityComp Program Subject Of Industry Webinar

Brokers and employers increasingly are becoming involved in disputes connected to Applied Underwriters EquityComp workers' comp program. Many insureds are seeking legal representation and many brokers, to protect themselves, are helping them find experienced counsel. *Workers' Comp Executive* is leading in breaking the news about the embattled program and is now providing a webcast covering the topic in depth.

*Workers' Comp Executive* is providing a new webcast December 9th to deal with the issues surrounding this controversial program, which is the subject of regulatory inquiries and lawsuits. The webcast is designed to provide strategies for "selling, competing with, or helping a client out of the EquityComp program mid-term." It is a two-hour intensive and CE credits have been applied for and are expected to be available.

Larry Lichtenegger, Esq., will teach the legal issues part of the webcast. He is well-versed in the inner workings of the program and the legal issues that surround it. He is the leading California attorney in cases against Applied Underwriters presently representing multiple California employers.

Our own Dale Debber will be handling the relationship – from proposal to placement to withdrawal – how to sell and compete with the program and dealing with the carrier part of the webcast.

With all the market turmoil, demand is already high for the Webcast. It is covering the basics of what employers and brokers need to know before entering into the program, as well as if they are considering leaving either mid-term or even at the end of its three-year period. It's a must-attend event for commercial lines underwriters and placers that find themselves competing with Applied Underwriters' EquityComp product.

This educational event comes as legal challenges to the program come to a head in multiple states, including California, and across various legal forums. California's Insurance Department is now considering what to do with an employer's challenge to the legality of the program's reinsurance participation agreement (RPA). Others are alleging fraudulent behavior in the marketing, selling, and execution of the program.

Many brokers who placed insured's with Applied Underwriters' EquityComp program are also finding themselves in court over their alleged failure to fully understand the program before recommending it to their clients. E and O carriers are also on notice.

Premium Workers' Comp Executive subscribers get a 10% discount on the registration fee.

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# EXHIBIT “D”


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## FLASH REPORTS

### FLASH: Workers' Comp Assessments Drop For 2016

The workers' comp assessment letters are in the mail. How much of your workers' comp premium will you be paying to fund the system next year? We've got the totals for you. [Read more here...](#) ▶

### FLASH: BBSI's Financials in Question

BBSI finds itself again in a controversy concerning its finances. This time, its auditors forced the company to issue a statement indicating the potential of an illegal act concerning reserves. How bad is it? Click here to find out... [Read more here...](#) ▶

### FLASH: IMR is Constitutional – Here to Stay

The state's independent medical review faced its first major constitutional challenge in the courts and now a decision is out. What's the initial verdict in the multi-round battle? [Read more here...](#) ▶

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## TOP STORIES

### Major Rewrite Of Self-Insurance Regs

The Office of Self Insurance Plans is proposing to rewrite many of the rules governing self-insurance in California. How are the rules changing and what is the motivation behind the move? [Read more here...](#) ▶

### Fraud Scheme Busted, More Arrests To Come

Prosecutors say they broke up a major workers' comp fraud scheme that bilked employers out of millions. Who was involved and what can you do to limit any impact on your X-Mod? [Read more here...](#) ▶

### Adjusters To Pay Millions For Missing Records

The Division of Workers' Compensation is taking action against claims administrators that it says have been dragging their feet on supplying required medical records. Who is in trouble and how big is the proposed penalty? [Read more here...](#) ▶

### EquityComp Program Subject Of Industry Webinar

Applied Underwriters EquityComp workers' comp program is the focus of a new industry webinar for brokers and employers. What do you

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Underwriters'  
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Program

Like it,  
Leave it,  
or  
Let it be?

Learn the  
strategies  
for selling,  
competing  
with, or  
helping a  
prospect  
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mid-term

REGISTER NOW!  
December 9, 9am

[Applied Underwriters'  
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Program Like it,  
Leave it, or Let it be?  
Workers Comp  
Fraud: Spot It and  
Stop It!](#)

need to know about the ins and outs of this program? [Read more here...](#) ▶

### **Public Sector Workers' Comp Liabilities Up \$200M**

The latest workers' comp totals for public sector self-insured employers are in and its not good news for taxpayers. What's the bottom line on the bill up to now? [Read more here...](#) ▶

### **Applied Underwriters Facing Another Employer Lawsuit**

Applied Underwriters is facing another lawsuit over its EquityComp program. Who is the plaintiff this time and what are the common complaints? Premium subscribers can find out right here right now... [Read more here...](#) ▶

### **Company's Managers Not Supervisors For Classification Purposes**

How do you tell who's an executive level supervisor and a second tier supervisor in the construction industry? A California Department of Insurance administrative law judge recently looked at the issue and now one company is paying more for its workers' comp coverage. We explain it to you. [Read more here...](#) ▶

### **Why A Homeowner Was Not Liable For Worker's Injury**

Does workers' compensation apply when a homeowner hires an unlicensed contractor and a worker gets hurt? Yes, but not always. What were the facts that made it inapplicable here? [Read more here...](#) ▶

### **DIR Again Collecting Lien Activation Fees**

Lien holders are facing a new deadline to pay a \$100 activation fee to keep their old claims alive. When will many of these questionable claims be gone once and for all? [Read more here...](#) ▶

### **Integrated Rating**

Be Prepared for Underwriting  
set your target premium  
know what you need from each carrier

Compline Integrated Rating



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Ex. D



# EXHIBIT “C”



**Subject:**

FW: FW: Applied Underwriters' EquityComp(R) Program Like it, Leave it, or Let it be?

**From:** <[newsdesk@wcexec.com](mailto:newsdesk@wcexec.com)>

**Date:** November 6, 2015 at 10:21:25 AM PST

**To:** Sidney Ferenc <[sferenc@applieduw.com](mailto:sferenc@applieduw.com)>

**Subject:** Applied Underwriters' EquityComp® Program Like it, Leave it, or Let it be?



## Applied Underwriters' EquityComp® Program Like it, Leave it, or Let it be?

Learn the best strategies for selling, competing  
with, or helping a prospect out of EquityComp®  
mid-term

### A Two Hour Intensive + Q&A

CA State Bar MCLE 2 hours approved and CDI credits pending

Cost: \$139.00 DVD+50 = \$189 10% discount for WCE  
subscribers



**You will learn:**

- What you must know and do before you sell the program
- What are the agreements Employers have to sign and why is it vital that you – and the clients lawyers – review them with the Employer in advance of signing the Request to Bind?

### Webcast Details

December 9th @ 9:00  
am

**REGISTER NOW!**  
December 9, 9am

Professional Commercial lines producers who are on either side of a transaction with Applied, as a broker or as the competition. Placers learn what questions to ask, and commercial lines underwriters and marketing types who want to understand the competition.

Regulators and legislators and lawyers who want to understand this sophisticated yet controversial program

- Is the Reinsurance Participation Agreement legal in California? And is there any profit sharing and if so when?
- What to look for in the proposal?
- What are the impacts of the exposure group factor and runoff LDFs
- Is EquityComp a loss sensitive program ?
- Are the promised minimums and maximums real? Can an employer really get to the minimum?
- How much should an Employer be prepared to pay and when?
- Are there patterns as to how Employers are treated, billed, and sued that we've seen and what are they?
- Why is venue an issue?
- If you have a client in the program who is unhappy, should you get them out and if so, how to know when?
- How to compete against the program – at the start and mid-term
- What are the liability issues for the brokers and perhaps how to avoid getting sued
- Why you should never consider or sell only the minimum price— and is the maximum price really the most an Employer can pay? You'll be surprised. Dale: this is in here twice
- Why do the monthly “pay-ins” differ so much even if payroll doesn't?
- What happens if you don't renew after 3 years?
- What is the legal concept of *unconscionability*?

**REGISTER NOW!**  
December 9, 9am

What you will get:

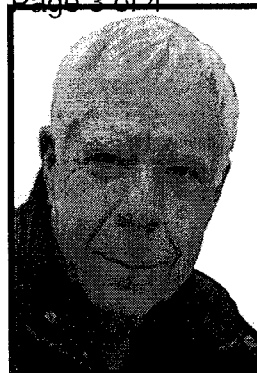
A Heck of a lot of information you can use to make money  
A checklist to use before you sell the program

A checklist to use to show the insured if you're competing against EquityComp

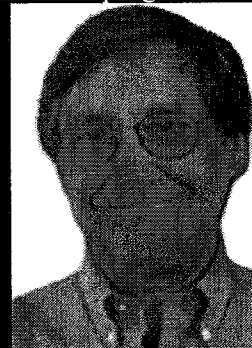
**REGISTER NOW!**  
December 9, 9am

EquityComp is the registered trademark of Applied Underwriters, Inc

Share:



Larry has a J.D. from Green Hall School of Law at the University of Kansas, a degree in International Law from McGill University, and a Masters in Taxation from Golden Gate University. He's been Lead Trial Counsel for the Monterey County District Attorney, senior partner in a law firm, and for 15 years has specialized in Investment and Commercial Fraud recovery. Larry represents a panoply of employers vs Applied and is well versed in their math and how their program works.



Father of Compline and Publisher of Workers' Comp Executive it was Dale who broke the recent spate of stories about Applied Underwriters' EquityComp Program. Only that other mild mannered reporter, Clark Kent, exceeds Dale's commitment to "Truth, Justice and the American Way." Dale's brand of journalism is

hard hitting honest and to the point. He understands workers' comp and this program. That what makes him the most widely read journalist in workers comp.

---

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WORKERS' COMP  
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A SEMIMONTHLY PUBLICATION FOR THE WORKERS' COMP EXECUTIVE



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Core-Mark International, Inc.  
6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SACRAMENTO  
10 UNLIMITED CIVIL CASE  
11

12 DAWN HILLARD, an individual,

13 Plaintiff,

14 v.

15 CORE-MARK INTERNATIONAL, INC.; DOES  
1 through 50, inclusive,

16 Defendant.  
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Case No. 34-2014-00166723

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEFENDANT CORE-MARK  
INTERNATIONAL, INC.'S MOTION FOR  
SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, SUMMARY  
ADJUDICATION**

Date: February 9, 2016  
Time: 2:00 p.m.  
Dept.: 53  
Judge: Hon. David I. Brown  
**Reservation No. 2119921**

Trial Date: March 15, 2016  
Date Action Filed: July 24, 2014



# EXHIBIT “B”



SPECIALTY LINES MARKETS: SECURITY GUARD INDUSTRY  
TECHNOLOGY: YETI PROVIDES A NEW EMPLOYEE TO AGENCIES  
YOUNG PROFESSIONALS: RECRUITING NEW TALENT  
MARKETING: DEMAND FOR CYBER COVERAGE GROWS

# Insurance Notes

PROPERTY & CASUALTY AGENTS • AGENCY MARKETING • INSURANCE MARKETS • NEW PRODUCTS  
NOVEMBER 2015

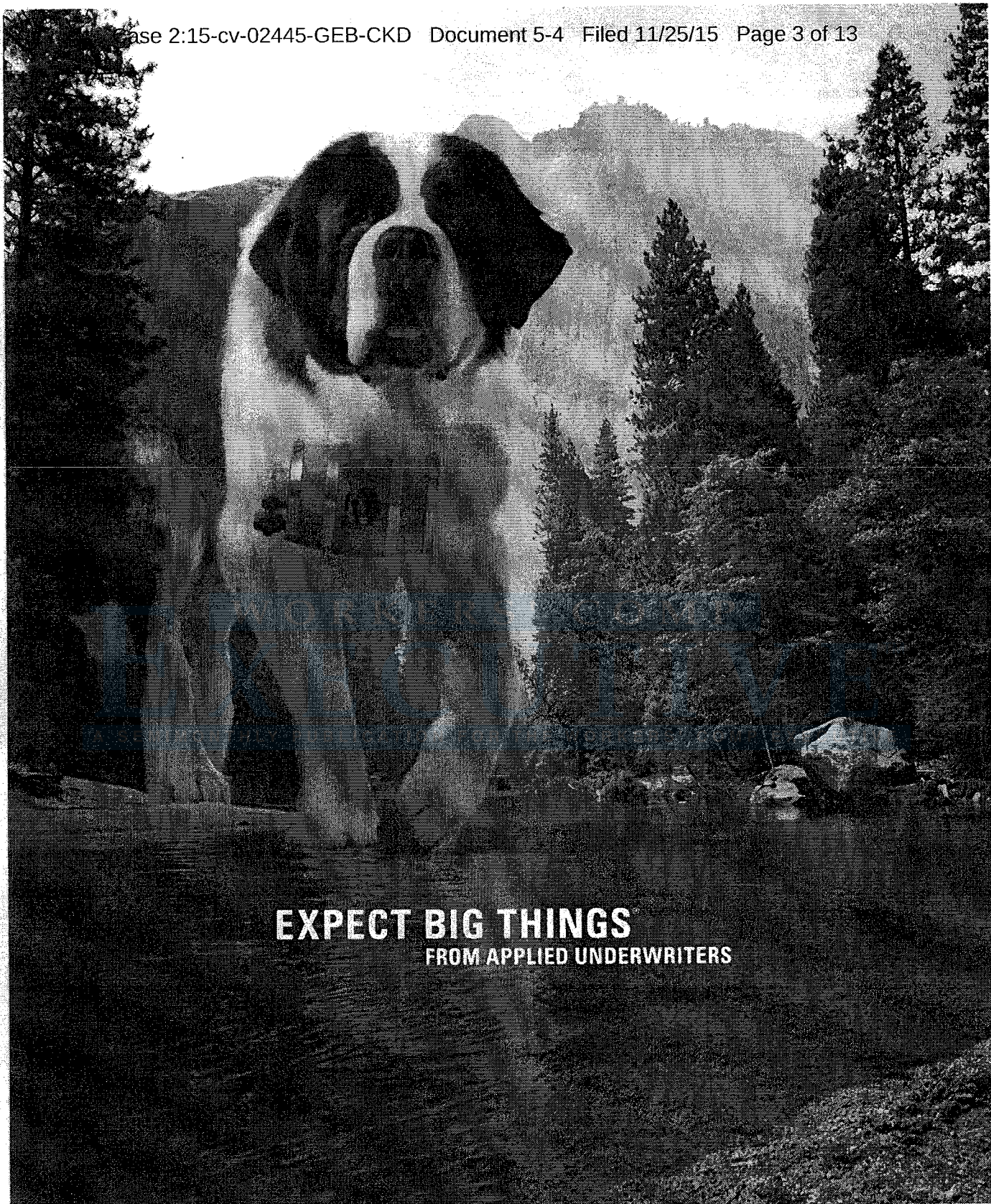
AGENCY OF THE MONTH:

**WABASH, INDIANA, FIRM  
FOCUS ON REDUCING OR  
ELIMINATING RISKS**

**SPECIAL SECTION**

\*\*\*\*\*CAR-RT LOT\*\*C-085  
#0327 2744 0891 6945#  
CHRISTAMANTIA DIRE CTOR BUSINE SS DEVEL OP  
APPLIED UNDERWRITERS  
10805 OLD MILL RD  
OMAHA NE 68154-2607  
V9017  
5213  
0104398  
P0139





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## PLANTING THE SEED



IN THE ENVIRONMENTAL MARKET,  
GROWING EXPOSURES YIELD  
A BOUNTY OF COVERAGE  
OPPORTUNITIES

#BXNVCWS CAR RT LOT C-085 MIX COMAIL M  
#6148460121/ PH 100  
SARAH SMITH  
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OMAHA NE 68154-2807  
PK 050097  
P0205  
528-PH1  
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An ALM Publication  
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October // 2015 // Volume 119 // No. 10

Ex. B



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# insight

November 2015

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Property/Casualty  
Profitability Grows

Highlights from the  
Convention & Tradeshow

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35 26 2  
CHRIS LAMANTIA  
APPLIED UNDERWRITERS  
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OMAHA NE 68103-0646  
\*\*\*\*\*MIXED ADC 630  
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# Insurance

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ISSUE 3.09



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\*\*\*\*\*AUNTO\*\*SCH 5-DIGIT 68116 MIX COMAIL  
CHRIS LAMANTIA 0  
APPLIED UNDERWRITERS DIR BUS DEV  
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P-232 P36810  
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Electronic Service requested  
OMAHA NE 68184-2607

DEBATE  
UNDERWRITING  
ES ARE  
UNDER FIRE

CONSTRUCTION BOOM  
HOW TO CAPITALIZE  
ON THIS NEWLY  
REVIVED INDUSTRY

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# Insurance

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# AGENCIES

What sets this year's 35 top agencies apart from the pack? Discover the surprisingly



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ELECTRONIC SERVICE REQUESTED  
\*\*\*\*\*AUTO\*\*SCH 5-DIGIT 68116 MIX COMAIL  
CHRIS LAMANTIA  
DIR BUS DEV  
APPLIED UNDERWRITERS  
10805 OLD MILL RD  
OMAHA NE 68154-2607  
P-226 93230  
687436

HANDLED  
IN CYBER  
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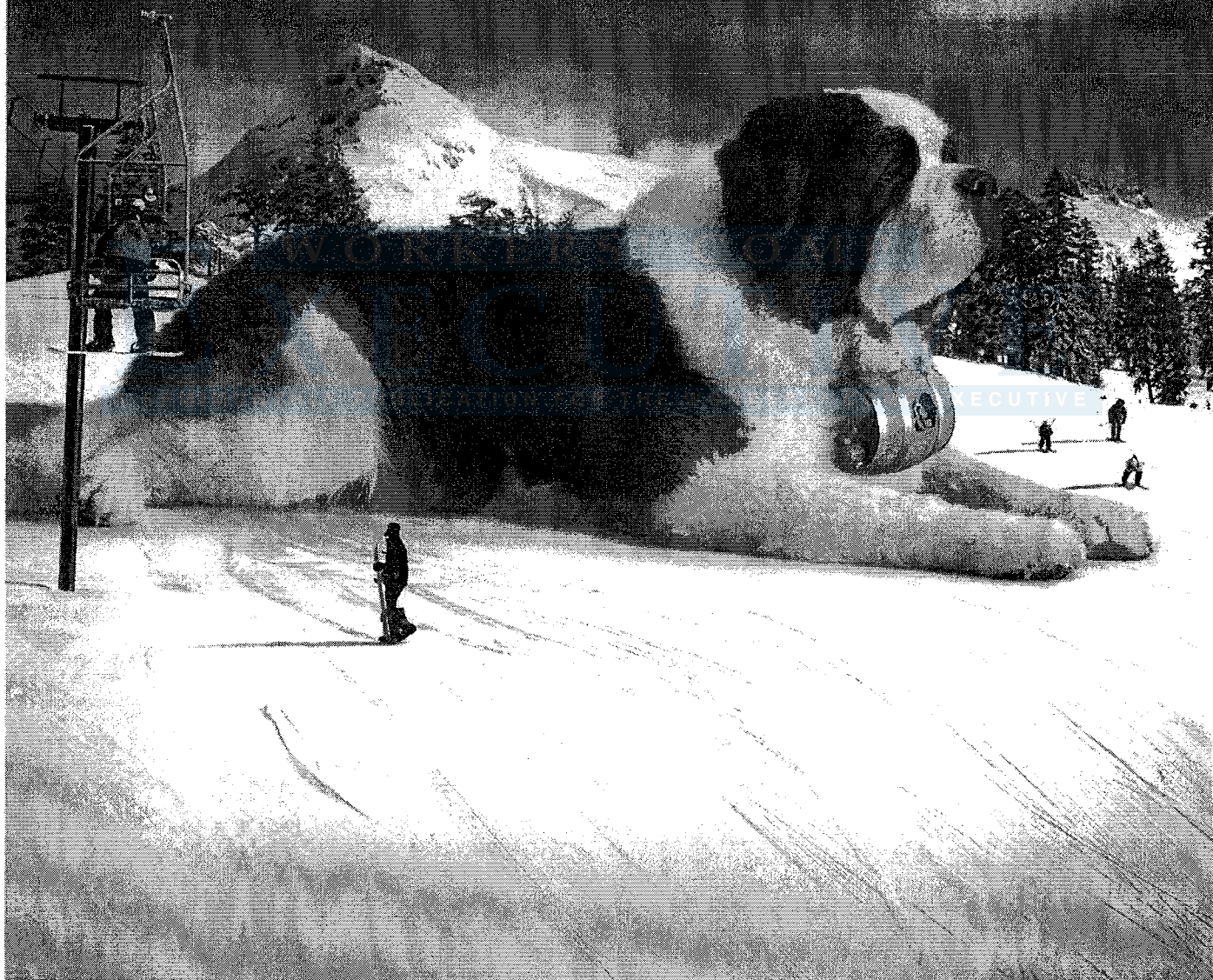
NO MORE EXCUSES  
SIX FOOLPROOF WAYS  
TO LEARN FROM  
YOUR FAILURES

Ex. B



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**APPLIED<sup>®</sup>**  
UNDERWRITERS  
EX. B 



**DO ONE THING. DO IT BETTER THAN ANYONE ELSE.**



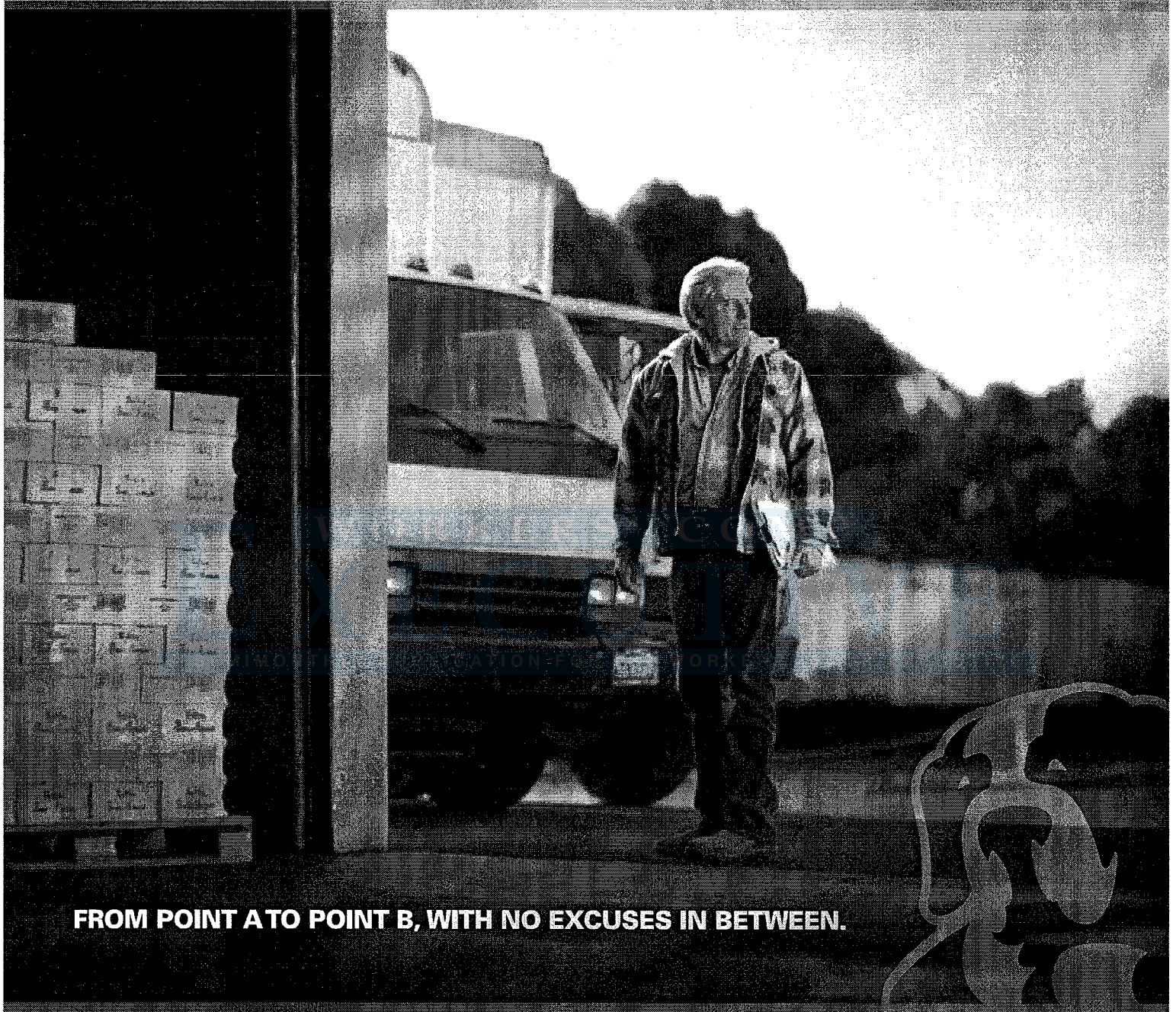
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SACRAMENTO  
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11 DAWN HILLARD, an individual,

12 Plaintiff,

13 v.

14 CORE-MARK INTERNATIONAL, INC.; DOES  
15 1 through 50, inclusive,

16 Defendants.

Case No. 34-2014-00166723

**[PROPOSED] ORDER GRANTING  
DEFENDANT CORE-MARK  
INTERNATIONAL, INC.'S MOTION FOR  
SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, SUMMARY  
ADJUDICATION**

Date: February 9, 2016

Time: 2:00 p.m.

Dept.: 53

Reservation No. 2119921

Trial Date: March 15, 2016

Date Action Filed: July 24, 2014  
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[PROPOSED] ORDER GRANTING MOTION FOR SUMMARY JUDGMENT/ADJUDICATION

22764034v.1

1 On February 9, 2016 at 2:00 p.m. in Department 53 of the Sacramento County Superior Court,  
2 Defendant Core-Mark International, Inc.'s ("Core-Mark" or "Defendant") Motion for Summary  
3 Judgment or, in the Alternative, Summary Adjudication ("Motion") came on for hearing. Seth E.  
4 Tillmon of the Law Offices of Seth E. Tillmon appeared on behalf of Plaintiff Dawn Hillard ("Plaintiff")  
5 and John R. Giovannone of Seyfarth Shaw LLP appeared on behalf of Defendant. All parties were  
6 given notice and opportunity to be heard.

7 The Court, having read and considered all of the papers filed and served herein, and having heard  
8 and considered the arguments of counsel, HEREBY ORDERS, ADJUDICATES, and ADJUDGES as  
9 follows:

10 Defendant's Motion for Summary Judgment is GRANTED IN ITS ENTIRETY as to Plaintiff's  
11 Entire Complaint (Causes of Action One through Nine for failure to pay minimum wage, failure to pay  
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14 time penalty liability, vehicle expense reimbursement, and unfair business practices). This Motion is  
15 GRANTED on the grounds that the undisputed material facts support that Defendant's affirmative  
16 defense that Plaintiff was properly classified as an exempt outside salesperson, Plaintiff was provided  
17 lawful meal and rest breaks, Plaintiff was timely paid all amounts due at termination and when another  
18 'Hershey P3 spiff' became due thereafter, Defendant's Runzheimer expense reimbursement policy  
19 properly reimbursed Plaintiff for her vehicle costs, and Defendant cannot be responsible for Plaintiff's  
20 failure to submit her mileage and her failure to change the oil and tires on her vehicle.

21  
22  
23 **IT IS SO ORDERED.**

24  
25 Dated: \_\_\_\_\_

26 \_\_\_\_\_  
27 Judge of the Superior Court  
28



SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

DAWN HILLARD, an individual,

Plaintiff,

v.

CORE-MARK INTERNATIONAL, INC.; DOES  
1 through 50, inclusive,

Defendants.

Case No. 34-2014-00166723

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26 Judge of the Superior Court  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

DAWN HILLARD, an individual,

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v.

CORE-MARK INTERNATIONAL, INC.; DOES  
1 through 50, inclusive,

Defendants.

Case No. 34-2014-00166723

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26 Judge of the Superior Court

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9 COUNTY OF SACRAMENTO  
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13 v.

14 CORE-MARK INTERNATIONAL, INC.; DOES  
15 1 through 50, inclusive,

16 Defendants.  
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26 \_\_\_\_\_  
27 Judge of the Superior Court  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

DAWN HILLARD, an individual,

Plaintiff,

v.

CORE-MARK INTERNATIONAL, INC.; DOES  
1 through 50, inclusive,

Defendants.

Case No. 34-2014-00166723

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27  
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SPENCER Y. KOOK (SBN 205304)  
HINSHAW & CULBERTSON LLP  
633 West 5th Street, 47th Floor  
Los Angeles, CA 90071-2043  
Telephone: 213-680-2800  
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TRAVIS WALL (SBN 191662)  
PETER J. FELSENFELD (SBN 260433)  
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One California Street, 18th Floor  
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Facsimile: 415-834-9070

MARK K. SURI (6199636)  
HINSHAW & CULBERTSON LLP  
222 North LaSalle Street, Ste. 300  
Chicago, Illinois 60601  
Telephone: (312) 704-3000  
Facsimile: (312) 704-3001  
*Pro Hac Vice Pending*

Attorneys for Plaintiff APPLIED UNDERWRITERS, INC.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

APPLIED UNDERWRITERS, INC., a  
Nebraska corporation,

Plaintiff,

vs.

LARRY J. LICHTENEGGER, J. DALE  
DEBBER, both Individuals, and  
PROVIDENCE PUBLICATIONS, LLC, a  
California limited liability company,

Defendants.

) Case No. 2:15-cv-02445-GEB-CKD

) **DECLARATION OF JEFFREY SILVER IN**  
) **SUPPORT OF PLAINTIFF APPLIED**  
) **UNDERWRITERS, INC.'S MOTION FOR**  
) **TEMPORARY RESTRAINING ORDER**

) Jury Trial Demanded

) Date: TBD

) Time: TBD

) Courtroom 10, 13<sup>th</sup> Floor

DECLARATION OF JEFFREY SILVER ISO MOTION FOR TEMPORARY RESTRAINING  
ORDER

Case No. 2:15-cv-02445-GEB-CKD

**DECLARATION OF JEFFREY SILVER**

I, Jeffrey Silver, declare as follows:

1. I am a citizen of the United States and reside in Omaha, Nebraska. The facts stated in this declaration are personally known to or believed by me to be true based on my experience, or on the records of the company. If called to testify, I am competent to testify to such facts.

2. I am employed by Applied Underwriters, Inc. ("Applied Underwriters"). I am currently the Executive Vice President, Secretary, and General Counsel for Applied Underwriters, and have been since 2005. I make this declaration in support of Applied Underwriters' Motion for Temporary Restraining Order.

3. Applied Underwriters is a financial services company that provides payroll processing services and, through affiliated insurance companies, offers programs through which workers' compensation insurance is offered and provided to employers throughout the United States. Applied Underwriters is an indirect subsidiary of Berkshire Hathaway Inc. Since its inception in 1994, Applied Underwriters has grown in number of customers and revenues. Applied Underwriters' affiliated insurance carriers are rated 'A+' (Superior) by A.M. Best Company.





4. Applied Underwriters first began using its name and mark APPLIED UNDERWRITERS® in October 2001 in connection with financial services relating to workers' compensation insurance. Since that time, Applied Underwriters has continuously used the name and mark "APPLIED UNDERWRITERS" in connection with its services.

5. Beginning in October 2002, Applied Underwriters began offering, through its affiliates, workers' compensation insurance services in connection with the mark EQUITYCOMP®. Since that time, Applied Underwriters has continuously used the mark "EQUITYCOMP" in connection with its workers' compensation insurance services.

6. Applied Underwriters' customers are independent brokers and their clients, which are business organizations that use the insurance services offered by Applied Underwriters and its affiliates.

7. In recognition of Applied Underwriters' rights in the APPLIED UNDERWRITERS and EQUITYCOMP name and marks, the United States Patent and Trademark Office has issued to it

numerous federal trademark registrations, including the following:

Mark	Registration No.	Services	Date of Registration
APPLIED UNDERWRITERS	2,651,867	(Class 36) Financial services for business, namely, administration of insurance and employee benefits plans for business organizations	November 19, 2002
	2,777,687	(Class 36) Financial services for business, namely, administration of insurance and employee benefits plans for business organizations	October 28, 2003
	2,781,677	(Class 36) Financial services for business, namely, administration of insurance and employee benefits plans for business organizations	November 11, 2003
	2,777,688	(Class 36) Financial services for business, namely, administration of insurance and employee benefits plans for business organizations	October 28, 2003
	2,812,457	(Class 36) Financial services for business, namely, administration of insurance and employee benefits plans for business organizations	February 10, 2004

1 Applied Underwriters' owns each of these registrations.

2 8. True and correct copies of the foregoing trademark registration certificates are  
3 attached as Ex. A.

4 9. Each of these trademark registrations are current, in force and are incontestable under  
5 15 U.S.C. § 1065.

6 10. Applied Underwriters aggressively advertises and promotes its marks and its services.  
7 Applied Underwriters engages in a wide variety of advertising, marketing and promotional activities  
8 in connection with its APPLIED UNDERWRITERS and EQUITYCOMP names and marks. In the last ten  
9 years, it has spent over \$20 million advertising its APPLIED UNDERWRITERS and/or EQUITYCOMP  
10 marks and the services offered in connection therewith. In 2015 so far, Applied Underwriters has  
11 spent over \$4 million on advertising its marks and services. Thus, with this level of spending on  
12 advertising, and the amount of sales of products in connection with the marks, the marks have  
13 significant marketplace recognition.

14 11. Applied Underwriters has sold approximately \$700 million in insurance premiums in  
15 the last two (2) years with nearly \$500 million of those premiums being sold in connection with the  
16 EQUITY COMP mark. Thus, with this level of spending on advertising, and the amount of sales of  
17 products in connection with the marks, the marks have significant marketplace recognition.

18 12. Some samples of recent advertisements published in magazines marketed towards  
19 Applied Underwriters' potential customers are attached as Ex. B. Applied Underwriters operates a  
20 website at [www.auw.com](http://www.auw.com). This website features information about Applied Underwriters and its  
21 EQUITYCOMP program, among other things. Applied Underwriters attends trade shows around the  
22 country at which it markets and promotes its marks and services and at which it puts on educational  
23 programs that explain and market its products, including those offered in connection with its  
24 EQUITYCOMP mark.

25 13. Through the extensive and widespread use of the APPLIED UNDERWRITERS and  
26 EQUITYCOMP name and marks, the Applied Underwriters' trademarks, related common law and  
27 other intellectual property rights have acquired significant and extensive good will. The marks are  
28 famous and distinctive as a source identifier in connection with Applied Underwriters' providing of

1 services relating to workers' compensation insurance.

2 14. Earlier this month, Defendants began offering a "webcast" and DVD, presumably that  
3 will contain a copy of the webcast, that uses the APPLIED UNDERWRITERS and EQUITYCOMP marks in  
4 the title of the webcast (the "Program"). Defendants do not have Applied Underwriters' authority or  
5 permission to use the APPLIED UNDERWRITERS and EQUITYCOMP name and marks, and are using the  
6 marks in the Program and in reckless disregard of Applied Underwriters' federal trademark  
7 registrations and its rights.

8 15. Defendants have advertised this product using the APPLIED UNDERWRITERS and  
9 EQUITYCOMP name and marks in several ways: Defendants have distributed an email advertising the  
10 Program. A copy of one of Defendants' emails is attached as Ex. C. Defendants are advertising the  
11 Program on Worker's Comp Executive, in a banner advertisement published at least once at  
12 [www.wcexec.com](http://www.wcexec.com). A copy of a page from that website showing the banner advertisement is  
13 attached as Ex. D. On the same page that the banner advertisement appears, Defendants also have an  
14 advertisement for the Program through a pseudo-article published on the Workers Comp Executive  
15 website. *See id.*; a copy of this pseudo-article is attached as Ex. E. It is a "pseudo-article" because it  
16 is really an advertisement designed to look like a factual, unbiased article; as if they were reporting  
17 on "news." In fact, of course, it is simply more advertising using the APPLIED UNDERWRITERS and  
18 EQUITYCOMP name and marks. Defendants are advertising the Program on the Providence  
19 Publications website at [www.provpubs.com](http://www.provpubs.com). A copy of this advertisement is attached as Ex. F.

20 16. Defendants are specifically and intentionally targeting their marketing and advertising  
21 for the Program that wrongfully uses the APPLIED UNDERWRITERS and EQUITYCOMP marks to  
22 brokers and businesses and employers they serve who need Applied Underwriters' and its affiliates'  
23 services.

24 17. Defendants' Program prominently and conspicuously uses both the APPLIED  
25 UNDERWRITERS and EQUITYCOMP name and marks in its title of the Program ad throughout the  
26 advertising for it. *See* Exs. C-F. Defendants' advertising and marketing nowhere mentions that  
27 Defendants are not affiliated with or sponsored by Applied Underwriters. *See* Ex. C-F. Indeed, in at  
28 least one of the offending advertisements that Defendants published and disseminated, they used a

1 “trademark legend” indicating that EQUITYCOMP is a registered trademark owned by Applied  
2 Underwriters. *See* Ex. C. This makes the material even more confusing and deceptive, because the  
3 legend appears to have been written by the owner of the trademark. Thus, use of the trademark  
4 legend adds to the general impression that the Program is put on by, or at least affiliated with or  
5 sponsored by, Applied Underwriters.

6 18. Defendants’ improper use of the APPLIED UNDERWRITERS and EQUITYCOMP name  
7 and marks has caused, and will continue to cause, damaging and actual confusion among the public.  
8 Within days of Defendants’ email being sent out, two brokers had contacted Applied Underwriters,  
9 asking about the Program. This actual confusion is certainly understandable, and will undoubtedly  
10 continue, given the identity of the marks at issue and the confusing and deceptive way in which  
11 Defendants’ market their services.

12 19. Defendant Larry J. Lichtenegger, the featured speaker in the Program, is an attorney  
13 involved in various matters involving Applied Underwriters and/or its affiliates. Mr. Lichtenegger is  
14 very familiar with Applied Underwriters, having handled several matters adverse to it in the last few  
15 years. He currently is adverse to Applied Underwriters in at least two matters. Each of these matters  
16 relate to the EQUITYCOMP services. As a result of his involvement in these matters, he is believed to  
17 be very familiar with Applied Underwriters’ trademark rights in both its APPLIED UNDERWRITERS  
18 and EQUITYCOMP name and marks.

19 20. Defendant Debber is believed to be the Chief Executive Officer and publisher of  
20 Defendant Providence Publications. As such, Mr. Debber has been responsible for publishing  
21 numerous articles about Applied Underwriters, including about its EQUITYCOMP services. Thus Mr.  
22 Debber is very familiar with Applied Underwriters’ trademark rights in both its APPLIED  
23 UNDERWRITERS and EQUITYCOMP name and marks.

24 21. Defendant Providence Publications publishes various on-line publications including  
25 without limitation, websites under the name the Workers’ Comp Executive [www.wcexec.com](http://www.wcexec.com) and  
26 [www.provpubs.com](http://www.provpubs.com). Providence Publications advertises and promotes the Program on various pages  
27 of its websites. Ex. F. Providence Publications has written articles about Applied Underwriters in  
28 the past, including about its EQUITYCOMP services, and as a result, is believed to be very familiar



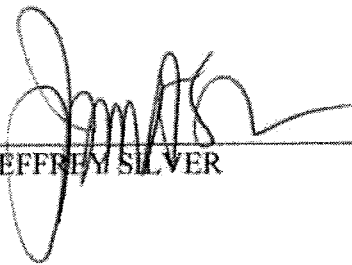
1 with Applied Underwriters' trademark rights in both its APPLIED UNDERWRITERS and EQUITYCOMP  
2 name and marks.

3 22. Applied Underwriters will suffer irreparable harm, including through the injury to its  
4 reputation, if Defendants are allowed to use the APPLIED UNDERWRITERS and EQUITYCOMP name  
5 and marks. Applied Underwriters' will lose the ability to control its reputation if Defendants are  
6 allowed to offer, promote, advertise and/or conduct services including webcasts, programs or  
7 seminars and DVDs using the marks APPLIED UNDERWRITERS or EQUITYCOMP. This loss of control  
8 is not recompensable by monetary damages. The quality of the products offered by Defendants is  
9 solely controlled by Defendants and is beyond Applied Underwriters' control. As an example of the  
10 low quality of products offered by Defendants, one of the products offered on the same web page as  
11 Defendants advertise using the APPLIED UNDERWRITERS and EQUITYCOMP name and marks is an  
12 offer for a DVD product entitled "Zombie Apocalypse: Preparing for the Inevitable." Ex. F.

13 23. Applied Underwriters first learned about Defendants' wrongful use of Applied  
14 Underwriters' name and marks on November 6, 2015. Applied Underwriters promptly investigated  
15 and analyzed the situation. Only after completing its investigation, did Applied Underwriters bring  
16 this action. Applied Underwriters did not delay in seeking relief.

17 I declare under the penalty of perjury that the foregoing is true and correct to the best of my  
18 knowledge.

19 Dated: November 25, 2015

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28

JEFFREY SILVER





# **EXHIBIT “A”**

**Int. Cl.: 36**

**Prior U.S. Cls.: 100, 101 and 102**

**United States Patent and Trademark Office**

**Reg. No. 2,651,867**

**Registered Nov. 19, 2002**

**SERVICE MARK  
PRINCIPAL REGISTER**

**APPLIED UNDERWRITERS**

APPLIED UNDERWRITERS, INC. (NEBRASKA  
CORPORATION)  
5 THOMAS MELLON CIRCLE  
SUITE 365  
SAN FRANCISCO, CA 94134

FIRST USE 3-2-2001; IN COMMERCE 3-2-2001.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "UNDERWRITERS", APART FROM  
THE MARK AS SHOWN.

FOR: FINANCIAL SERVICES FOR BUSINESS,  
NAMELY ADMINISTRATION OF INSURANCE  
AND EMPLOYEE BENEFITS PLANS FOR BUSI-  
NESS ORGANIZATIONS , IN CLASS 36 (U.S. CLS.  
100, 101 AND 102).

SER. NO. 76-357,695, FILED 1-11-2002.

BORIS UMANSKY, EXAMINING ATTORNEY

A SEMIMONTHLY PUBLICATION FOR THE WORKERS' COMP EXECUTIVE

Ex. A

Int. Cl.: 36

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,777,687

United States Patent and Trademark Office

Registered Oct. 28, 2003

SERVICE MARK  
PRINCIPAL REGISTER

**APPLIED**  
**UNDERWRITERS** 

APPLIED UNDERWRITERS, INC. (NEBRASKA  
CORPORATION)  
5 THOMAS MELLON CIRCLE SUITE 365  
SAN FRANCISCO, CA 94134

FIRST USE 10-15-2002; IN COMMERCE 10-15-2002.

FOR: FINANCIAL SERVICES FOR BUSINESS,  
NAMESLY ADMINISTRATION OF INSURANCE  
AND EMPLOYEE BENEFIT PLANS FOR BUSINESS  
ORGANIZATIONS, IN CLASS 36 (U.S. CLS. 100, 101  
AND 102).

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "UNDERWRITERS", APART FROM  
THE MARK AS SHOWN.

SER. NO. 76-468,498, FILED 11-20-2002.

JAMES A. RAUEN, EXAMINING ATTORNEY

A SEMIMONTHLY PUBLICATION FOR THE WORKERS' COMP EXECUTIVE

Ex. A

Int. Cl.: 36

Prior U.S. Cls.: 100, 101 and 102

**United States Patent and Trademark Office**

**Reg. No. 2,777,688**

Registered Oct. 28, 2003

**SERVICE MARK  
PRINCIPAL REGISTER**

Equity &  
Comp

APPLIED UNDERWRITERS, INC. (NEBRASKA  
CORPORATION)  
5 THOMAS MELLON CIRCLE SUITE 365  
SAN FRANCISCO, CA 94134

ORGANIZATIONS, IN CLASS 36 (U.S. CLS. 100, 101  
AND 102).

FIRST USE 10-15-2002; IN COMMERCE 10-15-2002.

FOR: FINANCIAL SERVICES FOR BUSINESS,  
NAMESLY ADMINISTRATION OF INSURANCE  
AND EMPLOYEE BENEFIT PLANS FOR BUSINESS

SER. NO. 76-468,499, FILED 11-20-2002.

JAMES A. RAUEN, EXAMINING ATTORNEY

WORKERS' COMP  
EXECUTIVE™  
A SEMIMONTHLY PUBLICATION FOR THE WORKERS' COMP EXECUTIVE

Ex. A



**Int. Cl.: 36**

**Prior U.S. Cls.: 100, 101 and 102**

**United States Patent and Trademark Office**

**Reg. No. 2,781,677**

**Registered Nov. 11, 2003**

**SERVICE MARK  
PRINCIPAL REGISTER**

**EQUITY COMP**

APPLIED UNDERWRITERS, INC. (NEBRASKA  
CORPORATION)  
5 THOMAS MELLON CIRCLE SUITE 365  
SAN FRANCISCO, CA 94134

ORGANIZATIONS , IN CLASS 36 (U.S. CLS. 100, 101  
AND 102).

FIRST USE 10-15-2002; IN COMMERCE 10-15-2002.

FOR: FINANCIAL SERVICES FOR BUSINESS,  
NAMELY ADMINISTRATION OF INSURANCE  
AND EMPLOYEE BENEFIT PLANS FOR BUSINESS

SER. NO. 76-471,070, FILED 11-25-2002.

RONALD AIKENS, EXAMINING ATTORNEY

**EXECUTIVE™**  
A SEMIMONTHLY PUBLICATION FOR THE WORKERS' COMP EXECUTIVE

Ex. A

Int. Cl.: 36

Prior U.S. Cls.: 100, 101 and 102

**United States Patent and Trademark Office**

**Reg. No. 2,812,457**

Registered Feb. 10, 2004

**SERVICE MARK  
PRINCIPAL REGISTER**

**Applied  
Underwriters**

APPLIED UNDERWRITERS, INC. (NEBRASKA  
CORPORATION)  
5 THOMAS MELLON CIRCLE SUITE 365  
SAN FRANCISCO, CA 94134

OWNER OF U.S. REG. NO. 2,651,867.

FOR: FINANCIAL SERVICES FOR BUSINESSES,  
NAMELY ADMINISTRATION OF INSURANCE  
AND EMPLOYEE BENEFIT PLANS FOR BUSINESS  
ORGANIZATIONS, IN CLASS 36 (U.S. CLS. 100, 101  
AND 102).

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "UNDERWRITERS", APART FROM  
THE MARK AS SHOWN.

SER. NO. 76-471,376, FILED 11-25-2002.

A S FIRST USE 10-15-2002; IN COMMERCE 10-15-2002. TRACY CROSS, EXAMINING ATTORNEY

Ex. A