

EXHIBIT 2

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address): Ricardo Echeverria, Esq., CSB 166049 SHERNOFF, BIDART DARRAS, ECHEVERRIA, LLP 600 S. Indian Hill Boulevard Claremont, California 91711 ATTORNEY FOR (Name): Plaintiff		TELEPHONE NO.: (909) 621-4935	FOR COURT USE ONLY FILED LOS ANGELES SUPERIOR COURT JUN - 1 2009 JOHN A. CLARKE, CLERK <i>A.V. Ayala</i> BY A.V. AYALA, DEPUTY
Insert name of court and name of judicial district and branch court, if any: Los Angeles Superior Court Central District		MAY 29 2009 FILING WINDOW	
PLAINTIFF/PETITIONER: BRIAN NOVACK, MD DEFENDANT/RESPONDENT: STATE FARM MUTUAL AUTOMOBILE INS. CO., et al.			
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Bad Faith, Interference with Contractual Relations, et al.		CASE NUMBER: BC 412007	

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

1. TO THE CLERK: Please **dismiss** this action as follows:

- a. (1) ☐ With prejudice (2) ☒ Without prejudice
- b. (1) ☐ Complaint (2) ☐ Petition
- (3) ☐ Cross-complaint filed by (name):
- (4) ☐ Cross-complaint filed by (name):
- (5) ☐ Entire action of all parties and all causes of action
- (6) ☒ Other (specify):* Complaint as to Stephen Rothman, MD, ONLY

on (date):

on (date):

Date: May 29, 2009

RICARDO ECHEVERRIA

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.


 (SIGNATURE)

Attorney or party without attorney for:

- ☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

**If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (f) or (g).

Attorney or party without attorney for:

- ☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

(To be completed by clerk)

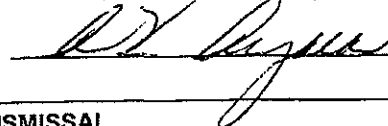
3. ☒ Dismissal entered as requested on (date): JUN - 1 2009
4. ☐ Dismissal entered on (date): as to only (name):
5. ☐ Dismissal **not** entered as requested for the following reasons (specify):

6. ☐ a. Attorney or party without attorney notified on (date):
- b. Attorney or party without attorney not notified. Filing party failed to provide
☐ a copy to conformed ☐ means to return conformed copy

JOHN A. CLARKE, CLERK

Date: JUN - 1 2009

Clerk, by



, Deputy

EXHIBIT 3

P 33

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Ricardo Echeverria, Esq. [166049] SHERNOFF BIDART DARRAS ECHEVERRIA, LLP 600 South Indian Hill Boulevard Claremont, California 91711 TELEPHONE NO.: 909.621.4935 FAX NO. (Optional): 909.625.6915 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff, BRIAN NOVACK, M.D.	FOR COURT USE ONLY FILED LOS ANGELES SUPERIOR COURT APR 29 2009 JOHN A. CLARKE, CLERK RAUL SANCHEZ, DEPUTY HONORABLE CHARLES F. PALMER DEPARTMENT 33
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: SAME CITY AND ZIP CODE: Los Angeles, California 90012 BRANCH NAME: CENTRAL DISTRICT	
PLAINTIFF: BRIAN NOVACK, M.D. DEFENDANT: STATE FARM MUTUAL AUTOMOBILE INSURANCE	CASE NUMBER: BC 412007
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. ☒ Summons
 - b. ☒ Complaint
 - c. ☒ Alternative Dispute Resolution (ADR) package
 - d. ☒ Civil Case Cover Sheet (served in complex cases only)
 - e. ☐ Cross-Complaint
 - f. ☒ other (specify documents): Notice of Case Assignment - Unlimited Civil Case; Civil Case Cover Sheet Addendum and Statement of Location; NE Program Information.
3. a. Party served (specify name of party as shown on documents served): **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a corporation**
 - b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substitute service was made) (specify name and relationship to the party named in item 3a):
Lorie Rafter - Manager/Authorized Agent for Process
4. Address where the party was served: 3345 Michelson Drive, Fourth Floor
 Irvine, California 92612
5. I served the party (check proper box)
 - a. ☒ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 04-27-09 (2) at (time): 2:30 PM
 - b. ☐ **by substituted service.** On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) ☐ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) ☐ (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
 - (5) ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF: BRIAN NOVACK, M.D.	CASE NUMBER:
DEFENDANT: STATE FARM MUTUAL AUTOMOBILE INSURANCE	BC 412007

- c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgment of Receipt*.) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ by other means (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☒ On behalf of (specify): **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,**
under the following Code of Civil Procedure section:

- | | |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. Person who served papers

- a. Name: Michael A. Tarango, Jr., RCPS #893 **Michael R. Milazzo, RCPS, Inc.**
- b. Address: **Registered California Process Servers**
- c. Telephone number: **Post Office Box 1771**
- d. The fee for service was: \$ 76.18 **Upland, California 91785-1771**
- e. I am: **T: 909.989.6115 F: 909.989.6415**



- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☒ registered California process server; and
- (i) ☐ owner ☒ employee ☐ independent contractor.
- (ii) Registration No.: 1154
- (iii) County: **San Bernardino**

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

or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 06-27-09

Michael A. Tarango, Jr., RCPS #893

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

(SIGNATURE)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/05/09

DEPT. 311

HONORABLE Carl J. West

JUDGE

R. Rully

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

None

Deputy Sheriff

None

Reporter

8:30 am BC412007

Plaintiff

Counsel

BRIAN NOVACK M D

No Appearances

VS

Defendant

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY ET AL

Counsel

NON-COMPLEX 5-5-09

NATURE OF PROCEEDINGS:

COURT ORDER

This Court makes its determination whether or not this case should be deemed complex pursuant to Rule 3.400 of the California Rules of Court.

This case is designated non-complex and is reassigned to Judge Edward A. Ferns in Department 69 at Stanley Mosk Courthouse for all further proceedings.

Court orders any complex case fee paid to be refunded.

Plaintiff is ordered to serve a copy of this minute order on all parties forthwith and file a proof of service in Department 69 within five (5) days of service.

Any party objecting to the non-complex designation must file an objection and proof of service in Department 311 within ten (10) days of service of this minute order. Any response to the objection must be filed in Department 311 within seven (7) days of service of the objection. This Court will make its ruling on the submitted pleadings.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/05/09

DEPT. 311

HONORABLE Carl J. West

JUDGE

R. Rully

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

None

Deputy Sheriff

None

Reporter

8:30 am

BC412007

Plaintiff

Counsel

BRIAN NOVACK M D

No Appearances

VS

Defendant

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY ET AL

Counsel

NON-COMPLEX 5-5-09

NATURE OF PROCEEDINGS:

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 05-05-09 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 05-05-09

John A. Clarke, Executive Officer/Clerk

By:

T. Lewis

SHERNOFF, BIDART, DARRAS, ECHEVERRIA, LLP
Michael J. Bidart, Esq.
600 South Indian Hill Boulevard
Claremont, CA. 91711

NOTICE SENT TO:

Bidart, Michael J., Esq.
 Shernoff Bidart Darras Echeverria, LLP
 600 South Indian Hill Boulevard
 Claremont, CA 91711

FILED

LOS ANGELES SUPERIOR COURT

MAY - 8 2009

JOHN A. CLARKE, CLERK
A.V. Ayala
 BY A.V. AYALA, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

BRIAN NOVACK M D

Plaintiff(s),

VS.

STATE FARM MUTUAL AUTOMOBILE INSURANCE
 Defendant(s).

CASE NUMBER

BC412007

**NOTICE OF CASE
MANAGEMENT CONFERENCE****TO THE PLAINTIFF(S)/ATTORNEY(S) FOR PLAINTIFF(S) OF RECORD:**

You are ordered to serve this notice of hearing on all parties/attorneys of record forthwith, and meet and confer with all parties/attorneys of record about the matters to be discussed no later than 30 days before the Case Management Conference.

Your Case Management Conference has been scheduled for September 4, 2009 at 8:30 am in Dept. 69 at 111 N. Hill Street, Los Angeles, California 90012.

Pursuant to California Rules of Court, 3.720-3.730, a completed Case Management Statement (Judicial Council form # CM-110) must be filed at least 15 calendar days prior to the Case Management Conference. The Case Management Statement may be filed jointly by all parties/attorneys of record or individually by each party/attorney of record. You must be familiar with the case and be fully prepared to participate effectively in the Case Management Conference.

At the Case Management Conference, the Court may make pretrial orders including the following, but not limited to, an order establishing a discovery schedule; an order referring the case to Alternative Dispute Resolution (ADR); an order reclassifying the case; an order dismissing fictitious/unnamed defendants; an order setting subsequent conference and the trial date; or other orders to achieve the goals of the Trial Court Delay Reduction Act (GC 68600 et seq.)

Notice is hereby given that if you do not file the Case Management Statement or appear and effectively participate at the Case Management Conference, the Court may impose sanctions pursuant to LASC Local Rule 7.13, CCP Sections 177.5, 575.2, 583.150, 583.360 and 583.410, GC Section 68608 (b), and California Rules of Court 2.04 et seq.

Date: May 8, 2009

Judicial Officer

EDWARD A. FERNS**CERTIFICATE OF SERVICE**

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Case Management Conference upon each party or counsel named above:

☐ by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed herein in a separate sealed envelope to each address as shown above with postage thereon fully prepaid.

☐ by personally giving the party notice upon filing the complaint.

Date: May 8, 2009

John A. Clarke, Executive Officer/Clerk

by *A.V. Ayala*, Deputy Clerk

ORIGINAL FILED

MAY 13 2009

**LOS ANGELES
SUPERIOR COURT**

ROBIE & MATTHAI
A Professional Corporation
JAMES R. ROBIE, SBN 67303
STEVEN S. FLEISCHMAN, SBN 169990
DAVID J. WEINMAN, SBN 143286
500 S. Grand Avenue, Suite 1500
Los Angeles, CA 90071-2609
Telephone: (213) 706-8000
Facsimile: (213) 624-2563

Attorneys for Defendant STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY

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

BRIAN NOVACK, M.D.

Plaintiff,

vs.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY, a corporation; STEPHEN
ROTHMAN, M.D., an individual, DOES
1-100,

Defendants.

CASE NO.: BC412007

**DEFENDANT STATE FARM
MUTUAL AUTOMOBILE
INSURANCE COMPANY'S
OBJECTION TO NON-COMPLEX
DESIGNATION**

Discovery Cut-Off : None
Motion Cut-Off : None

Filing Date : April 16, 2009
Trial Date : None

Pursuant to the Court's May 5, 2009 minute order, defendant State Farm Mutual Automobile Insurance Company ("State Farm") hereby objects to the Court's designation that this case is non-complex and requests that this Court order the case designated complex pursuant to Rule 3.400 of the California Rules of Court.

Because there was no hearing leading to the Court's May 5, 2009 minute order, State Farm is not able to address whatever specific concerns the Court may have had leading to its determination that this case is not complex. Nonetheless, State Farm submits that this case fits the criteria for complex designation and should be designated complex.

Although at first blush plaintiff's 45-page complaint may appear to be an ordinary first-party "bad faith" action brought against an insurance carrier, that is simply not the

1 case for at least three reasons. First, Plaintiff's complaint alleges a complex class action
2 that could entail extensive discovery just to determine who the members of the class would
3 be. Second, by the alleged class action, plaintiff seeks an extraordinarily broad mandatory
4 injunction. Third, there are numerous threshold issues of law that will need to be
5 resolved, not only in respect to the suitability of the class action allegations, but also
6 Plaintiff's substantive claims under Business & Professions Code section 17200 and on the
7 "bad faith" cause of action.

8 Plaintiff's third cause of action alleges a statewide class action defined in paragraph
9 139 of the complaint as all California residents who were State Farm policyholders, who
10 submitted an uninsured/underinsured motorist claim within the last four years where State
11 Farm failed to disclose the "potential bias" (whatever that means) of *any* retained
12 consultant. State Farm is the state's largest automobile insurer. State Farm has handled
13 tens of thousands of uninsured and underinsured claims in California over the alleged four-
14 year class period. Just to determine membership in the alleged class, tens of thousands of
15 claim files would have to be manually reviewed in order to determine if: (a) a consultant
16 was retained; (b) whether that consultant had some "alleged bias"; and (c) what was
17 disclosed to the insured claimant regarding the consultant's past experience with State
18 Farm. Some of those claims may also have resulted in litigation where outside counsel was
19 retained. To the extent discovery is permitted of such files, they may well have to be
20 subpoenaed, as the outside counsel are not parties to this action. Outside counsel's files
21 would then have to be reviewed for privileged materials before they can be produced
22 (should the Court so order). Indeed, Plaintiff asserts that his proposed class can "only be
23 determined by appropriate discovery" (Complaint, ¶ 141.) There will need to be
24 intense court supervision of any such discovery, including the propriety thereof, should the
25 case ever proceed to that point, since it appears that plaintiff's want access to tens of
26 thousands of claim files. Thus, the case involves "management of . . . a substantial amount
27 of documentary evidence." (Cal. R. Ct., rule 3.400(b)(2).) Moreover, the complaint also
28 appears to seek information regarding *pending* claims still being litigated, which

1 necessarily raises privilege issues. All of this discovery will require intense judicial
2 supervision, which is precisely what the Complex Courts were created to handle.

3 Moreover, the complaint seeks an incredibly broad injunction. The complaint seeks
4 a mandatory injunction to require State Farm to disclose in every uninsured/underinsured
5 motorist claim in the last four years, as well as every future claim, the number of times an
6 expert has been retained by State Farm and the amount paid to that expert. (Complaint,
7 ¶¶ 132-133.) The complaint does not limit the relief sought to retained doctors who
8 perform independent medical examinations. Presumably, outside counsel, photographers,
9 investigators, accident reconstruction experts and all other litigation support vendors would
10 also be subject to this injunction. Should the Court ever decide to grant such an oppressive
11 injunction, great attention would have to be paid to the scope, application and supervision
12 of any such injunction. After all, injunctions generally do not issue to prevent a breach of
13 contract. (Code Civ. Proc. § 526(b)(5); Civ. Code § 3423(e).) To the extent that the
14 injunction would be based upon some unspecified statute, injunctions which command a
15 party to obey the law are improper, because the party is already obliged to obey the law.
16 (*See City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 416
17 [holding that "obey the law" injunctions are improper and unenforceable].) Moreover,
18 should any such injunction ever issue, the Plaintiff would be asking the Court to sit as a
19 super-discovery referee to supervise court-mandated disclosures in all
20 uninsured/underinsured motorist claims for the indefinite future. (*See Ellison v. Ventura*
21 *Post Dist.* (1978) 80 Cal.App.3d 574, 581-581 [court should not issue injunction which
22 would require continuing court proceedings to enforce].) Thus, should the Court ultimately
23 grant any of the class-related injunctive relief sought in the complaint, there will need to be
24 substantial post-judgment judicial supervision of any such injunction. (Cal. R. Ct. rule
25 3.400(b)(5).)

1 In addition, there are numerous complex issues of law, which will require extensive
 2 court time to address and resolve.¹ This is not a simple first-party "bad faith" action. This
 3 action involves a disputed underinsured motorist claim. The gravamen of Plaintiff's claims
 4 is that State Farm opposed discovery requests Plaintiff served seeking to obtain
 5 information about financial payments made to a medical consultant, defendant Stephen
 6 Rothman, M.D. Plaintiff complains that State Farm opposed Plaintiff's attempts to obtain
 7 discovery from State Farm in Los Angeles Superior Court proceedings, and a related
 8 petition for writ of mandate filed in the Court of Appeal, that were initiated in the first
 9 instance by Plaintiff. (Complaint, ¶¶ 67-102.) However, those matters are privileged under
 10 Civil Code section 47. In defending against Plaintiff's underinsured motorist claim, State
 11 Farm "steps into the shoes" of the third-party tortfeasor and is permitted to defend the
 12 plaintiff's claim. Thus, one court has held that there is no such thing as a "bad faith
 13 defense." (*California Physician's Service v. Superior Court* (1992) 9 Cal.App.4th 1321.)
 14 Accordingly, the litigation privilege in Section 47 applies as a defense to Plaintiff's claims.
 15 (*See id.* at p. 1330; *Old Republic Ins. Co. v. FSR Brokerage, Inc.* (2000) 80 Cal.App.4th
 16 666, 687-688; *Nies v. National Auto. & Cas. Ins. Co.* (1988) 199 Cal.App.3d 1192, 1201
 17 [insurance company "had an absolute right to defend" against an uninsured motorist
 18 claim].) On the other hand, Plaintiff will assert that State Farm owed it a quasi-fiduciary
 19 duty to fairly and timely investigate and pay its uninsured motorist claim. Extensive
 20 judicial resources will have to be devoted to resolving this issue and determining what acts
 21 complained of are privileged under Civil Code section 47 and what acts, if any, are not
 22 privileged. Because of the manner in which Plaintiff's complaint is alleged, it may be that
 23 procedurally State Farm cannot move for summary adjudication on this issue because it
 24 does not address an entire cause of action (depending upon the Court's ruling). Thus, State
 25 Farm may have to use other "procedural devices" such as a motion to strike or motion *in*
 26 *limine* to address this issue. (*Hindin v. Rust* (2004) 118 Cal.App.4th 1247, 1259.) Again,

27
 28 ¹ By addressing these issues, State Farm is not attempting to argue the merits of
 this dispute, but simply wishes to emphasize the complex nature of the present dispute.

1 this is a matter better addressed by a Complex Court which can, among other things,
2 decide this issue as a threshold question of law.

3 There are numerous other complex issues of law raised by Plaintiff's complaint,
4 including but not limited to the following:

- 5 1. Can Plaintiff state a claim for restitution on its claim under Section 17200?
6 Plaintiff has not alleged that it paid any money to State Farm for which it
7 seeks restitution. Instead, it alleges a simple breach of contract. (*Korea*
8 *Supply Company v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1144,
9 1148.) If Plaintiff cannot seek restitution, does Plaintiff have standing under
10 Section 17200 to seek injunctive relief? (*See Buckland v. Threshold Enters.*
11 *Ltd.* (2007) 155 Cal.App.4th 798, 817 [holding that standing under Section
12 17200 for injunctive relief is lacking where the plaintiff is not entitled to
13 restitution]; *Citizens of Humanity, LLC v. Costco Wholesale Corp.* (2009)
14 171 Cal.App.4th 1, 22 [same]; *Kwikset Corp. v. Superior Court* (2009) 171
15 Cal.App.4th 645, 654-656 [same].) A motion to determine these issues as a
16 threshold question of law would be an ideal procedural mechanism to resolve
17 these issues. Indeed, State Farm is informed and believes that this Court,
18 sitting as a complex court, decided a virtually identical issue in another case
19 against an insurance company, entitled *Webster v. Allstate Insurance Co.*,
20 docket No. BC338075, as a threshold question of law.
- 21 2. Are the Plaintiff's claims subject to the anti-SLAPP statute because they are
22 based upon litigation conduct, which is privileged under Civil Code section
23 47?
- 24 3. Does Plaintiff's complaint allege a valid cause of action under Section 17200
25 for alleged unlawful and unfair business practices, both of which require a
26 purported violation of a statute as a predicate offense. (*Cel-Tech*
27 *Communications, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th
28 163, 180 [unlawful]; *In re Firearms Cases* (2005) 126 Cal.App.4th 959, 973

[unfair]; *Gregory v. Albertson's Inc.* (2002) 104 Cal.App.4th 845, 854 [unfair].) To the extent that Plaintiff relies upon Insurance Code section 790.03 and/or Insurance Regulations to provide the predicate offense, would such reliance be an improper attempt to circumvent the California Supreme Court's seminal decision in *Moradi-Shalal v. Fireman's Fund Ins. Cos.* (1988) 46 Cal.3d 287, holding that no private right of action exists under Section 790.03? (See *Textron Financial Corp. v. National Union* (2004) 118 Cal.App.4th 1061, 1070 ["parties cannot plead around *Moradi-Shalal's* holding by merely relabeling their cause of action as one for unfair competition"].)

4. Are Plaintiff's class allegations so fatally deficient on their face that they are due to be stricken now?
5. Even if the class allegations are permitted to proceed beyond a pleading phase, is the class definition infirm on the grounds that it is uncertain in scope or failsafe in nature, and can plaintiff satisfy his burden to show other class action requirements are met, such as adequacy, typicality, commonality, etc.?

In short, this is anything but a simple first-party "bad faith" case. Careful and intense judicial oversight is necessary to see that this case is handled in an efficient manner. Accordingly, State Farm respectfully requests that this Court designate this case as complex and rescind its May 5, 2009 assignment to Department 69.

DATED: May 13, 2009

ROBIE & MATTHAI
A Professional Corporation
JAMES R. ROBIE
STEVEN S. FLEISCHMAN
DAVID J. WEINMAN

By: 

JAMES R. ROBIE
Attorneys for Defendant STATE FARM
MUTUAL AUTOMOBILE INSURANCE
COMPANY

PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 500 South Grand Avenue, Suite 1500, Los Angeles, CA 90071.

On May 13, 2009, I served the foregoing document(s) described as: **DEFENDANT STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S OBJECTION TO NON-COMPLEX DESIGNATION** on all interested parties in this action by placing a true copy of each document, enclosed in a sealed envelope addressed as follows:

*** [SEE ATTACHED LIST]***

() **BY MAIL:** as follows: I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Los Angeles, California.

() **BY PERSONAL SERVICE:** I delivered such envelope by hand to the above addressee(s).

(x) **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to an overnight courier service, for delivery to the above addressee(s).

() **BY FACSIMILE TRANSMISSION:** I caused the above-referenced document(s) to be transmitted to the above-named person(s) at the telecopy number(s) following the names on the service list.

Executed on May 13, 2009, at Los Angeles, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


LINDA J. BLAKE

SERVICE LIST

[Novack v. State Farm Mutual Auto Ins. Co.]
LASC Case No. BC412007

Plaintiff's counsel:

Michael J. Bidart, Esq.
Ricardo Echeverria, Esq.
Steven Schuetze, Esq.
SHERNOFF BIDART DARRAS ECHEVERRIA,
LLP
600 South Indian Hill Blvd.
Claremont, CA 91711
(909) 621-4935
(909) 625-6915 Fax

**Co-Counsel for Defendant State Farm
Mutual Auto Ins. Co.:**

Joseph A. Cancila Jr., Esq.
SCHIFF HARDIN LLP
233 South Wacker Drive
Suite 6600
Chicago, IL 60606-6473
(312) 258-5500
(312) 258-5600 Fax

1 ROBIE & MATTHAI
A Professional Corporation
2 JAMES R. ROBIE, SBN 67303
STEVEN S. FLEISCHMAN, SBN 169990
3 DAVID J. WEINMAN, SBN 143286
500 S. Grand Avenue, Suite 1500
4 Los Angeles, CA 90071-2609
Telephone: (213) 706-8000
5 Facsimile: (213) 624-2563

6 Attorneys for Defendant STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY
7

ORIGINAL FILED

MAY 15 2009

**LOS ANGELES
SUPERIOR COURT**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**
10

11 BRIAN NOVACK, M.D.

12 Plaintiff,

13 vs.

14 STATE FARM MUTUAL
AUTOMOBILE INSURANCE
15 COMPANY, a corporation; STEPHEN
ROTHMAN, M.D., an individual, DOES
16 1-100,

17 Defendants.
18

CASE NO.: BC412007

DEFENDANT STATE FARM
MUTUAL AUTOMOBILE
INSURANCE COMPANY'S
SUPPLEMENTAL OBJECTION TO
NON-COMPLEX DESIGNATION

Discovery Cut-Off : None
Motion Cut-Off : None

Filing Date : April 16, 2009
Trial Date : None

19 Defendant State Farm Mutual Automobile Insurance Company ("State Farm")
20 hereby supplements its prior objection, filed on May 13, 2009, in which State Farm
21 objected to the Court's designation that this case is non-complex and requests that this
22 Court order the case designated complex pursuant to Rule 3.400 of the California Rules of
23 Court.

24 Due to inadvertence, State Farm just became aware of the Civil Case Cover Sheet
25 filed by Plaintiff, a copy of which is attached hereto as Exhibit 1. In that Civil Case Cover
26 Sheet (paragraph 2), Plaintiff submits that this case should be designated as complex
27 because of the substantial amount of documentary evidence and substantial post-judgment
28

1 supervision Plaintiff plans to pursue. Thus both Plaintiff and State Farm agree that this
2 matter should be designated as complex.

3 Accordingly, for the reasons stated in State Farm's May 13, 2009 Objections and
4 herein, this case should be designated as complex.

5
6 DATED: May 15, 2009

ROBIE & MATTHAI
A Professional Corporation
JAMES R. ROBIE
STEVEN S. FLEISCHMAN
DAVID J. WEINMAN

7
8
9
10 By: 

JAMES R. ROBIE

11 Attorneys for Defendant STATE FARM
12 MUTUAL AUTOMOBILE INSURANCE
13 COMPANY
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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Street number, and address): RICARDO ECHEVERRIA, ESQ. #106049 SHERNOFF BIDART DARRAS ECHEVERRIA, LLP 600 S. Indian Hill Blvd Claremont, CA 91711 TELEPHONE NO.: (909) 621-4935 FAX NO.: (909) 625-6915		FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; margin: 10px 0;">FILED</div> <div style="font-weight: bold; margin: 0;">LOS ANGELES SUPERIOR COURT</div>	
ATTORNEY FOR (Name): Plaintiff, BRIAN NOVACK, M.D.		<div style="font-size: 1.2em; margin: 0;">APR 16 2009</div> <div style="margin-top: 10px;"> JOHN A. CLARKE, CLERK MARY GARCIA, DEPUTY </div>	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: -Same- CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central District			
CASE NAME: BRIAN NOVACK, M.D. v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, et al.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: BC 412007 JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input checked="" type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	---	--

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 3
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-905.)

Date: April 16, 2009

RICARDO ECHEVERRIA

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SHORT TITLE:
Brian Novack, M.D. v. State Farm Mutual Automobile, et al.

CASE NUMBER

BC 412007

**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☒ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 15 ☐ HOURS/ ☒ DAYS

Item II. Select the correct district and courthouse location (4 steps -- If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

- | | |
|---|--|
| 1. Class Actions must be filed in the County Courthouse, Central District. | 6. Location of property or permanently garaged vehicle. |
| 2. May be filed in Central (Other county, or no Bodily Injury/Property Damage). | 7. Location where petitioner resides. |
| 3. Location where cause of action arose. | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred. | 9. Location where one or more of the parties reside. |
| 5. Location where performance required or defendant resides. | 10. Location of Labor Commissioner Office. |

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

Auto Tort

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	2.
	<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2.
Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice – Physicians & Surgeons	1., 2., 4.
	<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4.
Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 2., 4.
	<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4.
	<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 2., 3.
	<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.

Other Personal Injury/Property
Damage/Wrongful Death Tort

Other Personal Injury/Property
Damage/Wrongful-Death Tort

Non-Personal Injury/Property Damage/
Wrongful Death Tort (Cont'd.)

Employment

Contract

Real Property

Judicial Review, Unlawful Detainer

SHORT TITLE: Brian Novack, M.D. v. State Farm Mutual Automobile, et al.		CASE NUMBER
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (08) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input checked="" type="checkbox"/> A6016 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6080 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer- Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

SHORT TITLE: Brian Novack, M.D. v. State Farm Mutual Automobile, et al.	CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review (Cont'd.)	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Miscellaneous Civil Complaints	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
	Partnership Corporation Governance(21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Miscellaneous Civil Petitions	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

SHORT TITLE: Brian Novack, M.D. v. State Farm Mutual Automobile, et al.	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE		ADDRESS: 414 North Camden Drive, Suite 1010	
<input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			
CITY: Beverly Hills	STATE: CA	ZIP CODE: 90210	

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the MAIN courthouse in the CENTRAL District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subs. (b), (c) and (d)).

Dated: April 16, 2009


(SIGNATURE OF ATTORNEY FILING PARTY)
Ricardo R. Heverria

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for Issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev. 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

4/16/09

PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 500 South Grand Avenue, Suite 1500, Los Angeles, CA 90071.

On May 15, 2009, I served the foregoing document(s) described as: **DEFENDANT STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S SUPPLEMENTAL OBJECTION TO NON-COMPLEX DESIGNATION** on all interested parties in this action by placing a true copy of each document, enclosed in a sealed envelope addressed as follows:

*** [SEE ATTACHED LIST]***

- () **BY MAIL:** as follows: I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Los Angeles, California.
- () **BY PERSONAL SERVICE:** I delivered such envelope by hand to the above addressee(s).
- (x) **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to an overnight courier service, for delivery to the above addressee(s).
- () **BY FACSIMILE TRANSMISSION:** I caused the above-referenced document(s) to be transmitted to the above-named person(s) at the telecopy number(s) following the names on the service list.

Executed on May 15, 2009, at Los Angeles, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



LINDA J. BLAKE

SERVICE LIST

[*Novack v. State Farm Mutual Auto Ins. Co.*]
LASC Case No. BC412007

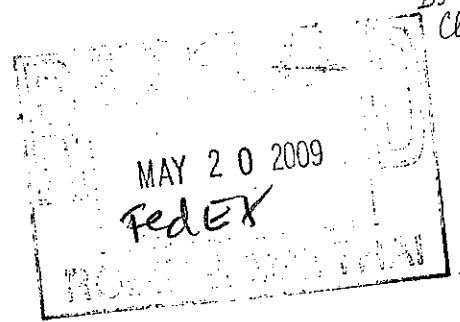
Plaintiff's counsel:

Michael J. Bidart, Esq.
Ricardo Echeverria, Esq.
Steven Schuetze, Esq.
SHERNOFF BIDART DARRAS ECHEVERRIA,
LLP
600 South Indian Hill Blvd.
Claremont, CA 91711
(909) 621-4935
(909) 625-6915 Fax

**Co-Counsel for Defendant State Farm
Mutual Auto-Ins. Co.:**

Joseph A. Cancila Jr., Esq.
SCHIFF HARDIN LLP
233 South Wacker Drive
Suite 6600
Chicago, IL 60606-6473
(312) 258-5500
(312) 258-5600 Fax

TRP
SSF
DJW
Client



1 MICHAEL J. BIDART #60582
2 RICARDO ECHEVERRIA #166049
3 STEVEN MESSNER, #259606
4 **SHERNOFF BIDART**
5 **DARRAS ECHEVERRIA, LLP**
6 600 South Indian Hill Boulevard
Claremont, CA 91711
Telephone: (909) 621-4935
Facsimile: (909) 625-6915

7 Attorneys for Plaintiff

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

10 BRIAN NOVACK, M.D.

11 Plaintiff,

12 vs.

13
14 STATE FARM MUTUAL AUTOMOBILE
15 INSURANCE COMPANY, a corporation;
16 STEPHEN ROTHMAN, M.D., an
individual, DOES 1-100,

17 Defendants

Case No.: BC412007
[Hon. Edward A. Ferns]

NOTICE OF COURT'S ORDER
DESIGNATING CASE AS NON-
COMPLEX

Date Action Filed: April 16, 2009
Trial Date: None

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19
20
21 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE that pursuant to the Court's Order, a copy of which is
23 attached hereto, the Court has designated this case as non-complex and reassigned it
24 to Judge Edward A. Ferns in Department 69 at Stanley Mosk Courthouse for all further
25 proceedings.


26 Any party objecting to the non-complex designation must file an objection and
27 proof of service in Department 311 within ten (10) days of service of the minute order.
28 Any response to the objection must be filed in Department 311 within seven (7) days of

1 service of the objection. The Court will make its ruling on the submitted pleadings.

2
3 Date: May 19, 2009

SHERNOFF BIDART
DARRAS ECHEVERRIA, LLP

4
5
6 By


RICARDO ECHEVERRIA
STEVEN MESSNER
Attorneys for Plaintiff

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SHERNOFF BIDART
DARRAS ECHEVERRIA
LAWYERS FOR INSURANCE POLICYHOLDERS

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/05/09

DEPT. 311

HONORABLE Carl J. West

JUDGE R. Rully

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

None

Deputy Sheriff

None

Reporter

8:30 am

BC412007

Plaintiff

Counsel

BRIAN NOVACK M D

No Appearances

VS

Defendant

STATE FARM MUTUAL AUTOMOBILE

Counsel

INSURANCE COMPANY ET AL

NON-COMPLEX 5-5-09

NATURE OF PROCEEDINGS:

COURT ORDER

This Court makes its determination whether or not this case should be deemed complex pursuant to Rule 3.400 of the California Rules of Court.

This case is designated non-complex and is reassigned to Judge Edward A. Ferns in Department 69 at Stanley Mosk Courthouse for all further proceedings.

Court orders any complex case fee paid to be refunded.

Plaintiff is ordered to serve a copy of this minute order on all parties forthwith and file a proof of service in Department 69 within five (5) days of service.

Any party objecting to the non-complex designation must file an objection and proof of service in Department 311 within ten (10) days of service of this minute order. Any response to the objection must be filed in Department 311 within seven (7) days of service of the objection. This Court will make its ruling on the submitted pleadings.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/05/09

DEPT. 311

HONORABLE Carl J. West

JUDGE

R. Rully

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

None

Deputy Sheriff

None

Reporter

8:30 am BC412007

Plaintiff

Counsel

No Appearances

BRIAN NOVACK M D

VS

Defendant

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY ET AL

Counsel

NON-COMPLEX 5-5-09

NATURE OF PROCEEDINGS:

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 05-05-09 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 05-05-09

John A. Clarke, Executive Officer/Clerk

By: TANAYA LEWIS

T.Lewis

SHERNOFF, BIDART, DARRAS, ECHEVERRIA, LLP
Michael J. Bidart, Esq.
600 South Indian Hill Boulevard
Claremont, CA. 91711

Re: *Novack v. State Farm Mutual, et al.*
Case No BC 412007

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 600 South Indian Hill Boulevard, Claremont, California 91711.

On **May 19, 2009**, I served the foregoing documents described as NOTICE OF COURT'S ORDER DESIGNATING CASE AS NON-COMPLEX on the interested parties in this action by placing ___ the original XX a true copy thereof enclosed in sealed envelopes addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

☐ BY MAIL I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Claremont, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

☐ BY FACSIMILE ("FAX") In addition to the manner of service indicated above, a copy was sent by FAX to the parties indicated on the service List.

☒ BY OVERNIGHT MAIL/COURIER To expedite service, copies were sent via FEDERAL EXPRESS.

☐ BY PERSONAL SERVICE I caused to be delivered such envelope by hand to the individual(s) indicated on the service list.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **May 19, 2009**, at Claremont, California.


DEBBIE HUNTER

Re: *Novack v. State Farm Mutual, et al.*
Case No BC 412007

SERVICE LIST

James R. Robie, Esq.
Steven S. Fleischman, Esq.
David J. Weinman, Esq.
ROBIE & MATTHAI
500 S. Grand Avenue, Suite 1500
Los Angeles, CA 90071-2609
(213) 706-8000
FAX: (213) 624-2563

Attorneys for Defendant
STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY

Joseph A. Cancila Jr., Esq.
SCHIFF HARDIN, LLP
233 S. Wacker Drive, Suite 6600
Chicago, IL 60606-6473
(312) 258-5500
FAX: (312) 258-5600

Attorneys for Defendant
STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY

Stephen Rothman, M.D.,
9233 West Pico Boulevard, Suite 210
Los Angeles, CA 90035-1385

Defendant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/28/09

DEPT. 311

HONORABLE Carl J. West

JUDGE R. Rully

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

none

Deputy Sheriff

none

Reporter

8:30 am

BC412007

Plaintiff

Counsel

BRIAN NOVACK M D

no appearances

VS

Defendant

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY ET AL

Counsel

NON-COMPLEX 5-5-09

NATURE OF PROCEEDINGS:

RULING ON OBJECTION TO NON-COMPLEX DESIGNATION -
OVERRULED

The Court has read and considered the Objection of Defendant State Farm Mutual Automobile Insurance Company's to Non-Complex Designation. The Objection is overruled. This order does not preclude designation of the case as complex by the Judge in the Mosk Courthouse to whom the case is assigned. This Court's designation of the case as non-complex is made for purposes of case assignment to a complex litigation department or to a trial court in the Mosk Courthouse.

The case remains assigned to Judge Edward A. Ferns in Department 69 at Stanley Mosk Courthouse for all further proceedings.

Defendant is ordered to serve a copy of this minute order on all parties forthwith and file a proof of service in Department 69 within seven (7) days of service.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/28/09

DEPT. 311

HONORABLE Carl J. West

JUDGE

R. Rully

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

none

Deputy Sheriff

none

Reporter

8:30 am

BC412007

Plaintiff

Counsel

BRIAN NOVACK M D

no appearances

VS

Defendant

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY ET AL

Counsel

NON-COMPLEX 5-5-09

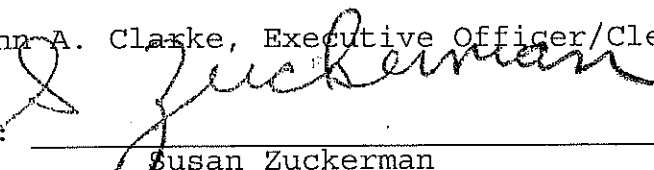
NATURE OF PROCEEDINGS:

above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 05-28-09 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 05-28-09

John A. Clarke, Executive Officer/Clerk

By:


 Susan Zuckerman

Robie & Matthai
 A Professional Corporation
 James R. Robie
 Steven S. Fleischman
 David J. Weinman
 500 S. Grand Avenue, Suite 1500
 L.A., Ca. 90071-2609

MICHAEL J. BIDART #60582
RICARDO ECHEVERRIA #166049
SHERNOFF BIDART
DARRAS ECHEVERRIA, LLP
600 South Indian Hill Boulevard
Claremont, CA 91711
Telephone: (909) 621-4935
Facsimile: (909) 625-6915

Attorneys for Plaintiffs

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

BRIAN NOVACK, M.D.

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, a corporation;
STEPHEN ROTHMAN, M.D., an
individual; DOES 1-100,

Defendants.

Case No.: BC412007
[Hon. Edward A. Ferns]

NOTICE OF COURT'S RULING ON
OBJECTION TO NON-COMPLEX
DESIGNATION

Date Action Filed: April 16, 2009
Trial Date: None

TO ALL PARTIES HEREIN AND TO THEIR ATTORNEY'S OF RECORD:

Attached hereto is a copy of the Court's Ruling on Objection to Non-Complex
Designation.

Dated: June 4, 2009

SHERNOFF BIDART
DARRAS ECHEVERRIA, LLP

By


RICARDO ECHEVERRIA
Attorneys for Plaintiff



SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/28/09

DEPT. 311

HONORABLE Carl J. West

JUDGE

R. Rully

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

none

Deputy Sheriff

none

Reporter

8:30 am BC412007

Plaintiff

Counsel

no appearances

BRIAN NOVACK M D

VS

Defendant

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY ET AL

Counsel

NON-COMPLEX 5-5-09

NATURE OF PROCEEDINGS:

RULING ON OBJECTION TO NON-COMPLEX DESIGNATION -
OVERRULED

The Court has read and considered the Objection of Plaintiff Brian Novack, M.D. to Non-Complex Designation. The Objection is overruled. This order does not preclude designation of the case as complex by the judge in the Mosk Courthouse to whom the case is assigned. This Court's designation of the case as non-complex is made for purposes of case assignment to a complex litigation department or to a trial court in the Mosk Courthouse.

The case remains assigned to Judge Edward A. Ferns in Department 69 at Stanley Mosk Courthouse for all further proceedings.

Plaintiff is ordered to serve a copy of this minute order on all parties forthwith and file a proof of service in Department 69 within seven (7) days of service.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/28/09

DEPT. 311

HONORABLE Carl J. West

JUDGE R. Rully

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

none

Deputy Sheriff

none

Reporter

8:30 am

BC412007

Plaintiff

Counsel

BRIAN NOVACK M D

no appearances

VS

Defendant

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY ET AL

Counsel

NON-COMPLEX 5-5-09

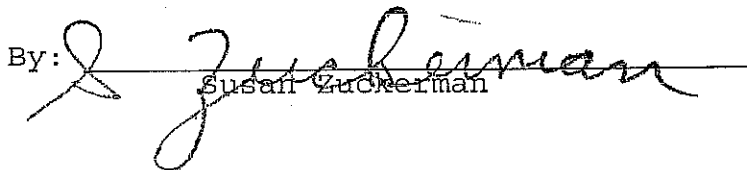
NATURE OF PROCEEDINGS:

served Notice of Entry of the above minute order of 05-28-09 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 05-28-09

John A. Clarke, Executive Officer/Clerk

By:



Susan Zuckerman

Michael J. Bidart
SHERNOFF BIDART
DARRAS ECHEVERRIA, LLP
600 South Indian Hill Boulevard
Claremont, Ca. 91711

Re: *Novack v. State Farm Mutual, et al.*
Case No BC 412007

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 600 South Indian Hill Boulevard, Claremont, California 91711.

On **June 4, 2009**, I served the foregoing documents described as NOTICE OF COURT'S RULING ON OBJECTION TO NON-COMPLEX DESIGNATION on the interested parties in this action by placing the original XX a true copy thereof enclosed in sealed envelopes addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

☒ BY MAIL I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Claremont, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

☐ BY FACSIMILE ("FAX") In addition to the manner of service indicated above, a copy was sent by FAX to the parties indicated on the service List.

☐ BY OVERNIGHT MAIL/COURIER To expedite service, copies were sent via FEDERAL EXPRESS.

☐ BY PERSONAL SERVICE I caused to be delivered such envelope by hand to the individual(s) indicated on the service list.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **June 4, 2009**, at Claremont, California.


DEBBIE HUNTER

Re: *Novack v. State Farm Mutual, et al.*
Case No. BC 412007

SERVICE LIST

James R. Robie, Esq.
Steven S. Fleischman, Esq.
David J. Weinman, Esq.
ROBIE & MATTHAI
500 S. Grand Avenue, Suite 1500
Los Angeles, CA 90071-2609
(213) 706-8000
FAX: (213) 624-2563

Attorneys for Defendant
STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY

Joseph A. Cancila Jr., Esq.
SCHIFF HARDIN, LLP
233 S. Wacker Drive, Suite 6600
Chicago, IL 60606-6473
(312) 258-5500
FAX: (312) 258-5600

Attorneys for Defendant
STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY

Nicholas A. Merkin, Esq.
WOLF RIFKIN SHAPIRO SCHULMAN
& RABKIN, LLP
11400 West Olympic Boulevard, 9th Floor
Los Angeles, CA 90064
(310) 478-4100
FAX: (310) 479-1422

Attorneys for Defendant
STEPHEN ROTHMAN, M.D.

DISMISSED – DO NOT SERVE

1 ROBIE & MATTHAI
A Professional Corporation
2 JAMES R. ROBIE, SBN 67303
STEVEN S. FLEISCHMAN, SBN 169990
3 DAVID J. WEINMAN, SBN 143286
500 S. Grand Avenue, Suite 1500
4 Los Angeles, CA 90071-2609
Telephone: (213) 706-8000
5 Facsimile: (213) 624-2563

6 Attorneys for Defendant STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

11 BRIAN NOVACK, M.D.

12 Plaintiff,

13 vs.

14 STATE FARM MUTUAL
AUTOMOBILE INSURANCE
15 COMPANY, a corporation; STEPHEN
ROTHMAN, M.D., an individual, DOES
16 1-100,

17 Defendants.

CASE NO.: BC412007

[Assigned to the Hon. Edward A. Ferns, Dept.
69]

**NOTICE OF COURT'S RULING ON
OBJECTION TO NON-COMPLEX
DESIGNATION**

Discovery Cut-Off : None
Motion Cut-Off : None

Filing Date : April 16, 2009
Trial Date : None

19 TO ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:

20 Attached hereto is a copy of the Court's Ruling on Objection to Non-Complex
21 Designation.

22 DATED: June 6, 2009

ROBIE & MATTHAI
A Professional Corporation

23
24 By: 

DAVID J. WEINMAN

25 Attorneys for Defendant STATE FARM
26 MUTUAL AUTOMOBILE INSURANCE
27 COMPANY
28

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/28/09

DEPT. 311

HONORABLE Carl J. West

JUDGE

R. Rully

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

none

Deputy Sheriff

none

Reporter

8:30 am BC412007

Plaintiff

Counsel

no appearances

BRIAN NOVACK M D

VS

Defendant

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY ET AL

Counsel

NON-COMPLEX 5-5-09

NATURE OF PROCEEDINGS:

RULING ON OBJECTION TO NON-COMPLEX DESIGNATION -
OVERRULED

The Court has read and considered the Objection of Defendant State Farm Mutual Automobile Insurance Company's to Non-Complex Designation. The Objection is overruled. This order does not preclude designation of the case as complex by the Judge in the Mosk Courthouse to whom the case is assigned. This Court's designation of the case as non-complex is made for purposes of case assignment to a complex litigation department or to a trial court in the Mosk Courthouse.

The case remains assigned to Judge Edward A. Ferns in Department 69 at Stanley Mosk Courthouse for all further proceedings.

Defendant is ordered to serve a copy of this minute order on all parties forthwith and file a proof of service in Department 69 within seven (7) days of service.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/28/09

DEPT. 311

HONORABLE Carl J. West

JUDGE R. Rully

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

none

Deputy Sheriff

none

Reporter

8:30 am BC412007

Plaintiff

Counsel

BRIAN NOVACK M D

no appearances

VS

Defendant

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY ET AL

Counsel

NON-COMPLEX 5-5-09

NATURE OF PROCEEDINGS:

above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 05-28-09 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 05-28-09

John A. Clarke, Executive Officer/Clerk

By:


 Susan Zuckerman

Robie & Matthai
 A Professional Corporation
 James R. Robie
 Steven S. Fleischman
 David J. Weinman
 500 S. Grand Avenue, Suite 1500
 L.A., Ca. 90071-2609

PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 500 South Grand Avenue, Suite 1500, Los Angeles, CA 90071.

On June 8, 2009, I served the foregoing document(s) described as: **NOTICE OF COURT'S RULING ON OBJECTION TO NON-COMPLEX DESIGNATION** on all interested parties in this action by placing a true copy of each document, enclosed in a sealed envelope addressed as follows:

*** [SEE ATTACHED LIST]***

(X) BY MAIL: as follows: I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Los Angeles, California.

() BY PERSONAL SERVICE: I delivered such envelope by hand to the above addressee(s).

() BY OVERNIGHT COURIER: I caused the above-referenced document(s) to be delivered to an overnight courier service, for delivery to the above addressee(s).

() BY FACSIMILE TRANSMISSION: I caused the above-referenced document(s) to be transmitted to the above-named person(s) at the telecopy number(s) following the names on the service list.

Executed on June 8, 2009, at Los Angeles, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Yvette Merino

SERVICE LIST

[Novack v. State Farm Mutual Auto Ins. Co.]
LASC Case No. BC412007

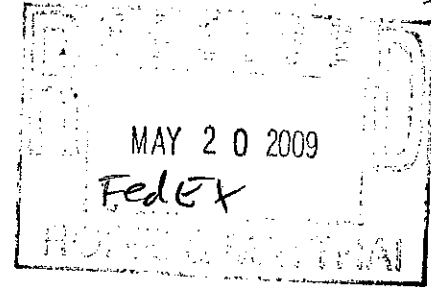
Plaintiff's counsel:

Michael J. Bidart, Esq.
Ricardo Echeverria, Esq.
Steven Schuetze, Esq.
SHERNOFF BIDART DARRAS ECHEVERRIA,
LLP
600 South Indian Hill Blvd.
Claremont, CA 91711
(909) 621-4935
(909) 625-6915 Fax

**Co-Counsel for Defendant State Farm
Mutual Auto Ins. Co.:**

Joseph A. Cancila Jr., Esq.
SCHIFF HARDIN LLP
233 South Wacker Drive
Suite 6600
Chicago, IL 60606-6473
(312) 258-5500
(312) 258-5600 Fax

JKR
SSF
DJW
Client



MICHAEL J. BIDART #60582
RICARDO ECHEVERRIA #166049
STEVEN MESSNER, #259606
SHERNOFF BIDART
DARRAS ECHEVERRIA, LLP
600 South Indian Hill Boulevard
Claremont, CA 91711
Telephone: (909) 621-4935
Facsimile: (909) 625-6915

Attorneys for Plaintiff

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

BRIAN NOVACK, M.D.

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, a corporation;
STEPHEN ROTHMAN, M.D., an
individual, DOES 1-100,

Defendants

Case No.: BC412007
[Hon. Edward A. Ferns]

NOTICE OF CASE MANAGEMENT
CONFERENCE

Date: September 4, 2009
Time: 8:30 a.m.
Dept: 69

Date Action Filed: April 16, 2009
Trial Date: None

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to the Court's Notice of Case Management Conference, a copy of which is attached hereto, the above-referenced case has been scheduled for a Case Management Conference on September 4, 2009, at 8:30 a.m., in Department 69 of the above-entitled Court.

Date: May 19, 2009

SHERNOFF BIDART
DARRAS ECHEVERRIA, LLP

By

RICARDO ECHEVERRIA
STEVEN MESSNER
Attorneys for Plaintiff

NOTICE SENT TO:

Bidart, Michael J., Esq.
 Shernoff Bidart Darras Echeverria, LLP
 600 South Indian Hill Boulevard
 Claremont, CA 91711

ORIGINAL FILED
 MAY - 8 2009
 LOS ANGELES
 SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

BRIAN NOVACK M D

Plaintiff(s),

VS.

STATE FARM MUTUAL AUTOMOBILE INSURANCE
 Defendant(s).

CASE NUMBER

BC412007

NOTICE OF CASE
MANAGEMENT CONFERENCE

TO THE PLAINTIFF(S)/ATTORNEY(S) FOR PLAINTIFF(S) OF RECORD:

You are ordered to serve this notice of hearing on all parties/attorneys of record forthwith, and meet and confer with all parties/attorneys of record about the matters to be discussed no later than 30 days before the Case Management Conference.

Your Case Management Conference has been scheduled for September 4, 2009 at 8:30 am in Dept. 69 at 111 N. Hill Street, Los Angeles, California 90012.

Pursuant to California Rules of Court, 3.720-3.730, a completed Case Management Statement (Judicial Council form # CM-110) must be filed at least 15 calendar days prior to the Case Management Conference. The Case Management Statement may be filed jointly by all parties/attorneys of record or individually by each party/attorney of record. You must be familiar with the case and be fully prepared to participate effectively in the Case Management Conference.

At the Case Management Conference, the Court may make pretrial orders including the following, but not limited to, an order establishing a discovery schedule; an order referring the case to Alternative Dispute Resolution (ADR); an order reclassifying the case; an order dismissing fictitious/unnamed defendants; an order setting subsequent conference and the trial date; or other orders to achieve the goals of the Trial Court Delay Reduction Act (GC 68600 et seq.)

Notice is hereby given that if you do not file the Case Management Statement or appear and effectively participate at the Case Management Conference, the Court may impose sanctions pursuant to LASC Local Rule 7.13, CCP Sections 177.5, 575.2, 583.150, 583.360 and 583.410, GC Section 68608 (b), and California Rules of Court 2.2 et seq.

Date: May 8, 2009

EDWARD A. FERNS

Judicial Officer

CERTIFICATE OF SERVICE

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Case Management Conference upon each party or counsel named above:

☐ by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed herein in a separate sealed envelope to each address as shown above with postage thereon fully prepaid.

☐ by personally giving the party notice upon filing the complaint.

Date: May 8, 2009

John A. Clarke, Executive Officer/Clerk

by A. AYALA, Deputy Clerk

Re: *Novack v. State Farm Mutual, et al.*
Case No. BC 412007

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 600 South Indian Hill Boulevard, Claremont, California 91711.

On **May 19, 2009**, I served the foregoing documents described as **COMMISSION TO TAKE DEPOSITION OUTSIDE CALIFORNIA (Issued by Clerk of the Court)** on the interested parties in this action by placing ___ the original XX a true copy thereof enclosed in sealed envelopes addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

☐ BY MAIL I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Claremont, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

☐ BY FACSIMILE ("FAX") In addition to the manner of service indicated above, a copy was sent by FAX to the parties indicated on the service List.

☒ BY OVERNIGHT MAIL/COURIER To expedite service, copies were sent via FEDERAL EXPRESS.

☐ BY PERSONAL SERVICE I caused to be delivered such envelope by hand to the individual(s) indicated on the service list.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **May 19, 2009**, at Claremont, California.


DEBBIE HUNTER

Re: *Novack v. State Farm Mutual, et al.*
Case No BC 412007

SERVICE LIST

James R. Robie, Esq.
Steven S. Fleischman, Esq.
David J. Weinman, Esq.
ROBIE & MATTHAI
500 S. Grand Avenue, Suite 1500
Los Angeles, CA 90071-2609
(213) 706-8000
FAX: (213) 624-2563

Attorneys for Defendant
STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY

Joseph A. Cancila Jr., Esq.
SCHIFF HARDIN, LLP
233 S. Wacker Drive, Suite 6600
Chicago, IL 60606-6473
(312) 258-5500
FAX: (312) 258-5600

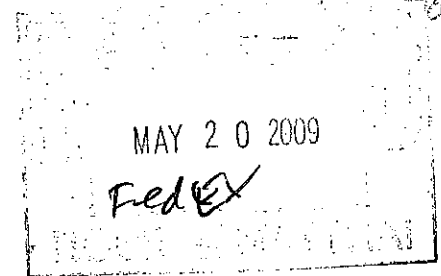
Attorneys for Defendant
STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY

Stephen Rothman, M.D.,
9233 West Pico Boulevard, Suite 210
Los Angeles, CA 90035-1385

Defendant

SHERNOFF BIDART
DARRAS ECHEVERRIA
LAWYERS FOR INSURANCE POLICYHOLDERS

RR
SSF
DJW
Elbert



MICHAEL J. BIDART #60582
RICARDO ECHEVERRIA #166049
STEVEN MESSNER # 259606
SHERNOFF BIDART
DARRAS ECHEVERRIA, LLP
600 South Indian Hill Boulevard
Claremont, CA 91711
Telephone: (909) 621-4935
Facsimile: (909) 625-6915

Attorneys for Plaintiff

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

BRIAN NOVACK, M.D.

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, a corporation;
STEPHEN ROTHMAN, M.D., an
individual, DOES 1-100,

Defendants

Case No.: BC412007

**PLAINTIFF BRIAN NOVACK'S
OBJECTION TO NON-COMPLEX
DESIGNATION**

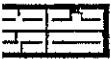
Date Action Filed: April 16, 2009
Trial Date: None

I.

INTRODUCTION

Pursuant to the Court's May 5, 2009 minute order, plaintiff Brian Novack hereby objects to the designation that this case is non-complex and requests that this Court order this case designated complex pursuant to Rule 3.400 of the California Rules of Court.

Defendant State Farm Mutual Automobile Insurance Company ("State Farm") has also objected to the Court's designation that this case is non-complex. A true and correct copy of State Farm's objections is attached hereto as **Exhibit 1**. Accordingly, both plaintiff and defendant State Farm agree that this matter should be designated



1 complex.

2 II.

3 THIS CASE IS COMPLEX UNDER RULE 3.400(b) OF
4 THE CALIFORNIA RULES OF COURT.

5 Rule 3.400(b) of the California Rules of Court sets forth five factors the Court
6 must consider in deciding whether an action is complex. The most applicable and
7 relevant factors in this case are:

8 (1) Numerous pretrial motions raising difficult or novel issues that will
9 be time-consuming to resolve;

10 (2) Management of a large number of witnesses or a substantial
11 amount of documentary evidence;

12 ...

13 (5) Substantial post judgment judicial supervision.

14 Plaintiff's complaint alleges causes of action against defendants for breach of the
15 implied covenant of good faith and fair dealing, intentional interference with contractual
16 relations, and violations of California Business and Professions Code section 17200
17 (Class Action.)

18
19 A. This Case will Require Numerous Pretrial Motions Raising Difficult or
20 Novel Issues that will be Time-Consuming to Resolve

21 In relation to plaintiff's third cause of action for violations of California Business
22 and Professions Code section 17200 brought as a class action, State Farm has listed
23 numerous difficult and novel legal issues within its objections to the Court's non-
24 complex designation.¹ (Exhibit 1.) Those legal issues include the discovery of
25 potentially privileged matters, availability of restitution, Anti-SLAPP application, statutory
26 predicates for violations of California Business and Professions Code section 17200,
27
28



1 and class certification issues. Each of the issues raised by State Farm's objection, and
 2 more, will require pretrial motions. Moreover, all of these pretrial motions will raise
 3 difficult or novel issues that will be time-consuming to resolve. Accordingly, this action
 4 meets the first factor under Rule 3.400(b) of the California Rules of Court.

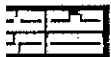
5
 6 **B. This Case Will Require the Management of a Large Number of**
 7 **Witnesses or a Substantial Amount of Documentary Evidence**

8 The class action cause of action for unfair competition will necessitate a
 9 substantial amount of documentary evidence and a large number of witnesses. The
 10 proposed class includes all California residents who were, or who are, State Farm policy
 11 holders from 2005 to the present who within the four years preceding the filing of this
 12 complaint who:

- 13 (1) Made a First Party uninsured/underinsurance claim to State Farm
 14 for payment of benefits;
 15 (2) Where State Farm retained expert consultants on such first party
 16 claims against their insureds;
 17 (3) Where State Farm failed to disclose the potential bias of such
 18 experts including the number of times they had retained such experts and
 19 the amount of money State Farm had paid each expert in the last four
 20 years. (Complaint, ¶139.)

21 As State Farm's own objection states, "State Farm has handled tens of
 22 thousands of uninsured and underinsured claims in California over the alleged four-year
 23 class period." (Exhibit 1.) The discovery of the documents and witnesses for these
 24 "tens of thousands" of claims will be necessary in this case. Thus, there is a large
 25 number of witnesses and the documentary evidence in this case will be substantial.
 26 Close and intense judicial management in this case which involves "tens of thousands"

27
 28 ¹ Plaintiff is not arguing the merits of State Farm's legal issues by this objection and disputes State Farm's
 legal contentions with respect to those issues; however, plaintiff raises the legal issues to highlight the



of claims is required to avoid unnecessary burdens and expedite this case. Accordingly, exceptional judicial supervision will be necessary and designation as complex is warranted and required.

C. This Case Will Require Substantial Post Judgment Judicial Supervision

Plaintiff is seeking injunctive and restitutive relief against State Farm under California Business and Professions Code section 17203. Plaintiff has asked that the Court issue a mandatory injunction against State Farm, on his behalf and on behalf of the general public, requiring State Farm to disclose, in every uninsured/underinsurance motorist first party claim, within the last four years in California (1) the number of times an expert in which State Farm is relying upon has been retained by State Farm or by State Farm hired counsel, and (2) the amount of money that has been paid by State Farm directly, or by State Farm hired counsel on State Farm's behalf for each of the last four years. (Complaint, ¶132.) The issuance of such an injunction will require substantial post judgment supervision.

Further, plaintiff is also requesting a mandatory injunction be issued against Defendant State Farm, on his behalf and on behalf of the general public, requiring state Farm to disclose for future uninsured/underinsurance motorist first party claims in California (1) the number of times an expert in which State Farm is relying upon has been retained by State Farm or by State Farm hired counsel, and (2) the amount of money that has been paid by State Farm directly, or by State Farm hired counsel on State Farm's behalf for each of the last 10 years. (Complaint, ¶133.) Again, the issuance of such an injunction will require substantial post judgment supervision.

complexities of this action.

III.

**THIS CASE IS PROVISIONALLY COMPLEX UNDER RULE 3.400 (c) OF
THE CALIFORNIA RULES OF COURT**

Rule 3.400(c) of the California Rules of Court provides that an action is provisionally a complex case if it involves one or more of the following types of cases:

This action involves trade regulation claims, class actions, and insurance coverage arising out of class actions. This class action claim under Business and Professions Code section 17200 is brought for unfair competition, defined as business practices which are unlawful, unfair or fraudulent. Plaintiff has brought this case as a Class Action. Therefore, this case is provisionally complex.

IV.

CONCLUSION

For the reasons set forth above, this case "requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel." (Rule 3.400(a) of the California Rules of Court.) Consequently, plaintiff respectfully requests that this Court designate this case as complex and rescind its May 5, 2009 non-complex designation and assignment to Department 69.

DATED: May 19, 2009.

SHERNOFF BIDART
DARRAS ECHEVERRIA, LLP

By: 

MICHAEL J. BIDART
RICARDO ECHEVERRIA
STEVEN MESSNER
Attorneys for Plaintiff

EXHIBIT 1

ROBIE & MATTHAI
A Professional Corporation
JAMES R. ROBIE, SBN 67303
STEVEN S. FLEISCHMAN, SBN 169990
DAVID J. WEINMAN, SBN 143286
500 S. Grand Avenue, Suite 1500
Los Angeles, CA 90071-2609
Telephone: (213) 706-8000
Facsimile: (213) 624-2563

Attorneys for Defendant STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY

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

BRIAN NOVACK, M.D.

Plaintiff,

vs.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY, a corporation; STEPHEN
ROTHMAN, M.D., an individual, DOES
1-100,

Defendants.

CASE NO.: BC412007

**DEFENDANT STATE FARM
MUTUAL AUTOMOBILE
INSURANCE COMPANY'S
OBJECTION TO NON-COMPLEX
DESIGNATION**

Discovery Cut-Off : None
Motion Cut-Off : None

Filing Date : April 16, 2009
Trial Date : None

Pursuant to the Court's May 5, 2009 minute order, defendant State Farm Mutual Automobile Insurance Company ("State Farm") hereby objects to the Court's designation that this case is non-complex and requests that this Court order the case designated complex pursuant to Rule 3.400 of the California Rules of Court.

Because there was no hearing leading to the Court's May 5, 2009 minute order, State Farm is not able to address whatever specific concerns the Court may have had leading to its determination that this case is not complex. Nonetheless, State Farm submits that this case fits the criteria for complex designation and should be designated complex.

Although at first blush plaintiff's 45-page complaint may appear to be an ordinary first-party "bad faith" action brought against an insurance carrier, that is simply not the

1 case for at least three reasons. First, Plaintiff's complaint alleges a complex class action
2 that could entail extensive discovery just to determine who the members of the class would
3 be. Second, by the alleged class action, plaintiff seeks an extraordinarily broad mandatory
4 injunction. Third, there are numerous threshold issues of law that will need to be
5 resolved, not only in respect to the suitability of the class action allegations, but also
6 Plaintiff's substantive claims under Business & Professions Code section 17200 and on the
7 "bad faith" cause of action.

8 Plaintiff's third cause of action alleges a statewide class action defined in paragraph
9 139 of the complaint as all California residents who were State Farm policyholders, who
10 submitted an uninsured/underinsured motorist claim within the last four years where State
11 Farm failed to disclose the "potential bias" (whatever that means) of *any* retained
12 consultant. State Farm is the state's largest automobile insurer. State Farm has handled
13 tens of thousands of uninsured and underinsured claims in California over the alleged four-
14 year class period. Just to determine membership in the alleged class, tens of thousands of
15 claim files would have to be manually reviewed in order to determine if: (a) a consultant
16 was retained; (b) whether that consultant had some "alleged bias"; and (c) what was
17 disclosed to the insured claimant regarding the consultant's past experience with State
18 Farm. Some of those claims may also have resulted in litigation where outside counsel was
19 retained. To the extent discovery is permitted of such files, they may well have to be
20 subpoenaed, as the outside counsel are not parties to this action. Outside counsel's files
21 would then have to be reviewed for privileged materials before they can be produced
22 (should the Court so order). Indeed, Plaintiff asserts that his proposed class can "only be
23 determined by appropriate discovery" (Complaint, ¶ 141.) There will need to be
24 intense court supervision of any such discovery, including the propriety thereof, should the
25 case ever proceed to that point, since it appears that plaintiff's want access to tens of
26 thousands of claim files. Thus, the case involves "management of . . . a substantial amount
27 of documentary evidence." (Cal. R. Ct., rule 3.400(b)(2).) Moreover, the complaint also
28 appears to seek information regarding *pending* claims still being litigated, which

1 necessarily raises privilege issues. All of this discovery will require intense judicial
2 supervision, which is precisely what the Complex Courts were created to handle.

3 Moreover, the complaint seeks an incredibly broad injunction. The complaint seeks
4 a mandatory injunction to require State Farm to disclose in every uninsured/underinsured
5 motorist claim in the last four years, as well as every future claim, the number of times an
6 expert has been retained by State Farm and the amount paid to that expert. (Complaint,
7 ¶¶ 132-133.) The complaint does not limit the relief sought to retained doctors who
8 perform independent medical examinations. Presumably, outside counsel, photographers,
9 investigators, accident reconstruction experts and all other litigation support vendors would
10 also be subject to this injunction. Should the Court ever decide to grant such an oppressive
11 injunction, great attention would have to be paid to the scope, application and supervision
12 of any such injunction. After all, injunctions generally do not issue to prevent a breach of
13 contract. (Code Civ. Proc. § 526(b)(5); Civ. Code § 3423(e).) To the extent that the
14 injunction would be based upon some unspecified statute, injunctions which command a
15 party to obey the law are improper, because the party is already obliged to obey the law.
16 (See *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 416
17 [holding that "obey the law" injunctions are improper and unenforceable].) Moreover,
18 should any such injunction ever issue, the Plaintiff would be asking the Court to sit as a
19 super-discovery referee to supervise court-mandated disclosures in all
20 uninsured/underinsured motorist claims for the indefinite future. (See *Ellison v. Ventura*
21 *Post Dist.* (1978) 80 Cal.App.3d 574, 581-581 [court should not issue injunction which
22 would require continuing court proceedings to enforce].) Thus, should the Court ultimately
23 grant any of the class-related injunctive relief sought in the complaint, there will need to be
24 substantial post-judgment judicial supervision of any such injunction. (Cal. R. Ct. rule
25 3.400(b)(5).)

1 In addition, there are numerous complex issues of law, which will require extensive
 2 court time to address and resolve.¹ This is not a simple first-party "bad faith" action. This
 3 action involves a disputed underinsured motorist claim. The gravamen of Plaintiff's claims
 4 is that State Farm opposed discovery requests Plaintiff served seeking to obtain
 5 information about financial payments made to a medical consultant, defendant Stephen
 6 Rothman, M.D. Plaintiff complains that State Farm opposed Plaintiff's attempts to obtain
 7 discovery from State Farm in Los Angeles Superior Court proceedings, and a related
 8 petition for writ of mandate filed in the Court of Appeal, that were initiated in the first
 9 instance by Plaintiff. (Complaint, ¶¶ 67-102.) However, those matters are privileged under
 10 Civil Code section 47. In defending against Plaintiff's underinsured motorist claim, State
 11 Farm "steps into the shoes" of the third-party tortfeasor and is permitted to defend the
 12 plaintiff's claim. Thus, one court has held that there is no such thing as a "bad faith
 13 defense." (*California Physician's Service v. Superior Court* (1992) 9 Cal.App.4th 1321.)
 14 Accordingly, the litigation privilege in Section 47 applies as a defense to Plaintiff's claims.
 15 (See *id.* at p. 1330; *Old Republic Ins. Co. v. FSR Brokerage, Inc.* (2000) 80 Cal.App.4th
 16 666, 687-688; *Nies v. National Auto. & Cas. Ins. Co.* (1988) 199 Cal.App.3d 1192, 1201
 17 [insurance company "had an absolute right to defend" against an uninsured motorist
 18 claim].) On the other hand, Plaintiff will assert that State Farm owed it a quasi-fiduciary
 19 duty to fairly and timely investigate and pay its uninsured motorist claim. Extensive
 20 judicial resources will have to be devoted to resolving this issue and determining what acts
 21 complained of are privileged under Civil Code section 47 and what acts, if any, are not
 22 privileged. Because of the manner in which Plaintiff's complaint is alleged, it may be that
 23 procedurally State Farm cannot move for summary adjudication on this issue because it
 24 does not address an entire cause of action (depending upon the Court's ruling). Thus, State
 25 Farm may have to use other "procedural devices" such as a motion to strike or motion *in*
 26 *limine* to address this issue. (*Hindin v. Rust* (2004) 118 Cal.App.4th 1247, 1259.) Again,

27
 28 ¹ By addressing these issues, State Farm is not attempting to argue the merits of
 this dispute, but simply wishes to emphasize the complex nature of the present dispute.

1 this is a matter better addressed by a Complex Court which can, among other things,
2 decide this issue as a threshold question of law.

3 There are numerous other complex issues of law raised by Plaintiff's complaint,
4 including but not limited to the following:

- 5 1. Can Plaintiff state a claim for restitution on its claim under Section 17200?
6 Plaintiff has not alleged that it paid any money to State Farm for which it
7 seeks restitution. Instead, it alleges a simple breach of contract. (*Korea*
8 *Supply Company v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1144,
9 1148.) If Plaintiff cannot seek restitution, does Plaintiff have standing under
10 Section 17200 to seek injunctive relief? (*See Buckland v. Threshold Enters.*
11 *Ltd.* (2007) 155 Cal.App.4th 798, 817 [holding that standing under Section
12 17200 for injunctive relief is lacking where the plaintiff is not entitled to
13 restitution]; *Citizens of Humanity, LLC v. Costco Wholesale Corp.* (2009)
14 171 Cal.App.4th 1, 22 [same]; *Kwikset Corp. v. Superior Court* (2009) 171
15 Cal.App.4th 645, 654-656 [same].) A motion to determine these issues as a
16 threshold question of law would be an ideal procedural mechanism to resolve
17 these issues. Indeed, State Farm is informed and believes that this Court,
18 sitting as a complex court, decided a virtually identical issue in another case
19 against an insurance company, entitled *Webster v. Allstate Insurance Co.*,
20 docket No. BC338075, as a threshold question of law.
- 21 2. Are the Plaintiff's claims subject to the anti-SLAPP statute because they are
22 based upon litigation conduct, which is privileged under Civil Code section
23 47?
- 24 3. Does Plaintiff's complaint allege a valid cause of action under Section 17200
25 for alleged unlawful and unfair business practices, both of which require a
26 purported violation of a statute as a predicate offense. (*Cel-Tech*
27 *Communications, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th
28 163, 180 [unlawful]; *In re Firearms Cases* (2005) 126 Cal.App.4th 959, 973

[unfair]; *Gregory v. Albertson's Inc.* (2002) 104 Cal.App.4th 845, 854 [unfair].) To the extent that Plaintiff relies upon Insurance Code section 790.03 and/or Insurance Regulations to provide the predicate offense, would such reliance be an improper attempt to circumvent the California Supreme Court's seminal decision in *Moradi-Shalal v. Fireman's Fund Ins. Cos.* (1988) 46 Cal.3d 287, holding that no private right of action exists under Section 790.03? (See *Textron Financial Corp. v. National Union* (2004) 118 Cal.App.4th 1061, 1070 ["parties cannot plead around *Moradi-Shalal's* holding by merely relabeling their cause of action as one for unfair competition"].)

4. Are Plaintiff's class allegations so fatally deficient on their face that they are due to be stricken now?
5. Even if the class allegations are permitted to proceed beyond a pleading phase, is the class definition infirm on the grounds that it is uncertain in scope or failsafe in nature, and can plaintiff satisfy his burden to show other class action requirements are met, such as adequacy, typicality, commonality, etc.?

In short, this is anything but a simple first-party "bad faith" case. Careful and intense judicial oversight is necessary to see that this case is handled in an efficient manner. Accordingly, State Farm respectfully requests that this Court designate this case as complex and rescind its May 5, 2009 assignment to Department 69.

DATED: May 13, 2009

ROBIE & MATTHAI
A Professional Corporation
JAMES R. ROBIE
STEVEN S. FLEISCHMAN
DAVID J. WEINMAN

By: 

JAMES R. ROBIE
Attorneys for Defendant STATE FARM
MUTUAL AUTOMOBILE INSURANCE
COMPANY

PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 500 South Grand Avenue, Suite 1500, Los Angeles, CA 90071.

On May 13, 2009, I served the foregoing document(s) described as: **DEFENDANT STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S OBJECTION TO NON-COMPLEX DESIGNATION** on all interested parties in this action by placing a true copy of each document, enclosed in a sealed envelope addressed as follows:

*** [SEE ATTACHED LIST]***

() **BY MAIL:** as follows: I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Los Angeles, California.

() **BY PERSONAL SERVICE:** I delivered such envelope by hand to the above addressee(s).

(x) **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to an overnight courier service, for delivery to the above addressee(s).

() **BY FACSIMILE TRANSMISSION:** I caused the above-referenced document(s) to be transmitted to the above-named person(s) at the telecopy number(s) following the names on the service list.

Executed on May 13, 2009, at Los Angeles, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


LINDA J. BLAKE

SERVICE LIST

[*Novack v. State Farm Mutual Auto Ins. Co.*]
LASC Case No. BC412007

Plaintiff's counsel:
Michael J. Bidart, Esq.
Ricardo Echeverria, Esq.
Steven Schuetze, Esq.
SHERNOFF BIDART DARRAS ECHEVERRIA,
LLP
600 South Indian Hill Blvd.
Claremont, CA 91711
(909) 621-4935
(909) 625-6915 Fax

**Co-Counsel for Defendant State Farm
Mutual Auto Ins. Co.:**
Joseph A. Cancila Jr., Esq.
SCHIFF HARDIN LLP
233 South Wacker Drive
Suite 6600
Chicago, IL 60606-6473
(312) 258-5500
(312) 258-5600 Fax

Re: *Novack v. State Farm Mutual, et al.*
Case No BC 412007

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 600 South Indian Hill Boulevard, Claremont, California 91711.

On **May 19, 2009**, I served the foregoing documents described as **PLAINTIFF BRIAN NOVACK'S OBJECTION TO NON-COMPLEX DESIGNATION** on the interested parties in this action by placing the original XX a true copy thereof enclosed in sealed envelopes addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

☐ BY MAIL I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Claremont, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

☐ BY FACSIMILE ("FAX") In addition to the manner of service indicated above, a copy was sent by FAX to the parties indicated on the service List.


☒ BY OVERNIGHT MAIL/COURIER To expedite service, copies were sent via FEDERAL EXPRESS.

☐ BY PERSONAL SERVICE I caused to be delivered such envelope by hand to the individual(s) indicated on the service list.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **May 19, 2009**, at Claremont, California.


DEBBIE HUNTER

Re: *Novack v. State Farm Mutual, et al.*—
Case No BC 412007

SERVICE LIST

James R. Robie, Esq.
Steven S. Fleischman, Esq.
David J. Weinman, Esq.
ROBIE & MATTHAI
500 S. Grand Avenue, Suite 1500
Los Angeles, CA 90071-2609
(213) 706-8000
FAX: (213) 624-2563

Attorneys for Defendant
STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY

Joseph A. Cancila Jr., Esq.
SCHIFF HARDIN, LLP
233 S. Wacker Drive, Suite 6600
Chicago, IL 60606-6473
(312) 258-5500
FAX: (312) 258-5600

Attorneys for Defendant
STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY

Stephen Rothman, M.D.,
9233 West Pico Boulevard, Suite 210
Los Angeles, CA 90035-1385

Defendant

EXHIBIT 4

JAMES R. ROBIE
EDITH R. MATTHAI
MICHAEL J. O'NEILL
KYLE KVETON
BERNADINE J. STOLAR
CRAIG W. BRUNET
NATALIE A. KOUYOUMDJIAN*
GABRIELLE M. JACKSON
IVAN MNATZAGANIAN
RONALD P. FUNNELL
STEVEN S. FLEISCHMAN*
SANDRA L. BLOCK
DAVID J. WEINMAN
DIANA K. RODGERS
CHRISTY GARGALIS
WILLIAM L. DANZIGER
LEAH K. BOLEA

ROBIE & MATTHAI

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

BILTMORE TOWER
500 SOUTH GRAND AVENUE, 15TH FLOOR
LOS ANGELES, CALIFORNIA 90071-2609
TELEPHONE (213) 706-8000
FAX (213) 706-9913

June 9, 2009

Via Facsimile Only

Steven Schuetze, Esq.
SHERNOFF BIDART DARRAS ECHEVERRIA, LLP
600 South Indian Hill Blvd.
Claremont, CA 91711

Re: *Novack v. State Farm*
Los Angeles Case No.: BC412007
R&M File No.: 004-4720

Dear Mr. Steven:

Please allow this letter to confirm our telephone call of earlier today wherein: (1) you stated that plaintiff would not stipulate to only seek less than \$75,000 in damages; and (2) our prior agreement that we have until June 26, 2009 to respond to the complaint remains in effect, whether we decide to remove the case to federal court or not.

Very truly yours,

ROBIE & MATTHAI
A Professional Corporation



STEVEN S. FLEISCHMAN

SSF:ljb

*** TX REPORT ***

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A Professional Corporation
ATTORNEYS AT LAW
BILTMORE TOWER
500 SOUTH GRAND AVENUE, SUITE 1500
LOS ANGELES, CALIFORNIA 90071-2609
TELEPHONE (213) 706-8000
FAX (213) 706-9913

DATE: June 9, 2009

TO: Steven Schuetze, Esq.
SHERNOFF BIDART DARRAS ECHEVERRIA, LLP

FAX NO.: (909) 625-6915

FROM: STEVEN S. FLEISCHMAN

SUBJECT: *Novack v. State Farm*
Los Angeles Case No.: BC412007
R&M File No.: 004-4720

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TELECOPIER MACHINE NUMBER: (213) 706-9913

OPERATOR: Alex

MESSAGE:

Attached please find my correspondence of June 9, 2009. A hard copy will not follow by U.S. Mail.