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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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SHASTA LINEN SUPPLY, INC., a
California corporation, on
behalf of itself and all
those similarly situated,

Plaintiff,

v.

APPLIED UNDERWRITERS, INC., a
Nebraska corporation; APPLIED
UNDERWRITERS CAPTIVE RISK
ASSURANCE COMPANY, a British
Virgin Islands company;
CALIFORNIA INSURANCE COMPANY,
a registered California
insurance company; APPLIED
RISK SERVICES, INC., a
Nebraska corporation,

Defendants.

CIV. NO. 2:16-158 WBS AC
ORDER RE: MOTION TO DISMISS

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Plaintiff Shasta Linen Supply, Inc. filed this putative
class action alleging claims for fraud and unfair competition
against defendants Applied Underwriters, Inc. ("AU"), Applied
Underwriters Captive Risk Assurance Company, Inc. ("AUCRA"),
Applied Risk Services, Inc. ("ARS"), and California Insurance

1 Company, Inc. ("CIC"), and seeking to represent a class of
2 California employers who purchased an EquityComp workers'
3 compensation insurance program from defendants.¹ (See First Am.
4 Compl. ("FAC") (Docket No. 5).)

5 Plaintiff alleges that, in 2009, defendants marketed
6 the EquityComp program to plaintiff and provided an estimate that
7 plaintiff's annual cost for the program would be between \$107,541
8 and \$368,457. (Id. ¶¶ 22-23.) Based on defendants' marketing
9 materials, plaintiff entered into the EquityComp program and was
10 issued a workers' compensation insurance policy that became
11 effective on January 1, 2010. (Id. ¶¶ 2, 24.) Then, on January
12 5, 2010, defendants allegedly required plaintiff to execute a
13 Reinsurance Participation Agreement ("RPA"), which modified the
14 existing policy's rates, payment obligations, choice of law, and
15 dispute resolution mechanism. (Id. ¶ 24, Ex. 1 ("RPA").)

16 Plaintiff alleges that it incurred significantly higher
17 costs for the EquityComp program than defendants had marketed.
18 Plaintiff claims that defendants used the RPA to charge excessive
19 rates and additional fees to plaintiff and other program
20 participants. Plaintiff also alleges that defendants
21 deliberately misrepresented the costs of the EquityComp program
22 in their marketing materials to induce plaintiff to rely on those
23 costs and enter the program. (Id. ¶¶ 30-32, 55-64.)

24 Plaintiff also alleges that the RPA modified the terms
25

26 ¹ AU is an indirect subsidiary of Berkshire Hathaway,
27 Inc. and is the parent company of AUCRA and ARS. AU is also the
28 parent company of North American Casualty Company, which is the
parent company of CIC.

1 of the existing insurance policies under the EquityComp program
2 by "control[ling] the insurance rates for each program
3 participant." (FAC ¶ 27; see id. ¶ 46 (alleging that "the RPA
4 controlled the rates paid by Plaintiff" under the existing
5 policy).) Plaintiff also alleges that defendants, through the
6 RPA, unlawfully charged plaintiff and the putative class
7 "excessive rates." (Id. ¶ 59.) Plaintiff claims that the RPA's
8 rates are void because, among other things, defendant did not
9 file the rates with the Insurance Commissioner as required by
10 California Insurance Code § 11735. (Id. ¶ 3.)²

11 Defendants state that their motion to dismiss is
12 "narrowly tailored to attack Plaintiff's claims to the extent
13 that they seek to invalidate the RPA's rates on the theory that
14 [the RPA] is an unfiled rate plan" pursuant to § 11735. (Defs.'
15 Reply at 7 (Docket No. 26).) They argue that, "[t]o the extent
16 Plaintiff's claims seek to void the RPA's payment obligations on
17 the ground that it has not been filed, those claims for relief
18 must be dismissed because . . . an unfiled rate is not an
19 unlawful rate." (Id. at 1.)

20 California's Workers' Compensation Act, Cal. Lab. Code
21 § 3200 et seq., requires most employers to buy workers'
22 compensation insurance as a condition of doing business in
23 California. See Cal. Lab. Code § 3700. The Legislature has
24 granted broad authority to the California Department of Insurance
25 ("CDI"), its Commissioner, and the Workers' Compensation
26

27 ² All statutory references are to the Insurance Code
28 unless otherwise specified.

1 Insurance Rating Bureau of California ("WCIRB") to regulate
2 workers' compensation insurance programs that are provided to
3 employers. See Cal. Ins. Code §§ 11750.3, 11751, 12921.³

4 Section 11735 requires every insurer to "file with the
5 commissioner all rates, rating plans, and supplementary rate
6 information that are to be used" by the insurer at least 30 days
7 before their effective date. Cal. Ins. Code § 11735(a). Section
8 11737 additionally provides that "[t]he commissioner may
9 disapprove a rate if the insurer fails to comply with the filing
10 requirements under Section 11735." Id. § 11737(a). As
11 defendants correctly point out, the use of a rate that has not
12 been filed as required by § 11735 is not an unlawful rate unless
13 and until the Commissioner conducts a hearing and disapproves the
14 rate. See id. § 11737; Cal. Code Regs. tit. 10, § 2509.33(c) ("A
15 disapproval of a rate filing . . . shall occur only by order of
16 the Commissioner after a hearing.").

17 The Complaint does not contain any allegations that the
18 Commissioner had conducted a hearing and disapproved the RPA's
19 rates. Plaintiff thus fails to state a claim that the RPA's
20 rates are void based on defendants' alleged failure to comply
21 with § 11735. Accordingly, the court will grant defendants'
22

23 ³ The WCIRB is a rating organization that assists the
24 Insurance Commissioner in developing and administering workers'
25 compensation insurance classification and rating systems. Id.
26 § 11751.5. Among other things, the WCIRB provides the
27 Commissioner with statistics and rating information, formulates
28 rules and regulations in connection with insurance rates, and
"examine[s] policies, daily reports, endorsements or other
evidences of insurance for the purpose of ascertaining whether
they comply with the provisions of law and to make reasonable
rules governing their submission." Id. § 11750.3.

1 motion to dismiss plaintiff's claims to the extent they seek to
2 void the RPA's rates on the theory that defendants failed to
3 comply with § 11735. Plaintiff's UCL and fraud claims, however,
4 are not limited to the grounds that defendants challenge here.⁴
5 Thus, in all other respects, defendants' motion will be denied.

6 IT IS THEREFORE ORDERED that defendants' motion to
7 dismiss plaintiff's First Amended Complaint, (Docket No. 17), be,
8 and the same hereby is GRANTED to the extent that plaintiff seeks
9 to invalidate the Reinsurance Participation Agreement on the
10 theory that defendants violated California Insurance Code
11 § 11735; and DENIED in all other respects.

12 Dated: June 20, 2016

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14 **WILLIAM B. SHUBB**
15 **UNITED STATES DISTRICT JUDGE**

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27 ⁴ Plaintiff alleges, for example, that defendants
28 violated the UCL because they failed to comply with Insurance
Code § 11658, engaged in unfair business practices, and engaged
in deceptive and fraudulent business acts. (FAC ¶¶ 40-54.)