

1 Douglas Hallett, Esq., Bar No.: 66086  
Marc J. Levine, Esq., Bar No.: 210949  
2 Joseph B. Miller, Esq., Bar No.: 204195  
**MERCURY INSURANCE GROUP**  
3 4484 Wilshire Boulevard  
Los Angeles, CA 90010-3710  
4 (323) 937-1060; Fax (323) 857-4923

5 Victor Poltrock, Esq., Bar No.: 186387  
1700 Greenbriar Lane  
6 Brea, CA 92821  
(714) 671-4756; Fax (714) 671-4758

7 Attorney(s) for MERCURY INSURANCE GROUP  
8

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

12 THE FOUNDATION FOR TAXPAYER  
13 AND CONSUMER RIGHTS; CONSUMER  
14 UNION OF THE U.S., INC.; SOUTHERN  
15 CHRISTIAN LEADERSHIP CONFERENCE  
16 OF GREATER LOS ANGELES; and  
NATIONAL COUNCIL OF LA RAZA

17 Petitioners and Plaintiffs,

18 v.

19 JOHN GARAMENDI, Commissioner of  
20 Insurance of the State of California; and  
STATE OF CALIFORNIA,

21 Respondents and Defendants.  
22

) Case No.: BS086235  
) UNLIMITED JURISDICTION

) **DECLARATION OF CHRIS MICHELI**  
) **IN SUPPORT OF INTERVENOR**  
) **MERCURY'S SPECIAL MOTION TO**  
) **STRIKE, OR IN THE ALTERNATIVE,**  
) **MOTION TO STRIKE**

23 I, CHRIS MICHELI, hereby declare and state as follows:

24 1. I am and have been since November 1994 an associate with the Sacramento  
25 governmental relations firm of Carpenter Snodgrass & Associates. I serve as an attorney and  
26 registered lobbyist for the firm. Among my clients is Mercury Insurance Group. As such, I have  
27 personal knowledge of the facts stated below, and, if called as a witness, could and would testify  
28 competently thereto under oath.

1           2.       During the 2003 Legislative Session that commenced on January 6, 2003 and  
2 ended on September 13, 2003, I served as the day-to-day lobbyist for Mercury Insurance Group.  
3 Mercury was the official sponsor of Senate Bill 841 (Perata) [Stats. 2003, Ch. 169]. As such, I  
4 was involved in all legislative and executive branch discussions of this bill.

5           3.       I am providing this declaration in support of the intervention of Mercury  
6 Insurance Group in the matter of *The Foundation for Taxpayer and Consumer Rights, et al. v.*  
7 *John Garamendi and the State of California.*

8           4.       In my position as lobbyist for Mercury Insurance Group, I was in charge of  
9 lobbying both the Legislature and Governor and their respective staffs related to SB 841. I  
10 participated in all legislative hearings and negotiations concerning this bill.

11          5.       I have reviewed all relevant legislative materials related to the enactment of SB  
12 841 that are in my possession and that were considered by the Legislature and Governor.

13          6.       The assertions made by plaintiffs in this action are inconsistent with the facts.  
14 Plaintiffs allege that SB 841 “would allow insurers to impose a surcharge that is triggered solely  
15 by the fact that a driver does not already have insurance.” No such surcharge or trigger is found  
16 in the language of SB 841.

17          7.       Plaintiffs also assert that the Legislature passed and the Governor signed SB 841  
18 “after another infusion of political contributions from Mercury Insurance,” and imply that those  
19 lawful campaign contributions had an improper impact on the legislation. No such impact  
20 occurred.

21          8.       In lobbying in favor of SB 841, I met with legislators or staff of 119 of the 120  
22 members of the Legislature, as well as policy committee staff from the Assembly and Senate. In  
23 each instance, I presented our bill, the arguments for it, the arguments against it, our rebuttal  
24 points against the opposition’s arguments to our bill, and answered any questions from  
25 legislators and/or their staff. In each meeting, the substance of the proposed legislation was  
26 discussed and debated. In no instance was there ever any discussion of any sort of monetary  
27 *quid pro quo.*

28          9.       Based upon my myriad of meetings and discussions with elected officials and

1 staff members, I believe that the Legislature and Governor acted in good faith and made a  
2 determination that SB 841 furthers the purposes of Proposition 103 and, therefore, enacted a  
3 proper amendment to it.

4 10. In every single in-person meeting and phone call that I had with members of the  
5 Legislature and/or their staff, only the substance of SB 841 was discussed. In no case was the  
6 subject matter of monetary contributions discussed. The only written and verbal  
7 communications that I had on Mercury's behalf with the Legislature related to making policy  
8 arguments in favor of SB 841, and rebutting the opposition's policy arguments against the bill.  
9 No member of the Legislature or their staff ever discussed campaign contributions with me  
10 directly or indirectly in any conversation related to SB 841.

11 11. My first meeting with the Governor's Office occurred on the afternoon of July 1.  
12 At my request, I met with Anne Richardson, Deputy Legislative Secretary to Governor Davis,  
13 who was in charge of this particular bill because the subject matter of SB 841 was under her  
14 jurisdiction. I explained the bill and its changes from last year's SB 689 (Perata), which  
15 Governor Davis had vetoed in 2002. I also apprised her that the bill would hopefully reach the  
16 Governor's Desk before the Legislature was scheduled to begin its Summer Recess on July 18.  
17 Her questions focused on the opposition arguments and how SB 841 was different from last  
18 year's SB 689.

19 12. On July 10, 2003, the Governor's Policy Director, Cassie Gilson, and I met about  
20 the bill at her request. She indicated that representatives of Consumer's Union had met with her  
21 earlier in the week about their opposition to SB 841. She solicited Mercury's arguments in favor  
22 of SB 841 and any rebuttal arguments I had to the opposition.

23 13. The following week, there were several brief telephone conversations about the  
24 status of the bill, including after it passed the Assembly Insurance Committee and ultimately the  
25 Assembly Floor. In those instances, I provided updates and positions and arguments taken by  
26 different Assembly Members regarding the pending legislation.

27 14. On July 22, 2003, I attended a meeting with Senator Perata, Erin Niemela, his  
28 chief of staff, Anne Richardson, and Cassie Gilson. At that meeting, the Governor's staff made

1 several requests of Senator Perata, including amendments to the bill, such as a sunset date.  
2 Because the bill had already passed the Senate and Assembly, Senator Perata refused to make  
3 such amendments.

4 15. On July 23, 2003, the Legislative Counsel issued a legal opinion (#16916) to  
5 Senator Perata that his SB 841, "if signed by the Governor would be a valid amendment of  
6 Proposition 103 without voter approval." The following day, July 24, 2003, Senator Perata sent  
7 a letter to Governor Davis asking him to sign SB 841 and supplying a copy of the Legislative  
8 Counsel opinion.

9 16. On July 23, 2003, the Governor's staff phoned me with questions, including the  
10 alleged rate displacement, how the ratemaking process works, portable versus loyalty  
11 persistency, rating factors, etc. They also requested feedback regarding the question whether SB  
12 841 would result in a surcharge to certain individuals. The Association of California Insurance  
13 Companies (ACIC) and 21<sup>st</sup> Century Insurance wrote letters to the Governor addressing this  
14 point at my request. The specific questions asked by the Governor's staff were: Which  
15 companies in California have offered portable persistency? What impact has the discount had, if  
16 there is any documentation on the point? Have insurers increased rates on previously uninsured  
17 while using a portable persistency discount?

18 17. On July 24, 2003, the Governor's staff asked additional questions, including what  
19 Mercury thought a study "five years down the road" would show if SB 841 were signed. In  
20 addition, the Senate released the bill and sent it to the Governor's Desk, which began the 12-day  
21 clock for him to act on the measure.

22 18. On July 25, 2003, I provided a copy of former Insurance Commissioner Low's  
23 study on persistency to the Governor's staff at their request. I also obtained and provided a  
24 listing from the Department of Insurance of the top 50 insurers in California and whether they  
25 offer either a loyalty discount or a portable persistency discount.

26 19. Over the next several days, I exchanged short phone calls with the Governor's  
27 staff in order to respond to their questions.

28 20. On July 31, 2003, as a result of conversations with the Governor's staff, I was

1 asked to prepare a brief memo to the Governor addressing several key points: SB 841's alleged  
2 impact on low-income drivers; the positive impact of persistency; persistency as a key indicator  
3 of risk of loss; and that the bill does not conflict with Prop. 103.

4 21. That memo read: "July 31, 2003 TO: Governor Gray Davis FROM: Chris  
5 Micheli RE: SB 841 (Perata) On behalf of our client, Mercury Insurance Group, I write to  
6 provide additional information requested by your staff relating to our sponsored bill, SB 841  
7 (Perata). As you know, this bill would make portable the existing Department of Insurance  
8 'persistency' regulation in order for consumers to derive maximum benefit from this discount.  
9 Because this bill is permissive, insurers who choose to not offer any persistency discount at all  
10 may continue to do so.

11 "Impact on Low-Income Drivers

12 "There is no empirical data to suggest that portable persistency discounts will result in a  
13 surcharge on low-income drivers. Unfortunately, the impacts of the ratemaking factors are so  
14 dynamic that it would be quite difficult to meaningfully assess. Nonetheless, constraining the  
15 impact of persistency, which the DOI regulation does, will increase most the impact of territory  
16 as a rating factor, based upon a static ratemaking theory. Maintaining portable persistency  
17 should make it easier for some marginally insureds to maintain insurance with the most  
18 competitive company available to them.

19 "Moreover, to the extent that individuals are encouraged to maintain their insurance  
20 coverage, uninsured motorist rates should be incrementally favorably impacted. As a result, any  
21 alleged negative impact of a broad persistency discount on newly-insureds, of whatever  
22 economic class, should be more than offset by these other rating impacts. Furthermore, the  
23 enactment of SB 841 will not automatically cause insurance rates to increase for the previously  
24 uninsured, certainly no more so than the existing loyalty discount does. In fact, portable  
25 persistency, and the currently approved loyalty discount, treat the uninsured the same. This  
26 measure simply allows currently insured drivers to take their persistency discount with them.

27 "Finally, persistency allows consumers to receive a discount on their auto insurance  
28 policy for persistent behavior. This is a discount, essentially a reduction in the base premium for

1 those policyholders who qualify for it. It does not result in a surcharge for other consumers who  
2 do not qualify for the discount. Because persistency is an actuarially sound rate, it does not  
3 cause insurers to “lose” money, thereby increasing another person’s rate to compensate for that  
4 “loss.”

5 “Key Indicator of Risk of Loss

6 “Persistency of coverage is one of the best indicators of risk of loss available to insurers.  
7 Prop. 103 requires that rating factors have a substantial relationship to the risk of loss. There is  
8 no actuarially significant distinction between the risk of loss of those holding persistent coverage  
9 with their existing carrier, and those holding persistent coverage generally. Moreover, Prop. 103  
10 is focused on controllable rating factors, which persistency clearly is. The Department of  
11 Insurance has already determined that persistency is an acceptable rating factor. As the  
12 Legislative Counsel has opined, the adoption of persistency as an optional rating factor in the  
13 regulations indicates that the Insurance Commissioner views persistency as a factor that is  
14 substantially related to the risk of loss. Unfortunately, it is the only discount that is not portable  
15 with the individual.

16 “Positive Impact of Persistency

17 “In addition, a broad, portable persistency discount is much more likely to encourage  
18 insureds to maintain their coverage, thus bringing more dollars into the state automobile  
19 insurance pool, rather than a narrow persistency discount that allows insureds only to benefit  
20 from persistency if they remain “locked” into their existing carriers. While California has  
21 codified a mandatory insurance law, there is no public policy mandate that our state’s drivers  
22 maintain automobile coverage with their existing carrier.

23 “Bill Does Not Conflict with Prop. 103

24 “According to a legal analysis by the Legislative Counsel, SB 841 furthers the purposes  
25 of Prop. 103 and, because it was adopted by the required 2/3 majority vote of each house of the  
26 Legislature, would be a proper amendment to the initiative. Consistent with Section 2 of Prop.  
27 103, SB 841 “encourages a competitive marketplace” among carriers so that coverage overall  
28 will be priced competitively, and insureds are able to claim a discount for regular purchases of

1 insurance from any carrier offering this discount irrespective of whether or not the insured has  
2 previously purchased from a given carrier offering the discount.

3 "The Legislative Counsel found that, 'allowing a portable persistency discount can be  
4 said to further the stated purpose of Prop. 103 to encourage a competitive insurance  
5 marketplace. Moreover, if portable persistency is substantially related to the risk of loss, it is our  
6 opinion that granting a discount for that factor would not undermine any of the other purposes of  
7 Prop. 103 and would not, therefore, violate the initiative's intent.'"

8 22. In the late afternoon of August 1, 2003, I was phoned by Anne Richardson and  
9 Cassie Gilson regarding additional questions and concerns they raised about SB 841. After  
10 several hours of discussions and negotiations, the three of us reached an agreement between  
11 Governor Davis and Mercury Insurance Group. The Governor's staff asked me to put forth a  
12 memo enumerating our agreement.

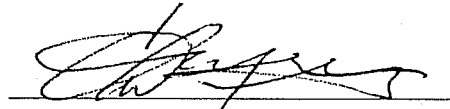
13 23. That memo read: "August 1, 2003 TO: Governor Davis FROM: George Joseph  
14 RE: Requested Amendments to SB 841 (Perata) This memo is to confirm the agreement that  
15 my lobbyist, Chris Micheli, reached this afternoon with your staff, Anne Richardson and Cassie  
16 Gilson, regarding legislation that would be pursued this Session to provide a sunset date and  
17 require a study of the portable persistency discount granted by SB 841. As agreed, assuming SB  
18 841 is enacted into law, such legislation would include a 7 year sunset, effectively December 31,  
19 2010 for the expiration of the portable persistency discount, and a required study to be completed  
20 no later than January 1, 2010. This study would be completed by a nationally-recognized  
21 actuarial firm. The standard to be used in this study is whether a portable persistency discount  
22 adversely affects low-income and previously-uninsured individuals more so than the currently-  
23 allowed loyalty discount."

24 24. Finally, on August 2, 2003, Governor Davis signed SB 841. I was apprised of  
25 this action and the bill's chapter number in a phone call from Anne Richardson that night. This  
26 call followed several additional calls during the day slightly revising the aforementioned memo  
27 concerning follow-up legislation, assuming SB 841 were signed. That night, I was read a draft  
28 signing message that was pending before the Governor that specified the differences between SB

1 841 and SB 689, as well as his justifications for signing SB 841, including citation to the  
2 Legislative Counsel's opinion that SB 841 does not violate Prop. 103. On August 4, I received a  
3 faxed copy of the Governor's signature message.

4 25. In every single in-person meeting and phone call that I had with the Governor's  
5 staff, only the substance of SB 841 was discussed. In no case was the subject matter of monetary  
6 contributions discussed. Moreover, as shown by the written communications set forth above, the  
7 only written and verbal communications that I had on Mercury's behalf with the Governor's staff  
8 related to making policy arguments in favor of SB 841, and rebutting the opposition's policy  
9 arguments against the bill. No member of the Governor's staff ever discussed campaign  
10 contributions with me directly or indirectly in any conversation related to SB 841.

11 I declare under penalty of perjury under the laws of the State of California, that the  
12 foregoing is true and correct and was executed by me on this <sup>24</sup>th day of October, 2003 at  
13 Sacramento, California.

14 

15  
16 Chris Micheli