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SUPERIOR COURT
THURSTON COUNTY, WA

2022 AUG 29 AM 10:31

LINDA NYHRE ENLOW
THURSTON COUNTY CLERK

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN THE COUNTY OF THURSTON

EX PARTE

NATIONAL ASSOCIATION OF MUTUAL
INSURANCE COMPANIES,

Petitioner,

v.

OFFICE OF THE INSURANCE
COMMISSIONER OF THE STATE OF
WASHINGTON and MIKE KREIDLER, in
his official capacity as INSURANCE
COMMISSIONER FOR THE STATE OF
WASHINGTON,

Respondents.

No. 22-2-00180-34

(consolidated with no. 22-2-00195-34)

ORDER GRANTING IN PART
PETITION FOR DECLARATORY
RELIEF OF PETITIONER NATIONAL
ASSOCIATION OF MUTUAL
INSURANCE COMPANIES AND
PETITION FOR DECLARATORY
AND INJUNCTIVE RELIEF OF
PETITIONERS AMERICAN
PROPERTY CASUALTY
INSURANCE ASSOCIATION,
PROFESSIONAL INSURANCE
AGENTS OF WASHINGTON AND
INDEPENDENT INSURANCE
AGENTS AND BROKERS OF
WASHINGTON

AMERICAN PROPERTY CASUALTY
INSURANCE ASSOCIATION;
PROFESSIONAL INSURANCE AGENTS
OF WASHINGTON; and INDEPENDENT
INSURANCE AGENTS AND BROKERS
OF WASHINGTON,

Petitioners,

v.

OFFICE OF THE INSURANCE
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Respondents.

ORDER GRANTING IN PART PETITION FOR DECLARATORY
RELIEF OF PETITIONER NATIONAL ASSOCIATION OF
MUTUAL INSURANCE COMPANIES AND PETITION FOR
DECLARATORY AND INJUNCTIVE RELIEF OF PETITIONERS
AMERICAN PROPERTY CASUALTY INSURANCE
ASSOCIATION, PROFESSIONAL INSURANCE AGENTS OF
WASHINGTON AND INDEPENDENT INSURANCE AGENTS
AND BROKERS OF WASHINGTON - 1

CARNEY BADLEY SPELLMAN, P.S.
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1 THIS CONSOLIDATED MATTER came before the Court for hearing on July 29, 2022
2 on the Petition of National Association of Mutual Insurance Companies (“NAMIC”) for
3 Declaratory Relief in case no. 22-2-00180-34 and on the Petition for Declaratory and Injunctive
4 Relief of Petitioners, American Property Casualty Insurance Association, Professional
5 Insurance Agents of Washington, and Independent Insurance Agents and Brokers of
6 Washington (collectively, “APCIA, *et al.*”) in consolidated case no. 22-2-00195-34 (NAMIC
7 and APCIA, *et al.* collectively, “Petitioners”). Petitioners seek declaratory and injunctive relief
8 with respect to a permanent rule adopted on February 1, 2022, by Respondents, the Office of
9 the Insurance Commissioner of the State of Washington and the Insurance Commissioner for
10 the State of Washington, Mike Kreidler (collectively, “Respondents”), entitled Temporary
11 Prohibition of Use of Credit History, R 2021-07, adopting WAC 284-24A-090 and amending
12 WAC 284-24A-050, as filed in WSR 22-04-090 (the “Rule”). The Rule, *inter alia*, prohibits
13 insurers’ use of consumers’ credit histories to determine personal insurance rates, premiums, or
14 eligibility for coverage for all homeowners and private-passenger-automobile insurance
15 coverage issued in the state of Washington for a period lasting until three years following the
16 day the national emergency concerning the outbreak of COVID-19 declared by the President
17 on March 13, 2020 terminates, or until three years after the day the Governor’s Proclamation
18 20-05 declaring a state of emergency throughout the State of Washington as a result of the
19 COVID-19 outbreak expires, whichever is later.

20 The Court is fully advised, having considered the arguments of counsel and the
21 pleadings and records on file, including:

- 22 1. NAMIC’s Petition for Declaratory Relief and the exhibits thereto;

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25 ORDER GRANTING IN PART PETITION FOR DECLARATORY
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- 1 2. APCIA, *et al.*'s Petition for Declaratory and Injunctive Relief and the exhibits
- 2 thereto;
- 3 3. NAMIC's Opening Brief in Support of Petition for Declaratory Relief;
- 4 4. NAMIC's Motion for Judicial Notice in Support of Opening Brief in Support of
- 5 Petition for Declaratory Relief;
- 6 5. Declaration of Danielle N. McKenzie in Support of NAMIC's Motion for
- 7 Judicial Notice in Support of Opening Brief in Support of Petition for Declaratory Relief and
- 8 the exhibits thereto;
- 9 6. APCIA, *et al.*'s Brief in Support of Petition for Declaratory and Injunctive
- 10 Relief;
- 11 7. Declaration of Senator Mark Mullet submitted in support of the Petition for
- 12 Declaratory and Injunctive Relief of APCIA, *et al.* and the exhibits thereto;
- 13 8. Declaration of Jason W. Anderson submitted in support of the Petition for
- 14 Declaratory and Injunctive Relief of APCIA, *et al.* and the exhibits thereto;
- 15 9. Respondents' Brief Opposing the Petition for Judicial Review of the Insurance
- 16 Commissioner's Temporary Credit Scoring Rule;
- 17 10. Reply Brief of NAMIC in Support of Petition for Declaratory Relief;
- 18 11. APCIA, *et al.*'s Reply Brief in Support of Petition for Declaratory and Injunctive
- 19 Relief;
- 20 12. *Amicus Curiae* Brief of the Consumer Federation of America, Northwest Justice
- 21 Project, and Northwest Consumer Law Center in Support of Respondent and Washington
- 22 Regulation R2021-07-Temporary Prohibition of use of Credit History for Three Years After
- 23 Conclusion of Public Emergency;
- 24

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1 13. Petitioners' Response to Consumer Federation of America, Northwest Justice
2 Project, and Northwest Consumer Law Center's *Amicus Curiae* Brief;

3 14. Declaration of Danielle N. McKenzie in Support of Petitioners' Response to
4 Consumer Federation of America, Northwest Justice Project, and Northwest Consumer Law
5 Center's *Amicus Curiae* Brief and the exhibits thereto;

6 15. Respondents' Reply to Consumer Federation of America, Northwest Justice
7 Project, and Northwest Consumer Law Center's *Amicus Curiae* Brief; and

8 16. The entire agency rulemaking record created in connection with the
9 consideration and adoption of the Rule.

10 Based upon consideration of the above, and the oral argument of counsel presented on
11 July 29, 2022, the Court issued an oral ruling in open court at the conclusion of oral argument.
12 A transcript of that oral ruling is attached as Exhibit A. Incorporating the findings in that oral
13 ruling into this Order, the Court determines as follows pursuant to RCW 34.05.570:

14 1. The Court finds that Respondents complied with the rule-making procedures of
15 Washington's Administrative Procedure Act;

16 2. The Court finds that the Rule is not arbitrary and capricious;

17 3. The Court finds that the Rule does not violate the constitutional separation of
18 powers;

19 4. The Court finds that the Rule does exceed Respondents' statutory authority;

20 5. The Court finds that Petitioners and their members are substantially prejudiced
21 by the Rule.

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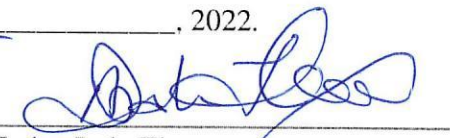
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Accordingly,

IT IS ORDERED THAT NAMIC's Petition for Declaratory Relief and the Petition for Declaratory and Injunctive Relief of APCIA, *et al.* are GRANTED in part.

IT IS FURTHER ORDERED THAT pursuant to RCW 34.05.570(2) and RCW 34.05.574(1)(b), the Rule is hereby DECLARED invalid.

This Order finally disposes of all claims by all parties in the action. The Court retains jurisdiction as may be necessary to ensure compliance with this order.

DATED this 27th day of Aug, 2022.


Judge Indu Thomas

1 Presented by:

2 DUANE MORRIS, LLP

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By /s/ Jason W. Anderson

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14 Approved as to form by:

15 OFFICE OF THE ATTORNEY GENERAL OF
16 THE STATE OF WASHINGTON

17 By /s/ Marta U. DeLeon

Marta U. DeLeon, WSBA No. 35779
Assistant Attorney General

18 *Attorney for Respondents*

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