CAUSE NO. D-1-GN-25-001663

TEXAS LAND TITLE ASSOCIATION,	§	**IN THE DISTRICT COURT OF**
	§	
***Plaintiff*,**	§	
	§	
v.	§	
	§	
	§	
TEXAS DEPARTMENT OF INSURANCE and CASSIE BROWN, IN HER CAPACITY AS COMMISSIONER OF THE TEXAS DEPARTMENT OF INSURANCE	§	**TRAVIS COUNTY, TEXAS**
	§	
	§	
	§	
	§	
***Defendants*.**	§	
	§	
	§	**345TH JUDICIAL DISTRICT**

PLAINTIFF'S BRIEF IN SUPPORT OF APPLICATION FOR TEMPORARY INJUNCTION

NOW COMES Plaintiff Texas Land Title Association ("TLTA") and files this Brief in Support of its Application for Temporary Injunction against the Texas Department of Insurance ("TDI") and Cassie Brown, in her Capacity as Commissioner of the Texas Department of Insurance ("Commissioner") (collectively "Defendants") and in support of same would respectfully show the Court as follows:

I. INTRODUCTION

1. Plaintiff Texas Land Title Association ("TLTA") urges this Court to intervene to prevent imminent and irreparable harm stemming from arbitrary and capricious acts on the part of the Texas Department of Insurance ("TDI") and its Commissioner, Cassie Brown. As the regulatory authority tasked with overseeing the intricate landscape of title insurance in Texas—a market vital to the protection of property owners' rights and the state's economic stability—Defendants have failed

to adhere to statutory mandates designed to ensure transparency and fairness in the rate-setting process and failed their statutory duty to establish nonconfiscatory regulatory rates. Accordingly, a temporary injunction protecting the status quo is necessary.

2. At hearing, TLTA will establish both a likelihood of success on the merits as well as imminent irreparable harm. TLTA's claims challenging Defendants' Rate Order are well founded; Defendants completely failed to follow the mandatory rulemaking procedures proscribed by the Administrative Procedures Act (APA) and the Insurance Code, and the resulting Order failed to substantially comply with the standards mandated by the Insurance Code. This confiscatory Order purports to go into effect on July 1, 2025. If it is allowed to go forward, the Texas title industry will experience financial injury in the form of invalid premium rate reductions that cannot be recovered, inability to fund operations and make payroll, business failures and office closures, loss of experienced personnel, reputation and goodwill, impaired capital access, and related irreparable harms. Such harms may be avoided, however, by enjoining the challenged Rate Order from going into effect during the pendency of this litigation.

II.
FACTUAL ALLEGATIONS

A. Background

3. Title insurance is a crucial protection mechanism in real estate transactions, safeguarding property owners and lenders against defects in a property's title that could threaten ownership rights. In Texas, it is effectively mandatory as institutional lenders require it for financing real estate purchases. The title insurance marketplace in Texas includes underwriters who assume the risk and agents who perform title examinations, issue policies, and handle closings. The Texas Land Title Association (TLTA) represents both underwriters and agents and interacts with the Texas Department of Insurance (TDI).

4. TDI exercises plenary authority as a regulator over all aspects of the Texas title insurance industry pursuant to Title 11 of the Tex. Ins. Code, with rate regulation authority circumscribed by Chapter 2703. TDI promulgates a uniform rate—typically not more frequently than every five years—applicable to all title insurance transactions throughout the state. Tex. Ins. Code § 2703.151; *see also* 28 Tex. Admin. Code § 9.1.

5. The rate-setting process follows a structured review cycle as mandated by Section 2703.202. Rate-setting can only be done one of two ways—either through rulemaking under the Administrative Procedures Act ("APA"), Tex. Gov't Code, Ch. 2001, or if requested by any party and granted by the TDI Commissioner, a contested case hearing. *See* Tex. Ins. Code § 2702.202. In this case, no party requested a contested case hearing, so a formal rulemaking process under the APA was mandatory. *See id.* at § 2703.202(c).

6. The statutory scheme provides that, after following the mandatory rulemaking procedures and evaluating the evidence presented in favor of and in opposition to the proposed rule, the Commissioner issues a rate order establishing the premium rates for title insurance policies. Tex. Ins. Code § 2703.202(g). Section 2703.152 mandates that rates must be "reasonable as to the public and nonconfiscatory as to the title insurance companies and title insurance agents." Under Texas law, "nonconfiscatory" means that the rates must allow for the recovery of operating expenses and also a reasonable return. *See Geeslin v. State Farm Lloyds*, 255 S.W.3d 786, 795 (Tex. App.—Austin 2008, no pet.).

B. The Process Leading to the 2025 Rate Order

7. On November 1, 2024, TLTA filed a Petition to Hold the Periodic Title Insurance Rate Rulemaking Hearing and for the Adoption of a Rule with TDI in accordance with Tex. Gov't Code §. 2001.021, Tex. Ins. Code § 2703.202, and 28 Tex. Admin. Code § 9.1 (the "Rulemaking

Petition"). *See* TDI CC 1.[1] The Rulemaking Petition requested no change in regulated rates, or in the alternative, a rate decrease no greater than 1%. Following the required process, TLTA's Rulemaking Petition submitted a proposed amendment to the title insurance rule that sets title premium rates, requested the Commissioner submit the proposal to the Texas Register for publication, and requested the Commissioner to publish notice of public hearing to consider adoption of title insurance rates. Each of these requests was in accordance with the APA's mandatory procedures. Shortly thereafter, the Texas Office of Public Insurance Counsel ("OPIC") also filed a petition for rate change through rulemaking. *See* TDI CC 17. These petitions followed a public meeting held on October 22, 2004, and various informal collaborative communications between TLTA, TDI, and other stakeholders, at which no final agreement was reached.

8. Unfortunately, TDI's subsequent actions failed to follow required processes, applied incorrect legal standards, failed to consider relevant factual information, and failed to apply a reasoned analysis to the data.

9. First, TDI denied TLTA's petition for a rulemaking hearing.[2] Commissioner's Order No. 2024-9045, TDI Docket No. P-1124-01 at 2 (Dec. 20, 2024), TDI CC 25. On January 23, 2025, the Commissioner held a public hearing. The January 23, 2025, public hearing can in no way be considered a proper rulemaking hearing. TDI did not publish a rule proposal in advance with a recommended rate change or any other rule proposal. Without publication of a rule containing all the information required in notice of a rule proposal by Tex. Gov't Code § 2001.024, the public hearing

[1] References to the administrative record filed by TDI shall be noted as "TDI CC," the bates stamp designation used by the agency in submitting the record.

[2] The reason Defendants gave for the denial was either mistaken or pretextual. The Commissioner stated that it was not feasible to provide the 60-day requirement to hold a hearing under Tex. Gov't Code § 2001.021 while meeting the 60-day notice requirement for hearings under Tex. Ins. Code § 2703.207. This was inaccurate because Tex. Gov't Code § 2001.021 only requires the agency to either deny the petition or to "initiate a rulemaking proceeding…" within 60 days. All the Commissioner had to do to initiate a rulemaking proceeding was to either post TLTA's rule proposal or post one of its own within 60 days of the petition.

was not a rule hearing with proper notice to the public as required by Tex. Ins. Code § 2703.202 and Tex. Gov't Code Chapter 2001, Subchapter B. TDI failed to provide adequate public notice and an opportunity to submit comments as required by the Texas Insurance Code and the applicable provisions of the APA.

10. Despite the fact that the January 23, 2025 public hearing was not a proper rulemaking hearing as mandated by statute, TDI staff, TLTA, individual title agents and insurers, and OPIC participated. Only TLTA presented evidence as to income and expenses beyond 2022.

11. On or about February 6, 2025, the Commissioner issued her Order, reducing the existing regulated rate by 10%. Commissioner's Order 2025-9125, TDI Docket No. 2851 at COL 6 (Feb. 6, 2025) ("Rate Order"), TDI CC 290, 297. The specific amount of the rate reduction, 10%, had not been advocated for by any party, and there were no findings of fact supporting this specific amount of decrease. This rate decrease was the largest ordered in the last 40 years.

12. On February 26, 2025, TLTA filed TLTA's Motion to Vacate and Motion for Rehearing and Reconsideration with TDI. The Motion pointed out all the defects in the Order that are alleged in this suit. TDI CC 302. By letter dated March 4, 2025, the Commissioner stated that she had received TLTA's Motion and that "Order No. 2024-9045 should stand," thereby effectively overruling TLTA's Motion. TDI CC 354.

C. TLTA Lawsuit

13. On March 6, 2025, TLTA filed its Original Petition and Application for Temporary Injunction in this matter. The Petition sought judicial review over the Commissioner's Order, and requested declaratory relief that the Order was invalid as well as injunctive relief preventing the Order from going into effect. On April 7, Defendants filed their Answer, which included a bare-bones Plea

to the Jurisdiction and a general denial. The Court scheduled a hearing on TLTA's Application for Temporary Injunction on May 27-28, 2025. This brief is submitted in support of this application.

III.
ARGUMENT

A. Temporary Injunction.

14. "To obtain a temporary injunction, the applicant must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim." *Butnaru v. Ford Motor Co*., 84 S.W.3d 198, 204 (Tex. 2002); *see also Bell v. Tex. Workers Comp. Comm'n*, 102 S.W.3d 299, 302 (Tex. App.—Austin 2003, no pet.). Here, as described above, Plaintiff has asserted a Declaratory Judgment action and a Petition for Review against Defendants challenging the Order. Plaintiff will establish at hearing through testimony and exhibits both the probable right to relief and imminent and irreparable injury if an injunction does not issue, as described below.

B. Probable Right to Relief.

15. To establish the probable right to relief element, Plaintiff need only present some evidence that tends to sustain one of its causes of action against Defendants. *Stewart Beach Condo. Homeowners Ass'n, Inc. v. Gili N Prop Investments, LLC*, 481 S.W.3d 336, 346 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (citing *Intercontinental Terminals Co., LLC v. Vopak N. Am., Inc.*, 354 S.W.3d 887, 897 (Tex. App.—Houston [1st Dist.] 2011, no pet.); *Tanguy v. Laux*, 259 S.W.3d 851, 857 (Tex. App.—Houston [1st Dist.] 2008, no pet.) ("A probable right to the relief sought is shown by alleging a cause of action and presenting evidence that tends to sustain it.").

16. Here, Plaintiff's causes of action are challenges to the Order pursuant to the APA and the Texas Insurance Code. Under the Texas APA, a plaintiff may bring an action challenging

the validity or applicability of the rule, and a court properly grants declaratory judgment declaring the rule invalid and injunctive relief against its enforcement. Tex. Gov't Code § 2001.038; *El Paso Hosp. Dist. v. Tex. HHS Comm'n*, 247 S.W.3d 709, 715 (Tex. 2008); *see Muth v. Voe*, 691 S.W.3d 93, 136-38 (Tex. App.—Austin 2024, pet. filed) (movant entitled to temporary injunction preventing enforcement of ad hoc rule likely to be declared invalid). Likewise, the Texas Insurance Code provides for judicial review of "a decision, order, rate, [or] rule . . . ." Tex. Ins. Code § 36.201.

17. As detailed above, the challenged Order fails on several grounds: failing to follow rulemaking procedures required by the Texas Insurance Code and the APA, failing to apply to correct legal standards in its analysis, failing to abide by a statutory requirement to consider all relevant evidence, and failing to apply a reasoned analysis to reach its conclusions. Any of these grounds requires the Order to be voided, the remedy that Plaintiff seeks.

i. *Failure to Follow Proper Rulemaking Procedures*

18. In the first place, Plaintiff easily satisfies this prong because it cannot be reasonably disputed that Defendants failed to follow required rulemaking procedures, and such failure is grounds for vacating the challenged Order.

19. The Texas Supreme Court made clear that "[w]hen an agency promulgates a rule without complying with the proper rulemaking procedure, the rule is invalid." *El Paso Hosp. Dist. v. Tex. HHS Comm'n*, 247 S.W.3d 709, 715 (Tex. 2008) (citing Tex. Gov't Code Ann. § 2001.035). In *El Paso Hospital District*, the Texas Supreme Court invalidated an agency action that functioned as a rule because the agency failed to follow the mandated notice and comment procedures. *Id.* at 714-15; *See also Tex. Dep't of Ins. v. Accident Fund Ins. Co. of Am.,* No. 03-21-00074-CV, 2023 Tex. App. LEXIS 1291, at *32, *36-37 (Tex. App.—Austin Feb. 28, 2023) (invalidating Texas

Department of Insurance action for failing to follow rulemaking process). Here, the same defects as in *El Paso Hospital District* were present, and more.

20. TLTA requested rulemaking to change title rates by filing its Ratemaking Petition.[3] There was no request for a contested case, therefore TDI was required to follow rulemaking procedures for any rate change. Tex. Ins. Code § 2702.202. Pursuant to the APA, a rulemaking hearing can only be conducted after a proposed rule is published in the Texas Register. *See* Tex. Gov't Code § 2001.029. There was no rule published prior to the public hearing. Thus, the public hearing referenced in the Order failed to comply with the basic publication requirements for rulemaking.[4] Defendants also failed to satisfy APA rulemaking procedures by failing to:

a. provide at least 30 days notice of its intention to adopt a rule before adopting the rule, *id.* at § 2001.023(a);

b. in the notice of the proposed rule, providing a certification that the proposed rule has been reviewed by legal counsel and found to be within TDI's authority to adopt, *id.* at § 2001.024;

[3] The current rates are part of the Title Insurance Basic Manual that has been adopted by reference as a rule and codified in 28 Tex. Admin. Code § 9.1. The Legislature has specifically authorized the adoption of a Title Manual by reference. See Tex. Ins. Code Sec. 2703.208. Unless a contested case is requested and granted, Tex. Ins. Code § 2703.202(c) requires a rulemaking hearing under Tex. Gov't Code Chapter 2001, Subchapter B prior to a final order fixing rates.

[4] Defendants also failed to comply with 28 Tex. Admin. Code § 1.202 in conjunction with TLTA's rulemaking petition by failing to: 1) Add TLTA's rule proposal to the list of rule proposals pending before TDI, 28 TAC § 1.202(b)(1); 2) Notify TLTA of the name, address, and telephone number of the staff person reviewing the proposal and designated contact person for inquiries, *id.* at § 1.202(b)(3); 3) Provide a copy of a recommended rule proposal in Texas Register form to TLTA as petitioner with a rule proposal containing a rate change that substantially differed from the rate change in TLTA's rule proposal and provide TLTA ten business days to file a written response to the recommended proposal, *id.* at § 1.202 (d)(1); 4) Provide the Commissioner with the original petition, TDI Staff's proposal in Texas Register form, TLTA's response (if any), and any additional written comments from the public addressing the proposal after TLTA filed a response or the time for submitting a response expired, *id.* at § 1.202 (d)(2); and 5) Instruct the Office of the Chief Clerk to submit the Commissioner's proposed rule to the Texas Register for publication and issue an order stating the reason TLTA's petition was denied in part because the published version of the rule was substantially different from TLTA's recommendation, *id.* at § 1.202 (e)(2).

c. fully consider all written and oral submissions about the proposed rule, *Id.* at § 2001.024(c).

21. The Public Hearing on January 23, 2025, was nothing more than that—a public hearing; it is clear from the deficiencies set out above that it was not a rulemaking hearing and cannot support a final order under Tex. Ins. Code § 2703.202.

22. Failure to observe the statutory rulemaking process set out in the APA and the Insurance Code not only rendered the Order invalid, but also violated principles of due process by depriving affected parties of a meaningful opportunity to participate in the regulatory process. For example, if Defendants had published their proposed 10 percent rate decrease as a proposed rule in advance of the hearing as required by the APA, then TLTA could have tailored their evidence and presentation to address that specific rate change. Instead, TLTA and other stakeholders were blind-sided, and thus denied a meaningful opportunity to participate in regulatory decisions critical to the solvency of agents and underwriters, and critical to the condition of the industry as a whole.

ii. Failure to provide a reasoned justification

23. In order to adopt a rule, an agency must not only comply with the required procedures set out above, but also provide a reasoned justification for the rule enacted. *See* Tex. Gov't Code §§ 2001.023, .029, .033. A rule not adopted in substantial compliance with the reasoned justification requirement is voidable. *Id*. at § 2001.035(a). In part this requirement means that the Order must "come fairly within the character and scope of each of the statute's requirements in specific and unambiguous terms." *Office of Pub. Util. Counsel v. PUC*, 131 S.W.3d 314, 328 (Tex. App.—Austin 2004, pet. denied).[5] Here, the statute at issue is Texas

[5] Additionally, "[t]he reasoned-justification requirement is intended to give notice of the factual, policy, and legal bases for the rule as adopted or construed by the agency in light of all the evidence gathered by the agency during the comment period in order to ensure that the agency fully considered the comments submitted by interested parties and

Insurance Code § 2703.152. The analysis requires an examination of the agency's explanation of the rule in its order. *Id.* If this examination shows that the agency either "(1) does not consider a factor that the Legislature intended the agency to consider in the circumstances; (2) considers an irrelevant factor; or (3) reaches a completely unreasonable result after weighing only relevant factors," the rule is arbitrary and capricious and thus fails the reasoned justification requirement. *Id.*

24. Here, the challenged Order fails to substantially comply with the relevant statute in several respects and fails the reasoned justification requirement. In the first place, the controlling statute requires that the title premium rates fixed by the Commissioner in the rulemaking process "must be . . . nonconfiscatory as to title insurance companies and title insurance agents." Tex. Ins. Code § 2703.152. To ensure that rate order complies with the nonconfiscatory requirement, the Commissioner is required to "consider all relevant income and expenses of title insurance companies and title insurance agents attributable to engaging in the business of title insurance in this state." *Id.* Therefore, under the plain language of the statute, Defendants had an affirmative obligation to ensure that the rate they fixed was nonconfiscatory and to consider all relevant income and expense evidence in discharging this obligation. Defendants failed in several respects.

25. In the first place, the Order specifies in defense of the rate that "[t]he commissioner did not receive **'clear and convincing evidence'** that a reduction in rates would lead the **average** title insurance company or title insurance agent to experience **insolvency** or earn an unreasonable rate of return." Order, FOF 19 (emphasis added). Instead of meeting the affirmative statutory requirement to fix a nonconfiscatory rate, Defendants not only improperly placed the burden of

to provide the factual basis and rationality of the rule as determined by the agency." *Office of Pub. Util. Counsel*, 131 S.W.3d at 328.

proof on TLTA to establish that the rate was confiscatory, but without any legal basis, applied a clear and convincing evidence standard to this burden.

26. Additionally, Defendants only determined that there was not such a showing that the rate was confiscatory to the *average* insurer or agent, another improper factor imported into the analysis. The statutory requirement is that the rates be nonconfiscatory to insurers and agents, not merely with respect to the average insurer or agent.

27. Finally, the order applies insolvency as a standard for finding a rate to be confiscatory. Not only is that requirement not found in the statute, but it appears to be drawn from a misreading of a case Defendants cite in the Order, *Geeslin v. State Farm Lloyds*. Order at FoF 19, n. 4 (citing *Geeslin v. State Farm Lloyds*, 255 S.W.3d 786, 795 (Tex. App.—Austin 2008, no pet.). In fact, *Geeslin* found that applying an insolvency standard in ratemaking ***was unconstitutional***. 255 S.W.2d at 795. Under Texas law, "nonconfiscatory" means that the rates must allow for the recovery of operating expenses and also a reasonable return. *See Geeslin*, 255 S.W.3d at 795. Supplanting the statutory standard of "nonconfiscatory" and instead requiring proof of "insolvency" is arbitrary, capricious, lacks due process and exceeds Defendants' authority. Amazingly, the Commissioner cites the *Geeslin* case as authority for her findings when in fact, that decision holds that "a rate that does not allow for a reasonable rate of return is confiscatory and unconstitutional." *Id. Geeslin* also discusses the difference between confiscatory and insolvent, a distinction that was apparently lost on Defendants. *Id.*

28. The Order's reliance on *Geeslin* to apply a clear and convincing evidence standard to TLTA, *see* Rate Order at FoF 19, likewise resulted from misreading the case. There, the standard was drawn from a specific statute not applicable here (a since repealed provision applying to the one-time transition of homeowner insurance rates to a file and use process), which specifically

called for the clear and convincing standard to be applied. Here, rather than statutorily assigning TLTA to carry this burden of proof, § 2703.152 places the burden on Defendants. Further, the *Geeslin* court observed, "[w]here the burden of proof for a contested case is undefined or unclear, we have applied the general civil standard of a preponderance of the evidence because contested cases are civil in nature." 255 S.W.3d at 797, n. 3; *see also In re Lipsky,* 460 S.W.3d 579, 589 (Tex. 2015) ("Criminal cases require proof beyond a reasonable doubt, a near certainty, whereas civil cases typically apply the preponderance-of-the-evidence standard… The Legislature well understands the clear-and-convincing-evidence standard and uses that standard when it so intends."); *Sanders v. Harder*, 227 S.W.2d 206, 209 (Tex. 1950) (finding that the circumstances where a clear and convincing standard applies are "very narrow" because "[n]o doctrine is more firmly established than that issues of fact are resolved from a preponderance of the evidence. . . .").

29. In misapplying the statutory standard in this way, Defendants' Order fails to show a reasoned justification for the rates imposed, but rather arbitrarily and capriciously supports the rate with inapplicable factors.

30. In addition, Defendants failed to substantially comply with § 2703.152's requirement to consider all relevant evidence. The Order demonstrates that Defendants failed to consider and address uncontroverted evidence showing that a rate decrease would be confiscatory. The Order relied on historical data ending in 2022 but failed to consider 2023 and later economic and policy count data. As such, it failed to "consider and address ***all*** relevant income and expenses of title insurance companies and title insurance agents" as required by § 2703.152 (emphasis added). Such 2023 income and expense data were in TDI's possession, and TLTA also presented 2023 income and expense data which was uncontroverted. *See* TDI CC 113. Both sources of 2023 data were ignored

by Defendant in setting the arbitrary 10% rate decrease set forth in the Order. TLTA additionally presented data gathered by the Texas Title Insurance Guaranty Association (a non-profit legal entity created by the Texas Title Insurance Code) demonstrating a precipitous decline in the number of issued policies in 2023 and 2024. TDI CC 167, 191.

31. This is a critical error given the dramatic change in market conditions since the fall of 2022. Because the expense ratio (expenses as a percentage of premium revenue) of title insurance agents is so critical to their viability, a lower volume of transactions (real estate sales or refi's) necessitates a higher premium in order to preserve a nonconfiscatory expense ratio. TLTA presented evidence of an historic decrease in the volume of real estate transactions beginning in the fall of 2022. Admittedly, the real estate market boomed during 2020, 2021, and the first part of 2022, but since then the bottom has fallen out. TLTA's evidence showed that this was due to a combination of higher mortgage rates (leading to a locked in effect where homeowners with older, low rates have no incentive to sell and incur much higher rates on their new home), increasing home prices, lower inventory of homes for sale, and inflation generally and particularly in the cost of building supplies. TLTA's evidence, which was uncontroverted, showed that these conditions are likely not to change for the next several years, especially given the Federal Reserve's outlook on inflation and maintaining current levels of interest rates. Title insurance rates are set prospectively, so decreasing rates by 10% at a time when the real estate market is experiencing, and will continue to experience, materially lower volume will spell disaster for a significant portion of TLTA's members.[6]

32. In addition to application of irrelevant standards and failure to consider relevant evidence, the Rate Order failed to provide a reasoned justification for its 10% rate reduction by identifying any reliable methodology supporting the reduction. The Order recites the in-depth

[6] *See* Section III.C., below.

methodologies by which TDI, TLTA, as well as the OPIC each made alternative calculations of the appropriate regulated rate. These calculations include various factors, including the profit provision and cost of capital, the experience periods considered, expense ratio, and loss adjustment expense ratios. The sharply differing rate calculations offered by each of these parties' expert analysis was the product of differences in the methodology and inputs of these calculations.

33. However, the Order fails to include any findings concerning which of these alternative methodologies or inputs Defendants accepted as reliable, or any findings on how its mandated rate cut of 10% was calculated. Setting out the numerical inputs chosen to support the rate ordered is a feature of rate orders in promulgated rate states and past orders of the Commissioner when multiple rate indications are being considered. *See, e.g.,* Commissioner's Order 06-1280, TDI Docket No. 2601 (December 12, 2006);[7] Commissioner's Order 04-0405, TDI Docket No. 2538.[8] Without specific findings of fact to support the rate ordered, the rate is arbitrary and capricious. This is especially true considering that the specific 10% rate reduction cannot be calculated with *any* combination of the competing inputs or methodologies presented to TDI, and such calculations or justification is not shown in the Order's findings of fact or conclusions of law.

34. Finally, the Order's calculation of resulting premium rates is clearly erroneous, and therefore not the product of reasoned justification. The Order includes as an attachment a Table of Texas Title Insurance Basic Premium Rates, which purports to apply the 10% reduction to the existing regulated rates. However, the values on the table are incorrectly calculated. Column 4 of the Table is intended to reflect the top rate for the previous row policy range, which policy amount and rate are subtracted out to allow for a progressively declining rate at each bracket. That rate amount is then

[7] Available at https://www.tdi.texas.gov/orders/documents/commorder061280titl.pdf.
[8] Available at https://www.tdi.texas.org/orders/co040405.html.

added back into the final calculation of the policy amount. Reducing each number in Column 4 by 10 percent instead of properly calculating each Add amount resulted in an incorrect Add for each Policy Range. The error in the rate chart creates an internal conflict and ambiguity in the Order and resulted in an Order not supported by substantial evidence or reasoned justification. The existing software closing platforms utilized by the title industry cannot be modified by a mathematical reduction of 10% of the current rates. When this error was pointed out to Defendants in TLTA's motion for rehearing and subsequent collaborative communications, TLTA's hearing evidence will show that TDI now claims they cannot fix the error—this Court has exclusive jurisdiction.

35. In summary, TLTA demonstrates a probable right to relief. Defendants failed to substantially comply with the relevant provisions of the Texas Insurance Code or the APA in the Rate Reduction Order. Additionally, the evidence presented shows that the rate decrease is unsupported by substantial evidence, contrary to the evidence presented, and lacks a reasoned justification, endangering the financial stability of title insurance agents and underwriters. Upon final trial, it is overwhelmingly likely that the Court will void the order; Plaintiff and its members should be protected in the meantime.

C. <u>Irreparable Harm</u>.

36. Having shown that it holds causes of action against Defendants on which it has a probable right of relief, Plaintiff is entitled to a temporary injunction to keep the status quo if it shows a probable, imminent, and irreparable injury that would occur in the interim before final trial. *See Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). Here, the injury to TLTA and its members if Defendants Rate Order goes into effect clearly meets these criteria.

i. Harm is Probable

37. If the Order is not enjoined and goes into effect on July 1, Texas title agents will be compelled to conduct business at premium rates that fail to cover operating costs and provide a reasonable return on invested capital. Not only that, but those reduced premium rates can never be recovered from real estate consumers when and if the rate order in question is ultimately determined to be invalid, which is highly likely.

38. As set out above, the 10% rate reduction ordered is the result of failing to apply a reasoned analysis or consider the available data. Specifically, TLTA has presented, and will present at the hearing, evidence of its members' reduced financial viability due to changes in market conditions beginning in 2022 and continuing to present. By improperly focusing on an earlier outlier period (2020-2022), Defendants have arrived at a rate order that would have disastrous effects under current market conditions. TLTA will present specific evidence of these effects at the hearing. There is also evidence that the 2023 market revenue and expense data, not considered by TDI, is likely to be more representative of market conditions for the foreseeable future, compared to the earlier data that Defendants improperly considered in determining the Order's rate reduction.

39. TLTA will also present evidence of the tremendous amount of work that is required to implement a premium rate change. The pricing software needs to be re-programmed, de-bugged, and implemented. This requires significant time and expense. Also, real estate closing dates frequently change for a variety of reasons, and if a closing is moved from before a rate change date until after, or vice versa, this requires an entirely new calculation of the premium and a new closing statement. The problem is exacerbated during the busy season, and July 1 is in the heart of the busiest season for real estate transactions.

40. Luckily, the Texas title industry usually only needs to absorb the costs and hassle of this process once every five years or so. But in this instance, if Defendants' invalid order is not enjoined, agents will have to undergo a pricing change on July 1, and then there is a high likelihood that they will need to reverse that premium decrease, again at high cost and effort, when the Order is ultimately set aside.

41. In the absence of the temporary injunction requested, the Order will go into effect on July 1, 2025. The harm to TLTA's members resulting from this arbitrary and confiscatory rate reduction is not merely probable, it is certain.

ii. Irreparable Harm is Imminent

42. Harm is imminent for purposes of a temporary injunction when the commission of an act is more than speculative and the injury that may flow from the act is more than conjectural. *See Huynh v. Blanchard*, 694 S.W.3d 648, 679 (Tex. 2024). "[A] finding of imminent harm can follow from a variety of circumstances, including actual injury, a pattern of actions, a threat to undertake harmful action, and other non-speculative bases to conclude that harm is impending." *Id.*

43. Here, it is clear that the harm resulting from the Rate Order going into effect is imminent. The Order mandates that the rate reduction will go into effect on July 1, 2025. TDI CC 297. Once the Order goes into effect, TLTA's members will suffer harm, as set out in Sections II.i and II.iii. However, the agents and underwriters will be harmed even before that date. TLTA's members are business organizations that must plan for anticipated disruptive changes like the Order. Agents and underwriters must begin adjusting revenue and profitability forecasts, curbing hiring, and freezing discretionary spending now to absorb the projected revenue loss, imposing immediate cash-flow constraints, thus highlighting the pressing need for injunctive relief.

iii. Harm is Irreparable

44. Harm is irreparable for the purposes of the rule where the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard. *Tex. Dep't of State Health Servs. v. Holmes*, 294 S.W.3d 328, 334 (Tex. App.—Austin 2009, pet. denied). Courts have determined that a company's loss of goodwill, clients, office stability, or access to credit may constitute irreparable harm, as would a financial condition necessitating layoffs or suspending business operations. *Id.*; *Graham v. Mary Kay, Inc*., 25 S.W.3d 749, 753 (Tex. App. —Houston [14th Dist.] 2000, pet. denied); *Texas Indus. Gas v. Phoenix Metallurgical Corp.,* 828 S.W.2d 529, 533 (Tex. App.—Houston [1st Dist.] 1992, no writ).

45. As discussed above, if the Rate Order went into effect, this would cause an unsupportable financial impact for a substantial portion of the affected agents, leading many to become unprofitable for the foreseeable future. Aside from the direct financial impact of reduced revenue, this unprofitability would cause myriad irreparable harms. In the first place, many agencies would be forced to implement layoffs, furloughs, and employee benefit cuts. *See* TDI CC 208-23.

46. Testimony and letters from agents submitted to TDI and the Commissioner at the public meeting and before the Order was issued describe how they are already coping with reduced volume—having to lay off experienced escrow officers and defer technology and compliance investments essential to protecting consumers. Once a skilled workforce is dispersed and operations are disrupted, they cannot be reassembled even by a later award of damages.

47. Finally, the Order's timing threatens TLTA members' business goodwill. Some not insignificant percentage of small, family-owned agencies that have served their communities for

decades will be forced by a ten percent rate cut to shutter offices and abandon markets. When an agency closes, its customer relationships and reputation migrate permanently to competitors, in this case likely in another town or county. Such loss of goodwill, market presence, and professional reputation is inherently incalculable and therefore not compensable. Because these injuries cannot be undone after the fact, a temporary injunction is essential to preserve the status quo and prevent irreparable harm to TLTA's members while the legality of the rate order is adjudicated.

48. Finally, the harm is irreparable because title premiums are collected once, at the moment of closing—there is no ongoing billing relationship that would allow agents to claw back the difference if the 10 % reduction is later invalidated. The Texas promulgated title commitment requires that a policy be issued upon payment of the specified premium once the closing conditions ae satisfied. Once the real estate transaction funds and records, the parties disperse and the file is effectively closed, leaving agents no practical or legal mechanism to issue a supplemental invoice or re-open escrow to recover the foregone premium.

49. Not only are TLTA's members unable to obtain compensation for the foregone premiums from their customers, these damages are likewise unrecoverable from Defendants. Because the Rate Order will cause a loss of revenue and associated harms that the Defendants' sovereign immunity prevents TLTA and its members from recovering, the injury "cannot be adequately compensated in damages" and is therefore irreparable. *Butnaru*, 84 S.W.3d at 204. Non-recoverable costs imposed by a governmental regulator thus constitute irreparable harm. *See State v. Hollins,* 620 S.W.3d 400, 410 (Tex. 2020) (since money damages are not available in ultra vires claim against a governmental official, irreparable injury is established); *Texas v. EPA*, 829 F.3d 405, 433 (5th Cir. 2016) ("'complying with a regulation later held invalid almost always produces the irreparable harm of nonrecoverable compliance costs.'") (quoting

Thunder Basin Coal Co. v. Reich, 510 U.S. 200, 220–21, (1994) (Scalia, J., concurring in part and in the judgment).

50. Accordingly, every policy written while the order remains in force represents a permanent, unrecoverable loss of revenue to TLTA's members, underscoring the need for immediate injunctive relief.

D. Injunctive Relief.

51. For the reasons set out above, TLTA seeks a temporary injunction to preserve the status quo by maintaining the current title insurance rates for the pendency of this litigation. Specifically, TLTA asks that the court enter an injunction binding TDI and the Commissioner, and their officers, employees, and agents:

(1) enjoining Defendants from implementing, enforcing, or giving any effect to the February 6, 2025 Rate Order;

(2) enjoining Defendants from any action that would fail to maintain in full force and effect the regulated rates and any associated rules and regulations in effect as of May 28, 2025; and

(3) directing TDI within 7 days of the entry of the injunction, to provide written notice of this injunction to all Texas licensed title-insurance underwriters and agents and to post the same conspicuously on TDI's public website.

52. TLTA requests that the injunction remain in effect until the Court enters a final judgment on the merits or issues a further order dissolving or modifying this injunction.

53. The requested injunction will preserve the status quo, which is the last actual, peaceable, non-contested status that preceded this controversy—namely, the continuation of the current title insurance rate structure that has been in place since 2019.

E. Bond.

54. TLTA is ready and willing to post a reasonable bond as required by law. However, TLTA respectfully submits that the bond should be minimal, or at least affordable, given that the purpose of the injunction is to prevent implementation of an unlawful agency action, defendants will not face pecuniary harm because of the injunctive relief sought, and TLTA is a nonprofit trade association.

IV.
REQUEST FOR RELIEF

Plaintiff requests that upon hearing its Application for Temporary Injunction, that the Court grant its Application and issue the temporary injunction requested, enjoining Defendants Rate Order, or any equivalent order, from going into effect during the pendency of this action. Plaintiff further request that such injunction include a setting for final trial on the merits pursuant to Texas Rule of Civil Procedure 683. Plaintiff prays for any other and further relief to which it may show it justly entitled.

Respectfully submitted,

By */s/ Ray Chester*

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of May, 2025, I electronically filed the above and foregoing document, which will send notification of such filing to:

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Ray Chester

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