

First, Defendants erroneously mischaracterize Plaintiff's APA challenge as a claim under Uniform Declaratory Judgment Act, and then attack this straw man by arguing the UDJA does not waive sovereign immunity and that such a claim would be redundant. Section 2001.038 of the Texas Government Code explicitly waives sovereign immunity for Plaintiff's declaratory challenge. TDI's Rate Order generally applies reduced premium rates across the title industry, and thereby constitutes a "rule" properly challenged under § 2001.038, regardless of whether Defendants characterize it as such. This APA challenge attacks the procedural and substantive deficiencies of this Order and is thus fully ripe for adjudication, with imminent and substantial harm sufficient to warrant temporary injunctive relief. The fact that Defendants argue in a separate brief that injunctive relief is unavailable under the separate judicial review action belies any argument that Plaintiff's two claims seek redundant remedies. For these reasons, Defendants' Plea to the Jurisdiction should be denied in its entirety.

II. **ARGUMENT**

Plaintiff's Petition asserts two causes of action, an APA challenge seeking declaratory judgment pursuant to Texas Government Code § 2001.038 and a petition for judicial review pursuant to Texas Insurance Code § 36.201. The Petition additionally seeks temporary injunctive relief to protect the status quo until such time as this Court enters judgment on its claims. Defendants' Plea admits that Plaintiff "has a right to judicial review of TDI's order under sections 36.201 through 36.205." Am. Plea at 2. It only challenges the second cause of action, which it apparently perceives as separates claims under the APA's § 2001.038 and the Uniform Declaratory Judgment Act ("UDJA"). *Id.* For clarity, §2001.038 is the jurisdictional basis for Plaintiff's declaratory relief, Plaintiff does not assert a separate declaratory claim under the UDJA.

The Amended Plea’s argument begins by asserting that sovereign immunity protects governmental agencies like TDI and their officers sued in their official capacity unless waived. Am. Plea at 4. That argument is true as far as it goes, but it is inapplicable here, as the APA provides a clear waiver of immunity for “an action for declaratory judgment” challenging “[t]he validity or applicability” of an agency rule. Tex. Govt. Tode § 2001.038(a).

Defendants’ arguments asserting that the UDJA does not provide a general waiver of sovereign immunity (Am. Plea at 5) are likewise inapplicable; Plaintiff relies on the APA, not the UDJA, to provide this court jurisdiction to adjudicate its challenge to the Rate Order. On the very page of *Patel* that the Plea cites, it is clarified that UDJA claims are distinct from APA § 2001.038 claims challenging agency rules. Am. Plea at 5; *Patel v. Tex. Dep’t of Licensing & Regulation*, 469 S.W.3d 69, 79 (Tex. 2015).¹ And, as the Plea itself concedes, “section 2001.038 is a grant of original jurisdiction and, moreover, waives sovereign immunity”. Am. Plea at 6 (quoting *Tex. Logos, L.P. v. Tex. Dep’t of Transp.*, 241 S.W.3d 105, 123 (Tex. App.—Austin, no pet.)).

Defendants use *Patel* for its statement that a UDJA action is unavailable when it is a redundant remedy merely duplicating another claim (in this case, the unchallenged petition for judicial review pursuant to Texas Insurance Code § 36.201). In the first place, as noted above, the claim at issue here is not a UDJA claim but rather a claim for declaratory relief pursuant to the

¹ “**The State maintains that the Legislature has provided Momin and Yogi two alternative avenues under the Administrative Procedures Act (APA): (1) a suit for judicial review alleging that the administrative decision was “in violation of a constitutional or statutory provision,” Tex. Gov’t Code § 2001.174(2)(A); or (2) a suit for a pre-enforcement declaratory judgment alleging “that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff.”** *Id.* § 2001.038(a). The State contends that **because either of those APA provisions permits Yogi and Momin to file suits that would redress their alleged injuries, they may not pursue relief under the UDJA.** . . . The State’s contention that Section 2001.038 of the APA creates an avenue for pre-enforcement declaratory judgment that an agency rule is invalid and would redress the Threaders’ alleged injuries is likewise unavailing. **When a plaintiff files a proceeding that only challenges the validity of an administrative rule, the parties are bound by the APA and may not seek relief under the UDJA** because such relief would be redundant.” *Patel v. Tex. Dep’t of Licensing & Regulation*, 469 S.W.3d 69, 79 (Tex. 2015) (emphasis added).

APA. However, Defendants' argument suffers from a further infirmity. The "redundant remedies" rule does not examine whether another claim is directed at the same "controversy" as a UDJA claim, as the Plea baldly asserts without authority. *See* Am. Plea at 6. Rather, the test is whether the two claims offer the same *remedy*. *See Patel*, 469 S.W.3d at 79. While the Plea suggests that Plaintiff's "claim for declaratory relief is merely incidental to the suit for judicial review," Am. Plea at 6, its concurrently-filed Response to Plaintiff's Request for Injunctive Relief ("Resp.") tells a different story. In that brief, Defendants highlight that Plaintiff's § 36.201 judicial review action challenging the Rate Order is an "appeal" of a rate order. Resp. at 9. Defendants there rely on a strained misinterpretation of Texas Insurance Code § 37.053 to suggest that in such an appeal the trial court is without jurisdiction to grant Plaintiff temporary injunctive relief. *Id.* This argument is incorrect, as discussed in Plaintiff's Reply in Support of Application for Temporary Injunction. However, if the Court were to accept it, then it would be clear that Defendants' "redundant remedies" argument is false; the APA challenge action would be necessarily retained as a basis to allow the court to order temporary injunctive relief against the enforcement of the challenged rule. *See Tex. Dep't of Pub. Safety v. Salazar*, 304 S.W.3d 896, 903 (Tex. App.—Austin 2009, no pet.) (clarifying that injunctive relief is available against a state agency under § 2001.038). In any event, Plaintiff's claim is an APA rule challenge over which this Court has jurisdiction.

The Plea does make one argument explicitly directed toward Plaintiff's APA rule challenge. The Plea argues that the APA challenge is not available because the Rate Order does not qualify as an APA "rule." Plea at 6-7. The Plea correctly sets out the relevant test; under the APA, a "statement of general applicability that: implement, interprets, or prescribes law or policy.

. . .” qualifies as a “rule.” Am. Plea at 7 (quoting Tex. Gov’t Code § 2001.003(6)(A)).² At this point, Defendants’ Plea becomes unclear; it simply asserts without applying this test that the agency decision Plaintiff challenges is “a rate order under section 2703.202(g), not a rule.” *Id.* The operative language of the Rate Order is as follows: “It is ordered that, effective July 1, 2025, title insurance companies and title insurance agents must use the basic premium rates reflected in Exhibit A.” TDI CC 297. Thus, the Order prescribes a law (the requirement to charge identified basic premium rates, effective July 1, 2025) that is generally applicable to the identified class of “title insurance companies and title insurance agents.” This clearly meets the APA’s definition of a rule, and accordingly § 2001.038 applies. As in many other cases, the fact that the agency at issue self-servingly does not denominate its action as a “rule” does not affect the analysis under the test. *See, e.g. El Paso Hosp. Dist. v. Tex. HHS Comm’n*, 247 S.W.3d 709, 714 (Tex. 2008) (an agency’s informal determination of a data cutoff date for calculating Medicaid reimbursement rates qualified as an APA rule.); *Tex. DOT v. Sunset Transp., Inc.*, 357 S.W.3d 691, 703 (Tex. App.—Austin 2011, no pet.) (an APA rule “obviously includes” and “extends beyond” “state agency statements formally promulgated” in a rulemaking procedure). Rather, “[T]he core concept” in distinguishing between an agency statement that constitutes a “rule” from one that falls short is whether the agency statement has “a binding effect on private parties.” *Tex. Tel. Ass’n v. PUC of Tex.*, 653 S.W.3d 227, 266 (Tex. App.—Austin 2022, no pet.) (quoting *Texas State Bd. of Pharmacy v. Witcher*, 447 S.W.3d 520, 529 (Tex. App.—Austin 2014, pet. denied).

² Here, “General applicability” refers to agency “statements that affect the interest of the public at large such that they cannot be given the effect of law without public input.” *R.R. Comm’n of Tex. v. WBD Oil & Gas Co.*, 104 S.W.3d 69, 79 (Tex. 2003). The Rate Order is clearly such a statement, as it affects regulated rates for the entire Texas title insurance industry and its millions of consumers (in contrast, an agency order affecting the rights of a single person or entity, like an individual’s professional license, would not have “general applicability”).

Though the argument is far from clear, Defendants may be suggesting that the Rate Order is not a “rule” because prior to its effective date it has not been incorporated into the Texas administrative code, apparently a disguised ripeness argument. Plea at 7. Notably, Defendants cite no authority for this assertion. On its face, the rate reduction is implemented by the Order itself, effective July 1, 2025. *See John Gannon, Inc. v. Tex. DOT*, No. 03-18-00696-CV, 2020 Tex. App. LEXIS 8074, at *18 (Tex. App.—Austin Oct. 9, 2020, pet. denied) (agency guidance implemented and prescribed law since it contained an effective date after which new requirements would apply). Just as in *El Paso Hospital District*, the agency statement challenged here alters the private rights of the regulated parties by affecting their revenue. 247 S.W.3d at 714-15.

To the extent that Defendants argue that Plaintiff’s APA challenge under 2001.038 is not ripe, this argument fails. A court’s ripeness analysis considers whether, at the time a lawsuit is filed, the facts are sufficiently developed so that an injury has occurred or is likely to occur, rather than being contingent or remote. *See Patel v. Texas Dep’t of Licensing & Regulat.*, 469 S.W.3d 69, 78 (Tex. 2015). Here, resolving Plaintiff’s APA challenges to the Rate Order do not require the determination of any factual matters that have not yet sufficiently developed; it is clear on the existing record that the Rate Order is a rule, that Defendants failed to follow the proscribed rulemaking procedures of both the APA and the insurance code, and that they additionally failed to substantially comply with the APA’s reasoned justification requirement. *See* Pl’s Brief in Support of Temp. Inj. at 7-15. Likewise, the injury is not remote or contingent; to some extent TLTA and its members are already being harmed by the February 6, 2025 Rate Order, and they will certainly be harmed as of July 1, when the Order goes into effect and slashes their premium rates.

Having applied the established legal standard for ripeness to Plaintiff's APA claim, it is perhaps clearer why Defendants neglected to identify such standard in their argument. Plaintiff's challenge clearly concerns an APA rule, and such challenge is clearly ripe. Indeed, temporary injunctive relief is needed to stave off imminent harm resulting from the Rate Order.

In sum, TDI's Rate Order unambiguously satisfies the APA's definition of a "rule," regardless of the agency's chosen nomenclature or procedural shortcuts, and Plaintiff's challenge is ripe for adjudication.

III. REQUEST FOR RELIEF

Plaintiff requests the Court deny Defendants' Plea to the Jurisdiction, and prays for any other and further relief to which it may show it justly entitled.

Respectfully submitted,

By /s/ Ray Chester

Ray C. Chester
State Bar No. 04189065
Andrew M. Edge
State Bar No. 24071446
McGinnis Lochridge LLP
1111 W. 6th Street, Bldg. B, Suite 400
Austin, Texas 78703
(512) 495-6000
(512) 495-6093 (Fax)
rchester@mcginnislaw.com
aedge@mcginnislaw.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of May, 2025, I electronically filed the above and foregoing document, which will send notification of such filing to:

James Z. Brazell
Administrative Law Division
Office of the Attorney General of Texas
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548
James.Brazell@oag.texas.gov

/s/ Ray Chester

Ray Chester