Harvey Rosenfield, SBN 123082
Pamela Pressley, SBN 180362
Jonathan Phenix, SBN 307327
CONSUMER WATCHDOG
2701 Ocean Park Blvd., Suite 112
Santa Monica, CA 90405
Tel. (310) 392-0522
Fax (310) 392-8874
harvey@consumerwatchdog.org
pam@consumerwatchdog.org
jon@consumerwatchdog.org

Attorneys for CONSUMER WATCHDOG

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Rate Application of State Farm General Insurance Company, Applicant.	File No.: 16-3238 **CONSUMER WATCHDOG'S PETITION FOR HEARING, PETITION TO INTERVENE, AND NOTICE OF INTENT TO SEEK COMPENSATION** [Ins. Code §§ 1861.05(c) and 1861.10; Cal. Code Regs, tit. 10, §§ 2653.1, 2661.2 and 2661.3]

Consumer Watchdog hereby requests that the Insurance Commissioner notice a public hearing pursuant to Insurance Code sections 1861.05, subdivision (c), and 1861.10, subdivision (a), on the above-referenced rate application of State Farm General Insurance Company ("Applicant") at which time Applicant will be directed to appear and respond to the issues raised in this petition. Consumer Watchdog also hereby requests that it be granted leave to intervene in the proceeding on Applicant's rate filing. Consumer Watchdog intends to seek compensation in this proceeding, and, pursuant to California Code of Regulations, title 10 ("10 CCR"), section 2661.3 subdivision (c), Consumer Watchdog's proposed budget is attached hereto as Exhibit A.

In support of its petition, Consumer Watchdog alleges:

I. THE APPLICATION

1. On or about June 1, 2016, Applicant filed a Prior Approval Rate Application with

the California Department of Insurance ("CDI") seeking an overall rate decrease of 21.6% to its independent Rental Dwelling Program (File No. 16-3238 ["Application"]). On or about June 17, 2016, the public was notified of the Application.

II. PETITIONER

2. Petitioner Consumer Watchdog is a nonprofit, nonpartisan, public interest corporation organized to represent the interests of consumers and taxpayers. A core focus of Consumer Watchdog's advocacy is the representation of the interests of insurance consumers and policyholders, particularly as they relate to the implementation and enforcement of Proposition 103, in matters before the Legislature, the courts, and the CDI.

3. Consumer Watchdog's founder authored Proposition 103 and led the successful campaign for its enactment by California voters in 1988. Consumer Watchdog's staff and consultants include some of the nation's foremost consumer advocates and experts on insurance ratemaking matters.

4. Consumer Watchdog has served as a public watchdog with regard to insurance rates and insurer rollback liabilities under Proposition 103 by: monitoring rollback settlements and the status of the rollback regulations; reviewing and challenging rate filings made by insurers seeking excessive rates; participating in rulemaking and adjudicatory hearings before the CDI; and educating the public concerning industry underwriting and rating practices, their rights under Proposition 103, and other provisions of state law. Consumer Watchdog has also initiated and intervened in actions in state court and appeared as amicus curiae in matters involving the interpretation and application of Proposition 103 and the Insurance Code.[1]

[1] For example, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243; *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473; *Spanish Speaking Citizens' Foundation v. Low* (2000) 85 Cal.App.4th 1179; *Donabedian v. Mercury Insurance Co.* (2004) 116 Cal.App.4th 968; *State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029; *The Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354; and *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029.

5. Consumer Watchdog has initiated and intervened in numerous proceedings before the CDI related to the implementation and enforcement of Proposition 103's reforms, including over 90 such proceedings in the last twelve years. In each and every proceeding in the last twelve years that has resulted in a final decision and in which Consumer Watchdog sought compensation, the Commissioner found that Consumer Watchdog made a substantial contribution, meaning that its participation was separate and distinct from any other party and that it presented relevant issues, evidence and arguments that resulted in more credible, non-frivolous information being available to the Commissioner in making his final decision.

III. EVIDENCE

6. At the requested public hearing, Consumer Watchdog will present and elicit evidence that the rates proposed in the Application are excessive and/or unfairly discriminatory in violation of Insurance Code section 1861.05, subdivision (a), which provides that "[n]o rate shall be approved or remain in effect which is excessive, inadequate, [or] unfairly discriminatory." Additionally, Consumer Watchdog will present and elicit evidence that Applicant's proposed rates violate 10 CCR § 2644.1, which provides that "[n]o rate shall be approved or remain in effect that is above the maximum permitted earned premium as defined in section 2644.2."

7. Based on Consumer Watchdog's preliminary analysis and the information contained in the Application, Consumer Watchdog will present and seek evidence during the proceeding on each of the following issues to show that Applicant's proposed rates are excessive and/or unfairly discriminatory in violation of Insurance Code section 1861.05, subdivision (a), and the prior approval rate regulations, 10 CCR § 2644.1, et seq.:

a. Improper / Unsupported Projected Losses (10 CCR § 2644.4(e)): Applicant uses an excessive and unsupported provision for fire following earthquake losses based upon computer modeled values. (Exhibit 9, Page 5.) Applicant did not provide sufficient details regarding the assumptions and calculations underlying the fire following earthquake provision. Applicant did not provide the documentation or support required by regulation.

b. Improper / Unsupported Catastrophe Adjustment (10 CCR § 2644.5): Applicant applies a 2% annual trend factor to its California historical catastrophe experience (Exhibit 9, Page 3). That 2% trend factor is based on countrywide data (Exhibit 9, Pages 1-2). The use by Applicant of an annual catastrophe trend factor of 2% a year based on experience outside of California results is an excessive rate projection. In addition, Applicant makes no correction for the unusual experience from the 1991 Oakland Fire. The October 1991 Oakland Fire is a catastrophe that should be spread over at least 50 years.

c. Improper / Unsupported Loss and Premium Trends (10 CCR § 2644.7): Applicant failed to prove that its trend selections, or the data periods used, are the most actuarially sound.

d. Improper / Unsupported Excluded Expenses (10 CCR § 2644.10): Applicant has not shown that all of its institutional advertising expenses have been reflected in the excluded expense provision. There may also be excluded expenses for other categories that should be reflected in the rate calculation but were not adequately reflected in the filing.

e. Improper / Unsupported Projected Yield (10 CCR § 2644.20): In calculating the projected yield, the regulation requires that "[t]he weights shall be determined using the insurer's most recent consolidated statutory annual statement." Applicant failed to use the data required by the regulation. The inappropriate asset distribution used by Applicant understates the projected yield, thereby understating investment income, resulting in an excessive rate projection.

f. Improper / Unsupported Variance 3 (10 CCR § 2644.27 (f)(3)): While Applicant may meet the first requirement of the variance – writing more than 90% of its direct earned premium in California, Applicant does not meet the second requirement of the variance – that its "mix of business presents investment risks different from the risks that are typical of the line as a whole." Applicant does not provide any relevant evidence in support of such a claim.

g. Rating Factors: Applicant uses undocumented, unsupported generalized linear models to produce indicated rating factors. Deficiencies in the documentation of the models used include not providing the assumptions underlying the model, not giving a description of the model inputs and not providing verification or validation of the model outputs. The unsupported rating factors result in a huge range in the proposed rate changes, up to a maximum percent change of +61.3%.

8. Based upon its initial analysis, Consumer Watchdog submits that the Commissioner should reject the Applicant's proposed rates, order a greater overall rate decrease, and take such further corrective action as necessary.

9. This petition is based upon Consumer Watchdog's preliminary analysis of the Application. Thus, Consumer Watchdog reserves the right to modify, withdraw and/or add issues for consideration as more information becomes available.

IV. AUTHORITY FOR PETITION AND GRANTING REQUEST FOR A HEARING

10. The authority for this petition for hearing is Insurance Code section 1861.10, subdivision (a), which grants "any person" the right to initiate or intervene in a proceeding permitted or established by Proposition 103 and the right to enforce Proposition 103. Specifically, as stated above, Consumer Watchdog initiates this rate proceeding to enforce Insurance Code section 1861.05, subdivision (a), and the prior approval rate regulations.

11. Additionally, a hearing is authorized pursuant to Insurance Code section 1861.05, subdivision (c), which allows "a consumer or his or her representative" to request a hearing on a rate application and 10 CCR § 2653.1, which provides that "any person, whether as an individual, representative of an organization, or on behalf of the general public, may request a hearing by submitting a petition for hearing."

12. This petition does not involve a rate that has been approved by the Insurance Commissioner after a hearing within the preceding 12 months.

V. INTEREST OF PETITIONER

13. Consumer Watchdog's interest in the above-captioned proceeding is to ensure that Applicant's homeowners insurance policyholders are charged rates that comply with Insurance

Code section 1861.05(a)'s requirement that "no rate shall be approved or remain in effect which is excessive, inadequate, [or] unfairly discriminatory." For most homeowners, their home is their most valuable asset and mortgage lenders generally require homeowners insurance. Consumers who might be overcharged by insurers as they attempt to protect their homes are part of Consumer Watchdog's core constituency.

14. As noted in paragraphs 2-5 above, Consumer Watchdog's staff and consultants have substantial experience and expertise in insurance rate matters that Consumer Watchdog believes will aid the CDI in its review of the Application and aid the Commissioner in making his ultimate decision as to whether to approve or disapprove the requested rate change. As noted in paragraph 5 above, the Commissioner has found that Consumer Watchdog has made a substantial contribution in all of the rate proceedings in which it has intervened in the last twelve years that have proceeded to a final decision and Consumer Watchdog has sought compensation. If leave to intervene is granted, Consumer Watchdog will submit testimony from actuarial experts and participate fully in all aspects of this proceeding.

VI. AUTHORITY FOR PETITION TO INTERVENE

15. The authority for Consumer Watchdog's petition to intervene is Insurance Code section 1861.10, subdivision (a), which grants "any person" the right to "initiate or intervene in any proceeding permitted or established pursuant to this chapter [Chapter 9 of Part 2 of Division 1 of the Insurance Code] . . . and enforce any provision of this article." This proceeding is a rate proceeding to determine whether Applicant's proposed rates are excessive pursuant to Insurance Code section 1861.05, subdivision (a), and hence is a proceeding both "permitted" and "established" by Chapter 9. Moreover, Consumer Watchdog seeks to "enforce" section 1861.05, enacted by Proposition 103, against Applicants. This petition to intervene is also authorized by 10 CCR § 2661.1 et seq. Although consumer presence in departmental proceedings typically results in significant reductions to policyholders' rates, the amount of savings for each individual consumer is outweighed by the time and expense of hiring individual counsel or an advocacy group to protect his or her rights. Thus, an independent group like Consumer Watchdog introduces a voice that, otherwise, would be absent from this proceeding.

VII. PARTICIPATION OF CONSUMER WATCHDOG

16. Consumer Watchdog verifies, in accordance with 10 CCR § 2661.3, that it will be able to attend and participate in this proceeding without unreasonably delaying this proceeding or any other proceedings before the Insurance Commissioner.

VIII. INTENT TO SEEK COMPENSATION

17. The Commissioner has awarded Consumer Watchdog compensation for its reasonable advocacy and witness fees and expenses in past departmental proceedings. The Commissioner issued Consumer Watchdog's most recent Finding of Eligibility on July 14, 2016, effective immediately. Consumer Watchdog was previously found eligible to seek compensation on July 24, 2014, July 24, 2012, July 2, 2010, August 25, 2008, July 14, 2006, July 2, 2004, June 20, 2002, October 1, 1997, September 26, 1995, September 27, 1994, and September 13, 1993.

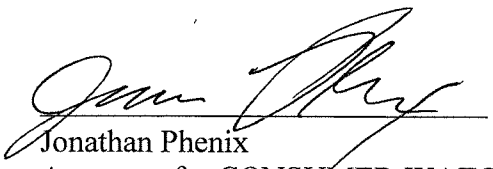
18. Consumer Watchdog intends to seek compensation in this proceeding. Pursuant to 10 CCR § 2661.3(c), Consumer Watchdog's estimated budget in this proceeding is attached hereto as Exhibit A. Consumer Watchdog has based its estimated budget on several factors including: (1) the technical and legal expertise needed to address these issues; (2) its current best estimate of the time needed to participate effectively in these proceedings, taking into account the time already expended by Consumer Watchdog staff and its consulting actuary and an estimate of time needed to complete remaining tasks; and (3) past experience in similar rate proceedings before the CDI. The estimated budget is reasonable and the staffing level is appropriate, given the expertise that Consumer Watchdog and its consultants bring to these proceedings when the issues involved are issues at the very core of its organizational mission and strike at the very heart of Proposition 103 itself. The budget presented in the attached Exhibit is a preliminary estimate, and Consumer Watchdog reserves the right to amend its proposed budget as its expenses become more certain, or in its request for final compensation. Consumer Watchdog will give notice of such modifications as soon as practicable after it discovers the need to revise its estimates, and shall comply with the budget revision requirements in the relevant intervenor regulations.

WHEREFORE, Consumer Watchdog respectfully requests that the Insurance Commissioner GRANT its petition for hearing and petition to intervene in the proceeding initiated on Applicant's rates.

DATED: August 1, 2016

Respectfully submitted,
Harvey Rosenfield
Pamela Pressley
Jonathan Phenix

CONSUMER WATCHDOG

By: 
Jonathan Phenix
Attorneys for CONSUMER WATCHDOG

VERIFICATION OF JONATHAN PHENIX IN SUPPORT OF CONSUMER WATCHDOG'S PETITION FOR HEARING, PETITION TO INTERVENE, AND NOTICE OF INTENT TO SEEK COMPENSATION

I, Jonathan Phenix, verify:

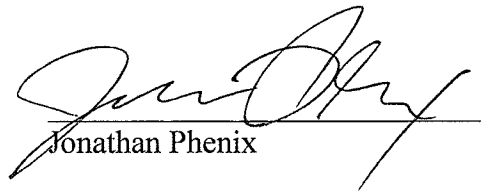
1. I am an attorney employed by Consumer Watchdog. If called as a witness, I could and would testify competently to the facts stated in this verification.

2. I personally prepared the pleading titled, "Consumer Watchdog's Petition for Hearing, Petition to Intervene, and Notice of Intent to Seek Compensation" filed in this matter. All of the factual matters alleged therein are true of my own personal knowledge, or I believe them to be true after I conducted some inquiry and investigation.

3. Pursuant to California Code of Regulations, title 10, section 2661.3, Consumer Watchdog attaches as Exhibit A its estimated budget in this proceeding.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed August 1, 2016, at Santa Monica, California.



Jonathan Phenix