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APR 18 2017

ADMINISTRATIVE HEARING BUREAU

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the rating practices of
FARMERS INSURANCE EXCHANGE
and MID CENTURY INSURANCE
COMPANY

File No. NC-2017-00003

NOTICE OF HEARING

TO: FARMERS INSURANCE EXCHANGE and MID CENTURY INSURANCE
COMPANY, YOU ARE HEREBY NOTIFIED:

Having been considered by the Commissioner, a hearing IS ORDERED for the purposes
described below.

I. BACKGROUND

This hearing arises out of a primary jurisdiction referral from the Los Angeles Superior
Court in the matter of *Roger Harris, Duane Brown, and Brian Lindsey v. Farmers Insurance
Exchange and Mid Century Insurance Company* ("Farmers") (Case No. BC579498) (hereafter
"*Harris v. Farmers*"). In *Harris v. Farmers*, the Plaintiffs allege that Farmers engaged in an
illegal rating practice by using "elasticity of demand" as a rating factor in calculating Private
Passenger Automobile ("PPA") insurance premiums.

A. Elasticity of Demand and Price Optimization

The Plaintiffs in *Harris v. Farmers* define "elasticity of demand" as "an individual's

1 sensitivity to price changes.” (First Amended Complaint (“FAC”) ¶ 36.) An individual whose
2 demand is “elastic” is sensitive to price changes, so that individual is likely to seek insurance
3 elsewhere in response to a relatively small price increase. (FAC ¶ 37.) Conversely, an individual
4 whose demand is “inelastic” is relatively insensitive to price changes, so he or she is relatively
5 unlikely to seek insurance elsewhere in response to a price increase. (FAC ¶ 38.)

6 Pricing based on elasticity of demand is also known as “price optimization” and is
7 prohibited under California law. (See The California Department of Insurance’s (“CDI’s or the
8 Department’s”) February 15, 2015 “Notice Regarding Unfair Discrimination in Rating: Price
9 Optimization.”) In the PPA context, the use of elasticity of demand as a rating factor is prohibited
10 under California Insurance Code (“CIC”) section 1861.02(a), because that section allows insurers
11 to adopt only those rating factors which are authorized by statute or regulation. Elasticity of
12 demand as a PPA rating factor is authorized neither by statute nor regulation, and the use of any
13 unauthorized criterion constitutes unfair discrimination. (See CIC § 1861.02(a)(4) and California
14 Code of Regulations, title 10 (“CCR”) § 2632.5.) The use of elasticity of demand in rating is also
15 unfairly discriminatory under CIC section 1861.05(a) because it does not seek to arrive at an
16 actuarially sound estimate of the risk of loss. The use of elasticity of demand in rating may also
17 violate CCR section 2360.3 if it results in insureds being charged a rate higher than the lowest
18 rate they qualify for.

19 **B. History**

20 On or about October 29, 2015, the Plaintiffs in *Harris v. Farmers* filed an amended
21 complaint alleging that Farmers engaged in illegal price optimization by using elasticity of
22 demand as a factor in calculating PPA insurance premiums.

23 On or about November 30, 2015, Farmers filed a demurrer in which it argued that the
24 Commissioner had exclusive jurisdiction over the Plaintiffs’ claims and therefore the case should
25 be dismissed. In the alternative, Farmers asked the Court to stay the case pursuant to the primary
26 jurisdiction doctrine and refer the rating issues on which it is based to the Commissioner, after
27 which the matter would resume in the referring court.

28 On or about January 25, 2016, the Los Angeles Superior Court overruled Farmers’

1 demurrer with respect to four of the Plaintiffs' five causes of action, while granting Farmers'
2 request to stay the case pursuant to the primary jurisdiction doctrine pending proceedings before
3 the Commissioner. (See Order attached as Exhibit A.) The Court found that the Commissioner's
4 expertise is needed to determine whether Farmers used elasticity of demand in calculating
5 premiums because the determination would involve a technical analysis of the rating factors and
6 formulas used.

7 On or about February 10, 2016, the Plaintiffs sent a letter to California Insurance
8 Commissioner Dave Jones notifying him of the referral.

9 On or about May 2, 2016, the Department sent a letter to Farmers advising it that the
10 Department was undertaking an investigation into whether Farmers was engaging in price
11 optimization and asking Farmers to respond to written questions and data requests.

12 On or about August 12, 2016, Farmers produced some data and provided some answers to
13 written questions in response to the Department's May 2, 2016 letter. Farmers asserted its August
14 12, 2016 responses were entitled to confidential treatment under CIC section 735.5 and the
15 California Public Records Act (Chapter 3.5 (commencing with section 6250) of Division 7 of
16 Title 1 of the Government Code).

17 Farmers' August 12, 2016 responses and subsequent follow-up discussions between the
18 Department and Farmers were insufficient for Department staff to determine whether Farmers
19 engaged in price optimization.

20 II. DETERMINATION TO HOLD HEARING

21 Based on the foregoing, IT IS ORDERED that:

22 Pursuant to CIC sections 12921 and 12926 and CCR section 2615.2 et seq., the
23 Commissioner, on his own motion and in response to the Los Angeles Superior Court's January
24 25, 2016 Order has determined to hold a hearing on: (1) whether Farmers has violated California
25 insurance law by using illegal price optimization; (2) how Farmers implemented any such illegal
26 price optimization in its rate and/or class plans; and (3) how any such illegal price optimization
27 impacted Farmers' policyholders.

28 The Plaintiffs in *Harris v. Farmers* may participate in this proceeding as intervenors

1 pursuant to CIC section 1861.10 by filing a Petition to Participate that meets the requirements set
2 forth in CCR section 2661.4. The Petition to Participate shall be submitted to the CDI's Rate
3 Enforcement Bureau and served on the Public Advisor. Pursuant to section 1861.10, any other
4 person may also intervene in this proceeding.

5 The hearing shall be held before the Department's Administrative Hearing Bureau
6 ("AHB"). The AHB will set the time and place for the hearing. The hearing shall be conducted
7 pursuant to Article 1 (commencing with section 2615) of Subchapter 4.5 of Chapter 5 of title 10
8 of the CCR. The hearing shall be presided over by an Administrative Law Judge ("ALJ") from
9 the AHB, who shall issue a proposed decision to the Commissioner.

10 Pursuant to the ALJ's authority under CCR section 2615.3, the ALJ shall issue a Pre-
11 Hearing Order addressing scheduling, allowable pleadings and motions, discovery, scope of
12 relevant evidence, rebuttal rights, briefing, and other procedural matters. Witness depositions
13 shall be permitted in the proceeding in the manner prescribed by law for depositions in civil
14 actions under Title 4 (commencing with section 2016.010) of Part 4 of the Code of Civil
15 Procedure. Subpoenas shall be permitted under the procedures set forth in the California
16 Administrative Procedure Act at Chapter 4, Article 11 (commencing with section 11450.05) of
17 Division 3 of Title 2 of the Government Code.

18 The Commissioner's findings in this matter will be conveyed to the Los Angeles Superior
19 Court. If the Commissioner finds Farmers is using elasticity of demand in an illegal manner, for
20 example as an unapproved rating factor in violation of CIC section 1861.02 and/or 1861.05, the
21 Commissioner may order Farmers to cease and desist the practice immediately pursuant to the
22 authority vested in the Commissioner under the California Insurance Code, including but not
23 limited to CIC sections 12921 and 12926. The Commissioner may also adopt the factual and legal
24 determinations resulting from this hearing in subsequent legal actions involving Farmers
25 including, but not limited to, noncompliance actions under Article 7 of Chapter 9 of Part 2 of
26 Division 1 of the CIC and rate hearings under Article 10 of Chapter 9 of Part 2 of Division 1 of
27 the CIC.
28

Dated: 4/14/17

CALIFORNIA DEPARTMENT OF INSURANCE

By 

John Finston, General Counsel

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Exhibit A

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JAN 25 2016

Sherri R. Carter, Executive Officer/Clerk
By: Nancy Navarro, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ROGER HARRIS, DUANE BROWN, and
BRIAN LINDSEY

Plaintiffs,

vs.

FARMERS INSURANCE EXCHANGE
and MID CENTURY INSURANCE
COMPANY,

Defendants.

Case Nos.: BC579498

~~DEFENDANT'S~~ ORDER SUSTAINING IN
PART AND OVERRULING IN PART
DEFENDANTS' DEMURRER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT

Hearing Date: January 25, 2016
Time: 11:00 a.m.
Dept.: 307

Plaintiffs Roger Harris, Duane Brown, and Brian Lindsey (collectively, "Plaintiffs") bring this putative class action against Defendants Farmers Insurance Exchange and its affiliate, Mid Century Insurance Company (collectively "Farmers" or Defendants") alleging that Defendants violated Ins. Code § 1861.02 and Cal. Code Regs., tit. 10 § 2632.5 by impermissibly calculating auto insurance premiums based on a policyholder's willingness to tolerate a price increase – a factor known as "elasticity of demand." Defendants demur that Plaintiffs' UCL causes of action (1) fall within the exclusive jurisdiction of the

1 California Department of Insurance and is barred by Ins. Code § 1860.1; (2) are barred by
2 the "filed rate" doctrine; (3) are barred due to Plaintiffs' failure to exhaust administrative
3 remedies; and (4) are barred by the "safe harbor" provisions of the UCL. Alternatively,
4 Defendants argue that this case should be stayed under the "primary jurisdiction" doctrine
5 pending proceedings before the Commissioner of Insurance (the "Commissioner").

6
7 The Court finds that Plaintiffs' UCL and unjust enrichment causes of action are not
8 barred by Ins. Code § 1860.1 or the "filed rate" doctrine because Plaintiffs are not
9 challenging a rate or rating factor approved by the Commissioner. However, the Court
10 agrees that Plaintiffs fail to allege a viable cause of action for violation of Ins. Code §
11 1861.10. The Court also agrees that the doctrine of primary jurisdiction applies and that this
12 matter should be stayed pending proceedings before the Commissioner.

13
14 Accordingly, the Court OVERRULES Defendants' demurrer as to Plaintiffs' UCL
15 and unjust enrichment causes of action. The Court SUSTAINS WITHOUT LEAVE TO
16 AMEND Defendants' demurrer as to Plaintiffs' cause of action for violation of Ins. Code §
17 1861.10. The Court STAYS this matter pending proceedings before the Commissioner.

18 **I. Introduction**

19
20 **A. Facts Alleged**

21
22 Auto insurance premiums in California are set pursuant to a two-step process. (FAC
23 ¶ 26.) First, an insurer must calculate and obtain the Insurance Commissioner's approval of
24 a "base rate," which is the same for each policyholder and represents the total annual
25 premium that the insurer must charge in order to cover expenses and obtain a reasonable rate
26 of return. (FAC ¶ 26; Ins. Code § 1861.05.) Second, an insurer must file a "class plan"
27 disclosing the rating factors used to determine each policyholder's premium. (FAC ¶ 29.)
28 Rating factors are defined as "any factor, including discounts, used by an insurer which

1 establishes or affects the rates, premiums, or charges assessed for a policy of automobile
2 insurance.” (FAC ¶ 28; Cal. Code Regs. (“CCR”), tit. 10, § 2632.2.)
3

4 The Insurance Code states that rates and premiums “shall” be determined by
5 application of the following factors: “(1) The insured's driving safety record. (2) The number
6 of miles he or she drives annually. (3) The number of years of driving experience the insured
7 has had. (4) Those other factors that the commissioner may adopt by regulation and that have
8 a substantial relationship to the risk of loss.” (FAC ¶ 30; Ins. Code § 1861.02(a).) Code of
9 Regulations, title 10, § 2632.5(d) sets forth additional rating factors approved by the
10 Commissioner including the type of vehicle, vehicle performance capabilities, gender,
11 marital status, and persistency. (FAC ¶ 31.)
12

13 The Commissioner has not approved “elasticity of demand” as a rating factor that
14 insurers may consider in determining a policyholder’s premium. (FAC ¶ 32; CCR, tit. 10, §
15 2632.5(d).) Nevertheless, Plaintiffs allege that Defendants use elasticity of demand as a
16 rating factor and charge certain policyholders more if they are unlikely to seek insurance
17 elsewhere in response to a price increase. (FAC ¶ 39.) Defendants did not disclose their use
18 of elasticity of demand in their class plan. (FAC ¶ 40.) As a result, “Defendants’ customers
19 whose demand is inelastic . . . pay prices that are higher than they would have paid based on
20 the risk they present, and higher than they would have paid in accordance with the class plan
21 Defendants filed with the Department and that the Department approved.” (FAC ¶ 39.)
22

23 Plaintiffs allege that named Plaintiffs and putative class members have suffered injury
24 in fact and have lost money as a result of Defendants’ unlawful business acts and practices.
25 (FAC ¶ 80.)

26 B. Procedural History
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1 On April 22, 2015, Plaintiffs filed their initial class action complaint against
2 Defendants. On October 29, 2015, Plaintiffs filed the operative First Amended Complaint
3 alleging the following causes of action:

- 4 1. Violation of Unfair Competition Law – Commission of Unlawful Business Act or
5 Practice Cal. Bus. § Prof. Code § 17200 et seq.;
- 6 2. Violation of Unfair Competition Law – Commission of Unfair Business Act or
7 Practice Cal. Bus. § Prof. Code § 17200 et seq.;
- 8 3. Violation of Unfair Competition Law – Commission of Fraudulent Business Act
9 or Practice Cal. Bus. § Prof. Code § 17200 et seq.;
- 10 4. Unjust Enrichment;
- 11 5. Violation of Cal. Ins. Code § 1861.10.

12 Defendants demur to all causes of action. Plaintiffs oppose.

13 **II. Analysis: Demurrer**

14 A demurrer for sufficiency tests whether the complaint states a cause of action. (*Hahn*
15 *v. Mirda* (2007) 147 Cal.App.4th 740, 747.) When considering demurrers, courts read the
16 allegations liberally and in context. In a demurrer proceeding, the defects must be apparent
17 on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins. Co.*
18 (2004) 116 Cal.App.4th 968, 994.) “A demurrer tests the pleadings alone and not the
19 evidence or other extrinsic matters. Therefore, it lies only where the defects appear on the
20 face of the pleading or are judicially noticed (Cal. Code Civ. Proc., §§ 430.30, 430.70). The
21 only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected
22 with extraneous matters, states a cause of action.” (*Hahn, supra*, 147 Cal.App.4th at 747.)
23 “As a general rule in testing a pleading against a demurrer the facts alleged in the pleading
24 are deemed to be true, however improbable they may be. [Citation.] The courts, however,
25 will not close their eyes to situations where a complaint contains allegations of fact
26 inconsistent with attached documents, or allegations contrary to facts which are judicially
27
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1 noticed." (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604
2 [176 Cal.Rptr. 824].)

3
4 *A. Plaintiffs' Causes of Action Are Not Barred by the Insurance Code Because*
5 *Plaintiffs Are Not Challenging an Approved Rate*

6
7 Defendants argue that Ins. Code § 1860.1 bars Plaintiffs from challenging rates or
8 rating factors approved by the Insurance Commissioner. Section 1860.1 states:

9 No act done, action taken or agreement made pursuant to the authority conferred by
10 [Chapter 9 of the Insurance Code] shall constitute a violation of or grounds for
11 prosecution or civil proceedings under any other law of this State heretofore or
12 hereafter enacted which does not specifically refer to insurance.

13 The following section (§ 1860.2) provides:

14 The administration and enforcement of [Chapter 9] shall be governed solely by the
15 provisions of this chapter. Except as provided in this chapter, no other law relating to
16 insurance and no other provisions in this code heretofore or hereafter enacted shall
17 apply to or be construed as supplementing or modifying the provisions of this chapter
18 unless such other law or other provision expressly so provides and specifically refers
19 to the sections of this chapter which it intends to supplement or modify.

20 Defendants contend that under these sections, any challenges to an approved rate must
21 be brought under the administrative procedures set forth in Chapter 9 of the Insurance Code.

22 Specifically, article 7 of Chapter 9 states:

23 "Any person aggrieved by any rate charged, rating plan, rating system, or
24 underwriting rule followed or adopted by an insurer or rating organization, may file
25 a written complaint with the commissioner requesting that the commissioner review
26 the manner in which the rate, plan, system, or rule has been applied with respect to
27 the insurance afforded to that person. In addition, the aggrieved person may file a
28 written request for a public hearing before the commissioner, specifying the grounds
relied upon."

1 (Ins. Code, § 1858(a).) However, Ins. Code, § 1861.03, which is also under Chapter 9,
2 expressly states:

3 The business of insurance shall be subject to the laws of California applicable to any
4 other business, including, but not limited to, the Unruh Civil Rights Act (Sections 51
5 to 53, inclusive, of the Civil Code), and the *antitrust and unfair business practices*
6 *laws* (Parts 2 (commencing with Section 16600) and 3 (commencing with Section
17500) of Division 7 of the Business and Professions Code).

7 (Ins. Code, § 1861.03(a) [emphasis added].) As the court in *MacKay v. Superior Court*
8 (2010) 188 Cal.App.4th 1427, 1442 [115 Cal.Rptr.3d 893, 904] recognized, section 1861.03
9 “which makes all of ‘the laws of California applicable to any other business’ applicable to
10 ‘[t]he business of insurance,’ appears to contradict Insurance Code sections 1860.1 and
11 1860.2, which limit ratemaking enforcement to the statutes set forth in the ratemaking
12 chapter itself.” The *MacKay* court reconciled this contradiction by finding that section
13 1860.1 “does not exempt all acts done ‘pursuant to’ the chapter—which is to say, all
14 ratemaking acts—but instead exempts acts done ‘pursuant to the authority conferred by this
15 chapter.’” (*Id.* at 1443.) Because Chapter 9 “confers on the [Department of Insurance] the
16 exclusive authority to approve insurance rating plans,” the court concluded that “[a]n insurer
17 charging a preapproved rate is . . . taking an action pursuant to the authority conferred by the
18 chapter.”

19
20 In *MacKay*, the court held that plaintiffs were precluded from bringing a civil action
21 challenging defendant’s use of accident verification as a rating factor because “accident
22 verification was, in fact, a rating factor approved by the DOI.” (*Id.* at 1437.) However, the
23 court clarified that “if the underlying conduct challenged was not the charging of an
24 approved rate, but the *application* of an unapproved underwriting guideline, Insurance Code
25 section 1860.1 would not be applicable.” (*Id.* at 1450.) In other words, an insurer could
26 “file with the [DOI] a rate filing and class plan that [satisfies] all of the ratemaking
27 components of the regulations,” but still violate the Insurance Code in applying that
28 approved rate. (*Ibid.*) This is precisely what Plaintiffs allege happened in this case.

1 Plaintiffs allege that Defendants filed a rate filing and class plan meeting all the
2 requirements in the regulations. However, Plaintiffs allege that in applying the approved
3 rate, Defendants improperly took into consideration elasticity of demand as a rating factor.
4 The parties agree that elasticity of demand was not one of the rating factors submitted to the
5 DOI as part of Defendants' class plan, which means that Plaintiffs are not challenging a rate
6 or rating factors approved by the Commissioner. Thus, under *MacKay*, Plaintiffs' causes of
7 action are not barred by Ins. Code § 1860.1 because Plaintiffs are not challenging an "action
8 [taken] pursuant to the authority conferred by the chapter." (See *Donabedian v. Mercury*
9 *Ins. Co.* (2004) 116 Cal.App.4th 968, 992 [11 Cal.Rptr.3d 45, 62] [overruling trial court's
10 order granting defendant's demurrer to plaintiff's UCL cause of action because plaintiff was
11 not challenging an approved rate, but instead challenging defendant's use of "lack of prior
12 insurance" to determine insurability without the Commissioner's approval].)

13
14 B. Plaintiffs' Claims are Not Barred Under the "Filed Rate" Doctrine

15
16 Defendants next argue that Plaintiffs' claims are also barred under the "filed rate"
17 doctrine. The filed rate doctrine "derives from the requirement contained in the Federal
18 Communications Act that common carriers . . . file with the Federal Communications
19 Commission (FCC) and keep open for public inspection 'all charges [and the] classifications,
20 practices, and regulations affecting such charges.'" (*Day v. AT & T Corp.* (1998) 63
21 Cal.App.4th 325, 328-29 [74 Cal.Rptr.2d 55].) "[T]he doctrine presumes the consumer's
22 knowledge of all lawful rates and bars consumer suits for damages arising out of claims
23 involving those rates, on the premise that a consumer who pays the filed rate has suffered no
24 injury and incurred no damage." (*Ibid.*) In *MacKay*, the Court found that "[n]umerous state
25 courts have applied the filed rate doctrine to approved insurance rates." (*MacKay, supra*,
26 188 Cal.App.4th at 1448-49.)

1 In this case, even assuming the filed rate doctrine applies, Plaintiffs' claims are not
2 barred. As discussed above, Plaintiffs are not challenging the rate or rating factors filed with
3 the Department of Insurance. Instead, Plaintiffs allege that Defendants used inelasticity of
4 demand as a rating factor without the Department's approval and as a result charged a rate
5 higher than the approved rate.

6 C. Plaintiffs Allege Facts Sufficient to State a Cause of Action for Unjust
7 Enrichment
8

9 Defendants contend that Plaintiffs' unjust enrichment cause of action fails because it
10 is being used as a means to plead around explicit bars to other causes of action. (Dem. p.
11 14.) "The elements of an unjust enrichment claim are the 'receipt of a benefit and [the]
12 unjust retention of the benefit at the expense of another.'" (*Peterson v. Cellico Partnership*
13 (2008) 164 Cal.App.4th 1583, 1593 [80 Cal.Rptr.3d 316, 323].) The Court finds that
14 Plaintiffs have sufficiently alleged a cause of action for unjust enrichment by alleging that
15 Defendants "unjustly collected higher auto insurance payments from thousands of insureds
16 than they were entitled to by using elasticity of demand as a rating factor."
17

18 Defendants' citation to *Peterson v. Cellico Partnership* (2008) 164 Cal.App.4th 1583
19 [80 Cal.Rptr.3d 316] is inapposite. In *Peterson*, plaintiffs alleged that defendants were
20 unjustly enriched by selling insurance and receiving insurance premiums without a license
21 to sell such insurance. (*Id.* at 1586.) The appellate court affirmed the trial court's ruling
22 sustaining defendant's demurrer to plaintiffs' causes of action for violation of the UCL and
23 unjust enrichment, in part, because plaintiffs failed to allege an actual injury. (*Id.* at 1592,
24 1594.) The court also held that plaintiffs could not "circumvent the law and public policy
25 reflected in [the UCL]" by "pursu[ing] their claim under the label 'unjust enrichment.'" (*Id.*
26 at 1595.)
27
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1 Here, by contrast, Plaintiffs have alleged injury in fact and have stated a cause of
2 action under the UCL. Accordingly, the Court finds that Plaintiffs have also stated a cause
3 of action for unjust enrichment.

4
5 D. Plaintiffs Fail to Allege a Cause of Action for Violation of Ins. Code § 1861.10

6
7 Defendants demur to Plaintiffs' cause of action for violation of Ins. Code § 1861.10
8 on the grounds that that section of the Insurance Code does not create a private right of
9 action. The Court agrees. Ins. Code § 1861.10(a) states:

10
11 (a) Any person may initiate or intervene in any proceeding permitted or established
12 pursuant to this chapter, challenge any action of the commissioner under this article,
13 and enforce any provision of this article.

14
15 "The plain language of this clause provides no independent authority for a proceeding not
16 otherwise authorized by chapter 9, but creates broad standing in a proceeding 'permitted or
17 established pursuant to' chapter 9." (*Farmers Ins. Exchange v. Superior Court* (2006) 137
18 Cal.App.4th 842, 854 [40 Cal.Rptr.3d 653, 661].) In other words, under section 1861.10(a),
19 an insured may initiate an administrative procedure pursuant to section 1858(a) or file suit
20 under the UCL or another business law pursuant to section 1861.03(a). However, section
21 1861.10(a) "does not create a private right of action based on a violation of section 1861.02."
22 (*Id.* at 854.)

23
24 Accordingly, Plaintiffs' cause of action under section 1861.10(a) fails as a matter of
25 law.¹

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¹ The Court notes that Plaintiffs do not raise any arguments opposing Defendants' demurrer to this cause of action.

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1 20% below the rate the insured would otherwise have been charged for the same coverage";
2 (iii) unlawfully using the absence of insurance as a criterion for determining eligibility for a
3 Good Driver Discount policy . . . ; and (iv) "unfairly discriminating in eligibility and rates
4 for insurance for persons who qualify under the statutory criteria for a Good Driver Discount
5 policy." (*Id.* at 381-382.)
6

7 In view of the allegations in the People's complaint, the *Farmers* court found "good
8 reason to require that th[e] [Insurance Code's] administrative procedures be invoked." (*Id.*
9 at 396.) The court noted that "questions involving insurance ratemaking pose issues for
10 which specialized agency fact-finding and expertise is needed in order to both resolve
11 complex factual questions and provide a record for subsequent judicial review." (*Id.* at 397.)
12 Moreover, requiring courts "to rule on such matters without benefit of the views of the
13 agency charged with regulating the insurance industry" creates a "risk of inconsistent
14 application of the regulatory statutes." (*Id.* at 398.)
15

16 Plaintiffs respond that deferring this matter to the Commission is unnecessary because
17 the question of whether Defendants employed elasticity of demand as a rating factor is a
18 straightforward question that can be answered without the Commissioner's expertise. The
19 Court is not convinced. Defendants contend that they did not use elasticity of a demand as
20 a rating factor. Thus, evaluating Plaintiffs' claims would necessarily involve a technical
21 analysis of the rating factors and formulas used by Defendants in order to determine whether
22 or not elasticity of demand was taken into account. In such a situation, as recognized by the
23 *Farmers* court, "it seems clear that the Insurance Commissioner, rather than a court, is best
24 suited initially to determine whether his or her own regulations pertaining to compliance
25 have been faithfully adhered to by an insurer." (*Farmers, supra*, 2 Cal.4th at 399.)
26
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1 **III. Conclusion**

2 For the foregoing reasons, the Court SUSTAINS WITHOUT LEAVE TO AMEND
3 Defendants' demurrer to Plaintiffs' cause of action for violation of Ins. Code § 1861.10. The
4 Court OVERRULES Defendants' demurrer to Plaintiffs' remaining causes of action. In
5 addition, applying the doctrine of "primary jurisdiction," the Court STAYS this matter
6 pending proceedings before the Commissioner of Insurance.
7

8
9 **AMY D. HOGUE, JUDGE**

10 Dated: JAN 25 2016

11 AMY D. HOGUE
12 JUDGE OF THE SUPERIOR COURT
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PROOF OF SERVICE
In the Matter of the Rating Practices of
Farmers Insurance Exchange and Mid Century Insurance Company, Applicants.
CDI File No. NC-2017-00003

I am over the age of eighteen years and am not a party to the within action. I am an employee of the Department of Insurance, State of California, employed at 45 Fremont Street, 21st Floor, San Francisco, California 94105. On April 18, 2017, I served the following document(s):

NOTICE OF HEARING

on all persons named on the attached Service List, by the method of service indicated, as follows:

If **U.S. MAIL** is indicated, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items to be sent by mail, pursuant to Code of Civil Procedure Section 1013. I am familiar with this office's practice of collecting and processing documents placed for mailing by U.S. Mail. Under that practice, outgoing items are deposited, in the ordinary course of business, with the U.S. Postal Service on that same day, with postage fully prepaid, in the city and county of San Francisco, California.

If **OVERNIGHT SERVICE** is indicated, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items for overnight delivery, pursuant to Code of Civil Procedure Section 1013. I am familiar with this office's practice of collecting and processing documents placed for overnight delivery. Under that practice, outgoing items are deposited, in the ordinary course of business, with an authorized courier or a facility regularly maintained by one of the following overnight services in the city and county of San Francisco, California: Express Mail, UPS, Federal Express, or Golden State overnight service, with an active account number shown for payment.

If **EMAIL** is indicated, by electronic mail transmission this date to the email address(es) stated.

If **FAX SERVICE** is indicated, by facsimile transmission this date to fax number stated for the person(s) so marked.

If **PERSONAL SERVICE** is indicated, by hand delivery this date.

If **INTRA-AGENCY MAIL** is indicated, by placing this date in a place designated for collection for delivery by Department of Insurance intra-agency mail.

Executed this date at San Francisco, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Cecilia Padua

SERVICE LIST
In the Matter of the Rating Practices of
Farmers Insurance Exchange and Mid Century Insurance Company, Applicants.
CDI File No. NC-2017-00003

<u>Name/Address</u>	<u>Method of Service</u>
The Honorable Kristin L. Rosi Administrative Law Judge Administrative Hearing Bureau CALIFORNIA DEPARTMENT OF INSURANCE 45 Fremont Street, 22 nd Floor San Francisco, CA 94105 Tel. No. (415) 538-4387 Fax No. (415) 904-5854	Personal Service
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