



Consumer Watchdog Legal Project

Consumer Watchdog is a nonprofit, non-partisan consumer research and advocacy organization founded in 1985 by consumer attorney and advocate Harvey Rosenfield. Its mission is to provide an effective voice for taxpayers and consumers in an era when special interests dominate public discourse, government, and politics. The organization deploys public interest attorneys, policy experts, strategists, and grassroots activists to expose, confront, and change unjust practices in the private and public sectors.

Consumer Watchdog's Legal Project attorneys advocate for consumers' rights and hold corporations and government officials accountable in federal and state courts and before regulatory agencies.

The Legal Project specializes in highly complex litigation, including class actions in federal and state courts, to address abuses in the marketplace such as illegal overcharges, false advertising, and violation of consumer protection laws. Some of our most notable accomplishments include:

- A 2021 victory in the Supreme Court of the United States, representing plaintiffs living with HIV in a suit against CVS for unlawfully disclosing HIV status and/or putting individuals at risk of such a disclosure, as well as providing them into a lower tier of service. After Consumer Watchdog's unanimous win in the 9th Circuit Court of Appeals, CVS petitioned the high court for review. Review was granted and the case was briefed, but CVS unexpectedly dropped the case, leaving the earlier victory intact. *Doe v. CVS Pharmacy, Inc.* (9th Cir. 2020) 982 F.3d 1204, *cert. granted in part*, (2021) 141 S. Ct. 2882, and *cert. dismissed sub nom. CVS Pharmacy, Inc. v. Doe, One* (2021) 142 S. Ct. 480.
- Settled a privacy case against Zoom alleging the video conferencing platform misrepresented the level of security it offered users (*Consumer Watchdog v. Zoom Video Comms., Inc.* (D.D.C. July 30, 2021), No. 20-cv-02526.)
- Settled a class action suit against Anthem Blue Cross for violating state and federal law by canceling consumers' health insurance plans and automatically enrolling them in plans that eliminate coverage for out-of-network doctors without proper notice. (*Simon v. Blue Cross of Cal.* (L.A. Cty. Super. Ct. Nov. 2, 2020), No. BC639205.)
- Settled two cases against Transamerica Life Insurance Company on behalf of policyholders whose premiums had unexpectedly and illegally skyrocketed, requiring the company to repay more than \$150 million in overcharges in 2019 and up to \$88 million in account value credits in 2020. (*Feller v. Transamerica Life Ins. Co.* (C.D. Cal. Feb. 6, 2019), No. 16-01378 and *Thompson v. Transamerica Life Ins. Co.* (C.D. Cal. Sept. 16, 2020), No. 18-05422.)
- Settled a case against CVS Healthcare Corporation on behalf of a class of 6,000 patients in Ohio whose HIV status was disclosed when a CVS-contracted company, Fiserv, mailed letters to them with information about a federal program to assist them with HIV-related treatment costs. The letters were mailed in envelopes with clear windows that showed patients' names, the words "Ohio

EXPOSE. CONFRONT. CHANGE.

Department of Health” and the letters HIV, exposing patients’ private medical information to anyone who saw the envelope, in opposition to the standard practice of the Ohio Department of Health of using opaque, non-windowed envelopes when sending out mailings regarding HIV. (*Doe One v. CVS Healthcare Corp.* (S.D. Ohio, Sept. 27, 2019) No. 2:18-CV-238, 2019 WL 4915471, *as amended* (S.D. Ohio, Oct. 4, 2019) No. 2:18-CV-238, 2019 WL 4893834.)

- Settled three class action lawsuits against health insurers over the “narrow network” issue, in which plaintiffs alleged that their insurers had misrepresented which doctors were “in network” under their plans. Under the settlement agreements, Anthem Blue Cross provided \$15 million in direct payments to consumers, Blue Shield provided more than \$18 million, and Cigna provided more than \$1.8 million. The settlement also ensured that all three providers implement an uncapped claim process. (*Anthem Blue Cross Affordable Care Act Cases* (L.A. Cty. Super. Ct. Aug. 19, 2016), JCCP No. 4805; *Blue Shield of Cal. Affordable Care Act Cases* (S.F. Cty. Super. Ct. Mar. 27, 2018), JCCP No. 4800; and *Davidson v. Cigna* (L.A. Cty. Super. Ct. June 28, 2018), No. BC558566.)
- Settled six class action lawsuits against health insurers for illegally requiring HIV/AIDS patients to purchase their medications from a mail-order pharmacy, threatening their health and privacy. As a result of the settlements, members prescribed HIV/AIDS medications may purchase their medications at any network pharmacy. Members were also allowed to seek reimbursement for out-of-pocket losses resulting from the mail order requirement. (*Doe v. Blue Cross of Cal.* (S.D. Cty. Super. Ct. June 24, 2016), No. 37-2013-00031442; *Doe One v. Unitedhealthcare Ins. Co.* (C.D. Cal. July 31, 2014), No. SACV-13-00864, 2014 WL 3865847; *Doe v. Cigna Health & Life Ins. Co.*, (S.D. Fla. Oct. 6, 2015), No. 15-cv-60894; *Doe v. Anthem, Inc.* (settled informally); *Doe v. Coventry Health Care Inc.* (S.D. Fla. May 5, 2016), No. 15-CIV-62685; and *Doe v. Aetna, Inc.* (S.D. Cal. Mar. 15, 2016), No. 14CV2986-LAB (DHB), 2016 WL 1028363.)
- Settled a class action against Anthem Blue Cross for illegally making mid-year changes to annual deductibles, co-pays, and other out-of-pocket costs. As a result of the settlement, Anthem reimbursed consumers for out-of-pocket losses resulting from the mid-year changes totaling \$8.3 million. The company also agreed not to make mid-year cost increases in the future. (*Taub v. Blue Cross of Cal.* (L.A. Cty. Super. Ct. Aug. 20, 2015) No. BC457809.)
- Settled a class action against Anthem Blue Cross for illegally closing insurance policies and using large rate hikes to force patients into lower-benefit and higher-deductible health coverage—a practice known as the “death spiral.” Relief obtained included a cap on future rate increases and the opportunity for plan members to switch coverage, without medical underwriting, to any open policy regulated by the California Department of Managed Health Care. (*Feller v. Blue Cross of Cal.* (Ventura Cty. Super. Ct. Aug 26, 2011), No. 56-2010-00368587.)
- Settled a class action against the Auto Club requiring the insurer to pay \$22.5 million in refunds to policyholders who were overcharged for not having prior insurance, a practice that is prohibited by insurance reform Proposition 103. (*Proposition 103 Enf’t Project v. Interins. Exch. of the Auto. Club* (L.A. Cty. Super. Ct. 2007), No. BC266218.)

- Secured a consumer's right to enforce the Insurance Code in court under the state's Unfair Competition Law in a case against Mercury for illegally surcharging drivers without prior insurance. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968.)
- Secured a historic \$27.5 million fine against Mercury Insurance Company in an administrative enforcement action for charging excessive and unfairly discriminatory rates by allowing its agents to charge illegal broker fees at the point of sale. (*In the Matter of Mercury Ins. Co.* (Cal. Ins. Comm'r, Feb. 6, 2015), No. NC03027545.)
- Obtained an order from the Insurance Commissioner approving a settlement agreement requiring Farmers Insurance to refund \$1.4 million in premium overcharges and pay a \$2 million fine to the State of California for utilizing improper homeowners insurance underwriting practices. (*In the Matter of the Rates, Rating Plans, or Rating Systems of Farmers Ins. Exch., Fire Ins. Exch., and Mid-Century Ins. Co.* (Cal. Ins. Comm'r, Aug. 8, 2007).)
- Successfully blocked insurance rate hike requests by dozens of insurance companies, saving Californians over \$3.4 billion since 2003 on their auto, homeowners, earthquake, and medical malpractice insurance.

Consumer Watchdog's attorneys have taken the lead role—authored comprehensive appellate briefs and participated in oral argument—in numerous landmark cases resulting in published appellate and California Supreme Court opinions upholding consumer protection statutes:

- *Villanueva v. Fid. Nat'l Title Co.* (2021) 11 Cal.5th 104 (counsel for amici curiae Consumer Watchdog, Consumer Federation of America, and Consumer Federation of California) – upholding the right of consumers to hold title insurance companies accountable for overcharges and other wrongdoing under the California Insurance Code.
- *Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th 82 (counsel for intervenor Consumer Watchdog) – upholding a \$27.6 million civil penalty against Mercury for violations of Proposition 103's prior approval requirement and prohibition against unfair rate discrimination based on its agents charging unapproved fees in addition to the approved premium amounts on over 180,000 insurance transactions over a four-year period.
- *Mercury Cas. Co. v. Jones* (2017) 8 Cal.App.5th 561 (counsel for intervenor Consumer Watchdog) – successfully defending against insurance trade associations to uphold a decision ordering Mercury to lower its homeowner rates and limiting the amount of institutional advertising that insurers may include in their premium calculations.
- *Consumer Watchdog v. Dep't of Managed Health Care* (2014) 225 Cal.App.4th 862 (counsel for petitioner Consumer Watchdog) – holding that the Department of Managed Health Care can no longer uphold a health plan's denial of coverage for autism treatment provided or supervised by a nationally board-certified individual on the basis that the provider is not licensed.

- *Ass'n of Cal. Ins. Cos. v. Poizner* (2009) 180 Cal.App.4th 1029 (counsel for intervenor Consumer Watchdog) – upholding Department of Insurance regulations consistent with the language and purpose of Proposition 103 to promote consumer participation in rate proceedings.
- *In re Tobacco II* (2009) 207 P.3d 20 (counsel for amicus curiae Consumer Watchdog) – holding that Prop 64 standing requirements apply only to named plaintiffs and not unnamed putative class members.
- *Karnan v. Safeco Ins. Co. of Am.* (2009) 173 Cal.App.4th 814 (counsel for plaintiff) – allowing plaintiff in a UCL action to proceed with pre-certification discovery to locate class members.
- *Fogel v. Farmers Group, Inc.* (2008) 160 Cal.App.4th 1403 (counsel for amicus curiae Consumer Watchdog) – allowing a UCL action to proceed against an insurer challenging as excessive fees paid by policyholders to the insurer's management company.
- *Found. for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354 (counsel for plaintiff) – overturning an illegal legislative amendment to Proposition 103 that would have allowed illegal surcharges to drivers who lacked prior insurance coverage.
- *State Farm Mut. Auto. Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029 (counsel for amicus curiae FTICR) – upholding against industry challenge Department of Insurance regulations requiring the public disclosure of insurance redlining data submitted to the Insurance Commissioner as required by Proposition 103.
- *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968 (counsel for amicus curiae Consumer Watchdog) – upholding consumers' right to bring a UCL action to enforce Proposition 103.
- *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473 (counsel for plaintiff) – invalidating an illegal legislative amendment to Proposition 103 that would have decreased the amount of refunds owed to policyholders under the initiative's rate rollback provision.
- *Amwest Sur. Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243 (counsel for intervenor) – Cal. Supreme Court decision invalidating an illegal legislative amendment to Proposition 103 that would have exempted surety insurance from regulation.
- *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216 (counsel for intervenor) – Cal. Supreme Court decision upholding insurance rate regulations enforcing Proposition 103's prohibition against excessive or inadequate rates.
- *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805 (counsel for intervenor) – Cal. Supreme Court decision upholding Proposition 103 against constitutional challenge by the insurance industry.

Consumer Watchdog's Legal Project is currently litigating high impact consumer protection lawsuits and administrative actions, including:

- A class action suit on behalf of an individual living with HIV against a public health agency for unlawful breach of his and other patients' protected medical information. (*Doe v. Cal. Dep't of Pub. Health* (L.A. Cty. Super. Ct. filed Aug. 25, 2020), No. 20STCV32364.)
- A petition for writ of mandate against Insurance Commissioner Ricardo Lara and the California Department of Insurance seeking to compel responses to requests for records made under California's Public Records Act. (*Consumer Watchdog v. Lara* (L.A. Cty. Super. Ct., filed Feb. 18, 2020), No. 20STCP00664.)
- A class action on behalf of enlisted military personnel alleging that their auto insurance company, USAA, discriminates against enlisted servicemembers by charging them higher premiums than officers, in violation of provisions of Proposition 103, California's voter approved insurance reform law and the Unruh Civil Rights Act. (*Coleman v. United Servs. Auto. Ass'n* (C.D. Cal., filed Feb. 4, 2021), No. 21-cv-217.)
- A petition for writ of mandate to stop the Department of Toxic Substances Control and the Department of Public Health from approving disposal of radioactive waste at facilities that are neither licensed nor designed to accept it, exposing the public to radioactive harm in violation of the California Environmental Quality Act. The case is currently on appeal. (*Physicians for Soc. Responsibility v. Dep't of Toxic Substances Control*. (Cal. Ct. App., filed Feb. 25, 2019), No. C088821.)
- A case against four of the largest health plans in California for alleged abuse of a tax code loophole that allowed them to avoid paying state taxes on health insurance premiums for decades. The case is currently on appeal. (*Myers v. State Bd. of Equalization* (Cal Ct. App., filed Oct. 23, 2020), No. B307981.)

Consumer Watchdog Legal Team

Jerry Flanagan

Jerry Flanagan is Consumer Watchdog's Litigation Director. Flanagan leads Consumer Watchdog's litigation efforts in the areas of health insurance coverage and access to treatments, internet privacy, the California Public Records Act, and First Amendment issues. He has 25 years experience working in public interest and health care policy, legislation and litigation.

Flanagan has spearheaded efforts to address discrimination against those with HIV and other serious illnesses in the era of the Affordable Care Act (aka "Obamacare").

Flanagan was counsel of record in a case before the United States Supreme Court in 2022 where he and other Consumer Watchdog counsel represented plaintiffs living with HIV in a suit against CVS for discrimination, including CVS's failure to provide medically appropriate dispensing of HIV medications and access to necessary counseling. After Consumer Watchdog's unanimous win in the Ninth Circuit Court of

Appeals, CVS petitioned to the high court for review. Review was granted and the case was briefed, but CVS unexpectedly dropped the case, leaving the earlier victory intact. *Doe v. CVS Pharmacy, Inc.* (9th Cir. 2020) 982 F.3d 1204, cert. granted in part, (2021) 141 S. Ct. 2882, and cert. dismissed sub nom. *CVS Pharmacy, Inc. v. Doe, One* (2021) 142 S. Ct. 480.

Flanagan is an adjunct professor at Loyola Law School of Los Angeles, where he previously taught the course "Health Insurance Regulation: Law, Policy & Politics" and is currently teaching "Social Change Lawyering: Lobbying, Litigation, Media & More."

Flanagan exposed the illegal practice of health insurers retroactively canceling coverage and authored a law journal article underscoring the need for reform in health insurance rescission law, *Healthy State of Mind: The Role of Intent in Health Plan Rescissions*, 43 *Loy. L.A. L. Rev.* 291 (2009). An "intentional misrepresentation" standard for coverage rescissions, advocated by the article, was adopted in the Affordable Care Act.

Prior to joining Consumer Watchdog, Flanagan drafted and won passage of one of the nation's strongest HMO accountability measures, which was signed into law in New Jersey in 2001.

Flanagan received a B.A. in Social/Cultural Anthropology and Rhetoric from the University of California, Berkeley and his law degree from Loyola Law School of Los Angeles. At Loyola

Flanagan was a Note and Comment Editor on the *Loyola Law Review*, and he graduated Magna Cum Laude and is a member of the Order of the Coif, Sayre Macneil Scholars Program, St. Thomas More Law Honor Society, and Alpha Sigma Nu Honor Society.

Flanagan was admitted to the California Bar in 2010.

Harvey Rosenfield

As Consumer Watchdog's founder, Harvey Rosenfield is one of the nation's foremost consumer advocates. Trained as a public interest lawyer, Rosenfield authored Proposition 103 and organized the campaign that led to its passage by California voters in 1988 despite over \$80 million spent in opposition (still a record).

He has co-authored groundbreaking initiatives on HMO reform and utility rate deregulation (Proposition 9, 1998). Rosenfield is the author of the book, *Silent Violence, Silent Death: The Hidden Epidemic of Medical Malpractice*.

Rosenfield, who established Consumer Watchdog in 1985, has worked for the Federal Trade Commission, the U.S. Congress, in private practice, as a staff attorney for Ralph Nader's Public Citizen Congress Watch and as the Program Director for the California Public Interest Research Group (CalPIRG).

Rosenfield graduated magna cum laude from Amherst College and obtained a joint Law and Masters degree in Foreign Service from Georgetown University.

Pamela Pressley

Consumer Watchdog's Senior Staff Attorney, Pamela Pressley has led Consumer Watchdog's efforts to enforce Proposition 103's mandates in court to protect California insurance policyholders against discriminatory practices and premium overcharges. Pam has authored appellate briefs and presented oral argument in numerous cases successfully upholding the insurance initiative and other California consumer protection laws, resulting in several precedential published opinions, including *The Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354; *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029, *Mercury Casualty Company v. Jones* (2017) 8 Cal.App.5th 561, and *Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th 82.

Pam has also served as lead counsel in challenges before the Department of Insurance to auto, homeowners, business and med mal insurance rate hike proposals, resulting in savings to California policyholders of over \$3.4 billion.

In May 2010, Pam was named as one of the top women litigators in California by the Daily Journal. At the time, she had served "as litigation director of this small but dogged consumer group for more than a decade" and "gone head-to-head with state regulators for not cracking down on [] autism denials." (Daily Journal Supplement, May 12, 2010, p. 34.) Her efforts, working together with Consumer Watchdog Litigation Director Jerry Flanagan and co-counsel Strumwasser & Woocher LLP, led to a Los Angeles Superior Court decision declaring that the Department of Managed Health Care (DMHC) illegally adopted rules that delayed and denied decisions regarding coverage for autism treatments and improperly withheld public documents that revealed how they handled consumer complaints, and a Court of Appeal decision ordering the DMHC to stop upholding such illegal denials of coverage for autism treatments.

Pam received her B.A. in Sociology from UCLA and her J.D. from Pepperdine University School of Law. She was admitted to the California State Bar in 1995. Before joining Consumer Watchdog and serving as the organization's Litigation Director for 15 years, Pam worked as Consumer Attorney for the California Public Interest Research Group (CALPIRG) and as a staff attorney for the Center for Law in the Public Interest (CLIPi).

Daniel Sternberg

Danny is a staff attorney at Consumer Watchdog, where he works on healthcare access issues and consumer protection impact litigation, as well as enforcement of Proposition 103 which protects California insurance policyholders against discriminatory practices and overcharges.

Prior to joining Consumer Watchdog, Danny was an Excelsior Service Fellow at New York State Homes and Community Renewal, where he focused on affordable housing policy related to civil rights and housing discrimination. Danny was also an associate at Bantle & Levy LLP, where he litigated cases of employment discrimination and non-payment of wages.

During law school, he represented clients in Section 1983 actions in federal court with the Cardozo Civil Rights Clinic, helped secure unpaid wages for low-income workers with the Regional Solicitor of the U.S. Department of Labor, and served as the managing editor of the Cardozo Public Law, Policy, and Ethics Journal.

Danny graduated from the University of Arizona and the Benjamin N. Cardozo School of Law, where he was a Public Service Scholar and a New York State Pro Bono Scholar.

Danny is a member of the Disability Rights Bar Association and admitted to practice in New York and California, the U.S. District Courts for the Central District of California, the Southern District of California, and the U.S. Court of Appeals for the Ninth Circuit.

Benjamin Powell

Benjamin Powell is a staff attorney on Consumer Watchdog's Litigation Team. While his primary focus is in the area of health insurance litigation, he also provides litigation support in other areas.

During law school, Powell was a member of the Loyola of Los Angeles Law Review, writing articles for the journal's specialized "Developments in the Law" issue. His scholarship included an analysis of the shifting employment status of California Uber drivers and a discussion of the fate of class action waivers under California contract law. Powell also served as a Coordinator for Loyola's Young Lawyers Program, providing students from local high schools with mentorship as well as training for a mock trial experience in front of actual Los Angeles Superior Court judges.

Powell received a B.A. in Political Science from UCLA and a J.D. from Loyola Law School in Los Angeles.

Ryan Mellino

Ryan Mellino is a staff attorney on Consumer Watchdog's Litigation Team. Mellino provides litigation support spanning across Consumer Watchdog's issue areas, including insurance, civil rights, and healthcare litigation.

During law school, Mellino externed with several different organizations. He spent time working on eviction defense with the Legal Aid Foundation of Los Angeles, on legal issues concerning inmates in L.A. County jails with the American Civil Liberties Union, and on system-wide homelessness prevention with the Los Angeles Homeless Services Authority. In his second summer of law school, Mellino began externing with Consumer Watchdog. He remained an extern through his final year of law school, before joining full-time after graduation.

Mellino received a B.A. in English Literature from Hunter College and a J.D. from the University of Southern California, Gould School of Law.

Kaitlyn Gentile

Kaitlyn Gentile is Consumer Watchdog's paralegal. She supports the litigation team in all state and federal court filings and provides administrative and research assistance.

Before joining Consumer Watchdog, Gentile worked at Lambda Legal, where she supported some of the nation's top litigators fighting to achieve the full civil rights of LGBT people and those living with HIV. In this capacity she assisted in preparing and filing impact litigation cases across the country, including 2015's Obergefell v. Hodges before the Supreme Court, which achieved marriage equality at the national level. She served as the project coordinator for the organization's work on issues affecting LGBT youth in foster

care, juvenile justice, and homeless systems, co-authoring a 50-state policy analysis of out-of-home care systems and advocating for comprehensive nondiscrimination policies at the state and federal level. She also helped two undocumented young people from West Africa obtain Green Cards after they faced rejection and violence by family and community in their countries of origin due to their sexual orientations.

Gentile is a certified English Language Teacher and spent a year teaching in elementary school in Mallorca, Spain. She holds a B.A. in Sociology from the University of Massachusetts at Amherst.