September 5, 2023

Attorney General Rob Bonta
Office of the Attorney General
State of California
1300 I Street
Sacramento, CA 95814

By Email and Overnight Mail

Re: Investigation of Insurance Industry Collusion in California

Dear Attorney General Bonta:

Insurance companies doing business in California are orchestrating shortages to pressure state officials to boost insurance premiums and authorize a massive bailout of the insurance industry that will likely cost Californians billions. Industry insiders have confirmed the companies' deliberate, ongoing destabilization of the marketplace, and have described to Consumer Watchdog how insurance companies and their lobbyists coordinate their actions to create shortages. An agreement among competitors to withdraw from a market in order to command higher prices constitutes a group boycott in violation of both state and federal antitrust laws. Consumer Watchdog believes that insurance companies are colluding to make insurance unavailable in California to boost the price of insurance and pressure policymakers to change California law to allow insurance companies to charge excessive rates. This is not the first time insurance companies have manufactured shortages to undermine state consumer protections: in 1988, insurance companies colluded in what then-Attorney General John Van de Kamp described as a "mass withdrawal, creating a crisis in which insurance would become unavailable," to coerce the California Supreme Court to overturn insurance reform Proposition 103.

We write to ask you, California's chief law enforcement officer, to take immediate action to protect Californians from the industry's pernicious scheme by launching an investigation into insurance industry collusion in California.

The Collusion

For at least the last eight months, a succession of insurance companies have announced that they are withdrawing from the sale of new home, condo and renters' insurance policies in California's $12 billion homeowners insurance marketplace. In recent months, State Farm, Farmers, Allstate, GEICO, Berkshire Hathaway, Mercury and, last Friday, USAA – among others – have announced their decision to refuse to sell new policies, one after another. Collectively, these companies control most of the market in California. Based on complaints from consumers, statements to the news media and information from insiders, Consumer Watchdog has learned that many of these companies have also begun arbitrarily non-renewing existing customers, in violation of existing laws regulating the sale of insurance.

The companies have stated that their conduct is necessary to address ostensible financial concerns. But their major lobbying organizations have made public statements linking the companies' conduct to their complaint that the state's consumer protection and anti-price gouging laws, enacted by California voters in 1988 as Proposition 103, are responsible. Privately, industry lobbyists and executives have been threatening lawmakers that they will continue to reduce their operations in California – or even leave the state entirely – unless Proposition 103 and other state insurance laws are changed to benefit the insurance companies' finances at the expense of California consumers and small businesses.

We have also learned from industry insiders *how* the insurance companies coordinate their activity. They convene weekly meetings at the offices of their lobbyists – Personal Insurance Federation of California and American Property Casualty Insurance Association. These meetings are ostensibly for the purpose of discussing public policy issues. But Consumer Watchdog is informed that the conversations include the sharing of confidential corporate information about planned market withdrawals, proposed rate requests, and other activity not publicly available. Consumer Watchdog can produce a confidential witness with decades of experience in the industry who participated in such meetings to validate these claims.

The Goal of the Collusion

Consumer Watchdog has learned from multiple sources, including public records disclosed by the California Department of Insurance (CDI) to Consumer Watchdog, that insurance company executives have insisted to the Insurance Commissioner and the staff of the California Department of Insurance that they must have immediate rate increases. Individual insurance companies have pressured the agency to grant rate increases without the full, public scrutiny required by Proposition 103.

We now also know, based on reporting by Politico[1] and from other sources, that the insurance companies' withdrawals are in pursuit of a broader goal: to coerce government officials to weaken or remove the existing protections against price gouging enacted by the voters as part of Proposition 103, and to enact changes to California's insurance industry-controlled insurer of last resort, the FAIR Plan, that would allow insurance companies to force every homeowner, renter or condo owner in the state to pay higher premiums to bail out insurance companies for wildfire claims. The insurance companies are aiming to "jam" their proposals through Sacramento before the end of the legislative session on September 14, denying the public, the news media and most lawmakers the opportunity to thoroughly vet and comment on the proposals.

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[1] Camille Von Kaenel, POLITICO, "Wildfires Are About to Burn California Politicians," August 21, 2023 (https://www.politico.com/news/2023/08/21/wildfires-california-politicians-00112016).

A 17-year insurance company veteran lobbyist on a flight to Sacramento in late August publicly confirmed the industry plan. Bragging to nearby passengers and flight crew, he linked the withdrawals to the bailout, noting that "State Farm is not writing any new [policies], Allstate stopped a while ago …." He continued: "we are trying to jam a bill in the last three weeks of the year…." He joked it would be a "surprise you don't know about. 'Where did that come from?'"[2] The implication of his comments is that the companies staged the pullouts as a way of pressuring an eleventh-hour deal.

Other Evidence of the Insurance Companies' Coordinated Actions

Apart from the overt actions of insurance companies in collectively withdrawing from sales in California, there is other evidence that the companies are using their economic power to extort a bailout of their legal and financial responsibilities:

• In a July 7 press release, Farmers Insurance announced that it had ceased selling new home insurance policies in California. But Farmers referred media questions to its Sacramento lobbying organization, Personal Insurance Federation of California, suggesting that its announcement was intended to support the industry's deregulation agenda. ("For additional context, you may want to reach out to Rex Frasier at the Personal Insurance Federation of California at 916-710-1910."[3]) Almost simultaneously, another industry lobbying organization, the American Property Casualty Insurance Association, issued a statement "in response." It placed primary blame for the shortages on Proposition 103's consumer protections, and warned, "Insurers do not want to retrench from one of the nation's most important markets, but cannot continue to operate and protect policyholders when insurers are struggling to secure an adequate rate and manage their risk exposure."[4] Farmers obviously coordinated its announcement with its lobbying organizations, and its decision was widely reported as exacerbating the shortages in the marketplace. Farmers' executives later acknowledged that Farmers did not "pull back" from all new sales, but rather froze them at existing levels.

• Home insurance companies have prospered in California, negating the industry's contention that the insurers' market withdrawals are necessary because the 2017-2018 wildfires wiped out all the profits they made in 25 years.[5] California home insurers' annual profits here have been

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[2] Christopher Cadelago and Camille Von Kaenel, POLITICO, "A Secret Recording. Boasts Of Late-Session 'Jam.' Insurance Fight Bursts Into The Open," August 31, 2023 (https://www.politico.com/news/2023/08/31/california-wildfires-insurance-risk-00113563).

[3] Farmers has removed this press release from its website.

[4] American Property Casualty Insurance Association Press Release, "California's Insurance Marketplace is Fragile, the Time has Come to Reform Proposition 103," July 7, 2023 (https://www.apci.org/media/news-releases/release/76691/).

[5] Testimony of Seren Taylor, Personal Insurance Federation of California, before the California Senate Insurance Committee, March 1, 2023 (video of hearing accessible at https://www.senate.ca.gov/media-archive?page=3).

four times the national average over the last twenty years.[6] Moreover, California home insurers collected $77.1 billion *more* in premiums than they paid out in claims between 1991 and 2021.[7]

• Insurance companies are getting virtually all of the rate increases they have requested pursuant to Proposition 103, negating the insurers' insistence that they must withdraw from the sale of new policies because they cannot obtain adequate rates under Proposition 103. Data published by the California Department of Insurance show that of the 109 rate increases requested by home insurance companies between 2021 and 2023, insurance companies received the Insurance Commissioner's approval for 95%, on average, of the amount they requested.

• Insurance companies are also disrupting the *auto insurance marketplace*. Although insurance companies insist that their market pullbacks are necessary because of the risk of wildfires caused by climate change, widespread news reports, consumer complaints and information received by Consumer Watchdog from industry sources reveal that many insurance companies doing business in California are also reducing new sales and renewals of auto insurance, by imposing unexplained and unlawful underwriting restrictions.[8] Wildfires have zero appreciable impact on auto accident claims. The industry's expansion of market manipulation to the creation of shortages in California's normally stable auto insurance markets – especially after reaping a record windfall during the pandemic – is further evidence that a broader collusive campaign is underway to increase prices.

The facts presented here are far more than adequate to justify an investigation by your office.

Collusion Is Unlawful – and Insurance Companies Have Done it Before

Coordinated market manipulation – a group boycott – is a violation of California's antitrust laws. (California Business and Professions Code section 16720, 16726; Proposition 103 makes these laws applicable to violations of any of its provisions [Insurance Code section 1861.03(a)].) Violations are punishable by criminal and civil penalties. Federal antitrust laws also prohibit group boycotts.

This would not be the first time the insurance industry has colluded to create shortages in the marketplace in order to undermine California law and public policy. In 1988, the industry targeted Proposition 103, which was on the California ballot in the November election. As election day approached, the insurance companies realized that despite their $63 million

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[6] Consumer Watchdog, Testimony before the California Senate Insurance Committee, "Facts vs. Falsehoods about Proposition 103 and Residential Insurance Availability and Affordability in California," May 10, 2023, pp. 2-4 (https://consumerwatchdog.org/wp-content/uploads/2023/05/Home-Insurance-Facts-v-Myths.pdf).
[7] *Id.*
[8] See, for example, Claire Ho, San Francisco Chronicle, "It's Not Just Home Insurance. Californians Are Struggling to Insure Their Cars, Too," June 20, 2023 (https://www.sfchronicle.com/california/article/home-car-insurance-18145165.php?utm_campaign=CMS%20Sharing%20Tools%20(Premium)&utm_source=t.co&utm_medium=referral).

advertising campaign, they might be unable to defeat the grassroots-backed Proposition 103. So they colluded to cease operations – stop doing all business in California – on the day after the election. As explained by your predecessor, highly respected Attorney General John Van de Kamp, in a 115-page report he issued after a two-year investigation,[9] the industry's highly coordinated strategy was to create "chaos" in California in order to pressure the California Supreme Court to overturn the initiative.

On the morning after the election, insurance companies filed a massive lawsuit before the high court challenging the constitutionality of Proposition 103. As the report, "Collusion and Market Power in the Insurance Industry," explains, the insurance industry knew that "The success of their lawsuit would be aided by a mass withdrawal, creating a crisis in which insurance would become unavailable."[10]

> Immediately following the passage of Proposition 103 on November 8, 1988, at least 67 insurance companies, representing some 75.6% of the pre-November 8 total private passenger auto liability insurance market in California, took steps either totally to withdraw from the market, to suspend acceptance of new business, to limit sales (e.g., reduction in agent force), or to suspend processing of renewals for existing policy holders. Additionally, many companies that did continue to write coverage only did so in higher priced, more restrictive affiliates, thus effectively restricting both the accessibility and affordability of those few remaining sources of insurance coverage. … This simultaneous action by numerous putative competitors raised the suspicion that the action may have been the result of unlawful collusive activity.[11]

Attorney General Van de Kamp concluded that insurance companies colluded in their unsuccessful attempt to pressure the California Supreme Court, through what he called the "Proposition 103 Boycott":

> This investigation provides further evidence of the culture of collusion that pervades the insurance industry. Whether a change in the law, like Proposition 103, makes a business unprofitable is a decision independent companies are supposed to reach independently. We found that on the most basic decision – whether to compete at all – insurance companies were consulting one another, seeking and providing reassurance that they would follow one another in lock-step.[12]

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[9] California Department of Justice, "Collusion and Market Power in the Insurance Industry," January 2, 1991 (https://consumerwatchdog.org/wp-content/uploads/2023/09/103-AT-Collusion-Mkt-Power-in-Ins-I-CAG-1-2-91.pdf).
[10] *Id.*, p. 2.
[11] *Id.*, p. 4.
[12] California Department of Justice Press Release, "Antitrust Investigation Reveals Collusion in Insurers' Proposition 103 Boycott," January 2, 1991, pp.1-2 (https://consumerwatchdog.org/wp-content/uploads/2023/09/AG-VDK-Prs-Rel-1-2-91-re-AT.pdf).

Your Immediate Action Is Necessary

The insurance industry is at this very moment executing the final steps of its plan to instigate and coordinate shortages in California's insurance markets for its financial benefit. It is imperative that you initiate an immediate investigation, including subpoenas to and depositions of insurance company executives, lobbyists, and any state officials who have been working with the insurance industry. They need to be instructed to preserve all evidence, including email communications, memoranda, and meeting notes, pending your inquiry. These individuals will have the documents and knowledge that will confirm exactly what the insurance companies have been doing and why. We urge your immediate action to protect California consumers and businesses, and our economy, against further disruption, manipulation, and higher prices. Consumer Watchdog stands ready to assist you.

Sincerely,

Harvey Rosenfield	Jamie Court	Carmen Balber
Author, Prop 103	President	Executive Director