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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Rate Application of
State Farm Mutual Automobile
Insurance Company,
Applicant.

File No.: 23-890

**CONSUMER WATCHDOG'S PETITION
FOR HEARING, PETITION TO
INTERVENE, AND NOTICE OF INTENT
TO SEEK COMPENSATION**

[Ins. Code §§ 1861.02, 1861.05, and 1861.10;
Cal. Code Regs, tit. 10, §§ 2653.1, 2661.2 and
2661.3]

1 Consumer Watchdog hereby requests that the Insurance Commissioner notice a public
2 hearing pursuant to Insurance Code sections 1861.05, subdivisions (a) and (c), and 1861.10,
3 subdivision (a), on the issues raised in this petition regarding the above-referenced Rate
4 Application of State Farm Mutual Automobile Insurance Company (“State Farm” or
5 “Applicant”), at which time Applicant will be directed to appear and respond to the issues raised
6 in this petition. Consumer Watchdog also hereby requests that it be granted leave to intervene in
7 the proceeding on Applicant’s Rate Application pursuant to Insurance Code section 1861.10,
8 subdivision (a). Consumer Watchdog intends to seek compensation in this proceeding, and,
9 pursuant to California Code of Regulations, title 10 (“10 CCR”), section 2661.3 subdivision (c),
10 Consumer Watchdog’s proposed budget is attached hereto as Exhibit A.

11 In support of its petition, Consumer Watchdog alleges:

12 **I. THE APPLICATION**

13 1. On or about March 31, 2023, Applicant filed a Prior Approval Rate Application
14 with the California Department of Insurance (“CDI”), seeking approval of an overall 24.6% rate
15 increase to its Private Passenger Auto line of business (File No. 23-890 [“the Application”]).

16 2. On or about May 26, 2023, the public was notified of the Application.

17 **II. PETITIONER**

18 3. Petitioner Consumer Watchdog is a nonprofit, nonpartisan, public interest
19 corporation organized to represent the interests of consumers and taxpayers. A core focus of
20 Consumer Watchdog’s advocacy is the representation of the interests of insurance consumers and
21 policyholders, particularly as they relate to the implementation and enforcement of Proposition
22 103, in matters before the Legislature, the courts, and the CDI.

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

27 5. Consumer Watchdog has served as a public watchdog with regard to insurance
28 rates and insurer rollback liabilities under Proposition 103 by: monitoring rollback settlements

1 and the status of the rollback regulations; reviewing and challenging rate filings made by insurers
2 seeking excessive rates; participating in rulemaking and adjudicatory hearings before the CDI;
3 and educating the public concerning industry underwriting and rating practices, their rights under
4 Proposition 103, and other provisions of state law. Consumer Watchdog has also initiated and
5 intervened in actions in state court and appeared as amicus curiae in matters involving the
6 interpretation and application of Proposition 103 and the Insurance Code.¹

7 6. Consumer Watchdog has initiated and intervened in numerous proceedings before
8 the CDI related to the implementation and enforcement of Proposition 103's reforms, including
9 over 125 such proceedings in the last twenty years. In every rate proceeding that has resulted in a
10 final decision and in which Consumer Watchdog sought compensation from 2003–2022, the
11 Commissioner found that Consumer Watchdog made a substantial contribution, meaning that its
12 participation was separate and distinct from any other party and that it presented relevant issues,
13 evidence, and arguments that resulted in more credible, non-frivolous information being
14 available to the Commissioner in making his final decision.

15 **III. EVIDENCE**

16 7. In the rate proceeding initiated by Consumer Watchdog's petition, Consumer
17 Watchdog will present and elicit evidence to show that the proposed rates and rule and rating
18 plan changes result in rates that are excessive and/or unfairly discriminatory in violation of
19 Insurance Code section 1861.05, subdivision (a), which provides that "[n]o rate shall be
20 approved or remain in effect which is excessive, inadequate, [or] unfairly discriminatory."
21 Additionally, Consumer Watchdog will present and elicit evidence that Applicant's proposed
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24 ¹ For example, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805; *20th Century Ins. Co. v.*
25 *Garamendi* (1994) 8 Cal.4th 216; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243;
26 *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473; *Spanish*
27 *Speaking Citizens' Foundation v. Low* (2000) 85 Cal.App.4th 1179; *Donabedian v. Mercury*
28 *Insurance Co.* (2004) 116 Cal.App.4th 968; *State Farm Mut. Auto. Ins. Co. v. Garamendi* (2004)
32 Cal.4th 1029; *The Found. for Taxpayer and Consumer Rights v. Garamendi* (2005) 132
Cal.App.4th 1354; *Ass'n of Cal. Ins. Cos. v. Poizner* (2009) 180 Cal.App.4th 1029; *Mercury*
Cas. Co. v. Jones (2017) 8 Cal.App.5th 561; and *Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th
82; and *State Farm General Ins. Co. v. Lara* (2021) 71 Cal.App.5th 197.

1 rates violate 10 CCR § 2644.1, which provides that “[n]o rate shall be approved or remain in
2 effect that is above the maximum permitted earned premium as defined in section 2644.2.”

3 8. Based on Consumer Watchdog’s preliminary analysis in consultation with its
4 actuarial expert and the information contained in the Application, Consumer Watchdog has
5 identified the following issues with the Application on which it intends to present and elicit
6 evidence, as set forth in (a)–(d) below.

7 a. Loss and Premium Trends (10 CCR § 2644.7): Applicant’s frequency and severity
8 trend selections result in excessive net trends which overstate the projected losses,
9 causing an inflated rate indication. Also, Applicant does not demonstrate that the
10 selected trend factors and trend data period used are the most actuarially sound. Based
11 on Consumer Watchdog’s preliminary analysis, a longer period should be used for
12 trend calculation to more accurately reflect the expected experience. Further, the
13 selected projected frequency values in the “Standard Exhibits w Variance 8A.pdf” file
14 (see the Step 3 section on pages 1, 3, 5, 7, 9, 11, 13) do not align with the projected
15 frequencies in column 10, with consideration for the adjusted frequency values in
16 column 12 and the selected Pre-COVID trends. For example, on page 7 (Uninsured
17 Motorists), the reported frequency in column 10 is 0.85, the adjusted frequency in
18 column 12 is 0.76, and the Selected Pre-COVID Trend is -6.7%. Yet the selected
19 projected frequency for the policy period covered by this rate filing is 0.91, resulting
20 in an implied trend of +3.0%.

21 b. Improper Loss Development (10 CCR § 2644.6): Applicant uses incurred loss
22 development in the rate templates. For the BI and UM coverages, incurred
23 development is materially higher than paid development. The developed incurred
24 losses are 10% higher than the developed paid losses for the most recent year for BI,
25 and about 5% higher for UM. Applicant fails to explain why there is such a large
26 difference between the paid and incurred development. Nor does it demonstrate that
27 the much higher incurred development method is the most actuarially sound.

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

6 d. Improper / Unsupported Variance 8A (10 CCR § 2644.27(f)(8)(A)): While a variance
7 from the trend section of the regulation (10 CCR § 2644.7) could be appropriate,
8 Applicant failed to prove that its trend selections are the most actuarially sound.
9 Applicant's analyses of potential distorting events on the loss and premium trend were
10 not adequately documented or supported.

11 9. This petition is based upon Consumer Watchdog's preliminary analysis of the
12 Application. Thus, Consumer Watchdog reserves the right to modify, withdraw, and/or add issues
13 for consideration as more information becomes available, including but not limited to violations
14 of Insurance Code section 1859 for failure to disclose information in its filings that will affect
15 policyholders' rates and premiums.

16 **IV. AUTHORITY FOR PETITION AND GRANTING REQUEST FOR A HEARING**

17 10. The authority for this petition for hearing is Insurance Code section 1861.10,
18 subdivision (a), which grants "any person" the right to initiate or intervene in a proceeding
19 permitted or established by Proposition 103 and the right to enforce Proposition 103. Specifically,
20 as stated above, Consumer Watchdog initiates this proceeding to enforce Insurance Code section
21 1861.05 and the Commissioner's regulations.

22 11. Additionally, a hearing is authorized pursuant to Insurance Code section 1861.05,
23 subdivision (c), which allows "a consumer or his or her representative" to request a hearing on a
24 rate application and 10 CCR § 2653.1, which provides that "any person, whether as an individual,
25 representative of an organization, or on behalf of the general public, may request a hearing by
26 submitting a petition for hearing."
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1 12. This petition is timely pursuant to Insurance Code section 1861.05, subdivision (c),
2 and 10 CCR § 2646.4(a)(1), because it is filed within forty-five (45) days of the May 26, 2023
3 public notice date.

4 **V. INTEREST OF PETITIONER**

5 13. Consumer Watchdog’s interest in the above-captioned proceeding is to ensure that
6 Applicant’s automobile insurance policyholders are charged rates and premiums that comply with
7 the provisions of Insurance Code section 1861.05, subdivision (a)’s requirement that “no rate
8 shall be approved or remain in effect which is excessive, inadequate, [or] unfairly discriminatory
9 or otherwise in violation of this chapter,” and the requirements contained in the regulations
10 promulgated thereunder. Pursuant to state law, drivers are required to purchase automobile
11 insurance. Consumers who are overcharged by insurers for this insurance coverage are part of
12 Consumer Watchdog’s core constituency. The specific issues and positions to be taken by
13 Consumer Watchdog in this proceeding, to the extent known at this time, are set forth in
14 paragraphs 8(a)–(d) *supra*.

15 14. As noted in paragraphs 3–6 above, Consumer Watchdog’s staff and consultants
16 have substantial experience and expertise in insurance rate matters, which Consumer Watchdog
17 believes will aid the CDI in its review of the Application and aid the Commissioner in making his
18 ultimate decision as to whether to approve or disapprove the requested rates. As noted in
19 paragraph 6 above, the Commissioner found that Consumer Watchdog made a substantial
20 contribution to his decisions in every rate proceeding that has resulted in a final decision and in
21 which Consumer Watchdog sought compensation from 2003–2022. If leave to intervene is
22 granted, Consumer Watchdog will participate fully in all aspects of this proceeding.

23 15. Consumer Watchdog also has an interest in assuring that Applicant, the CDI, and
24 the Insurance Commissioner comply with the laws enacted by the voters under Proposition 103,
25 and the rules and regulations that implement those laws.

26 **VI. AUTHORITY FOR PETITION TO INTERVENE**

27 16. The authority for Consumer Watchdog’s petition to intervene is Insurance Code
28 section 1861.10, subdivision (a), which grants “any person” the right to “initiate or intervene in

1 any proceeding permitted or established pursuant to this chapter [Chapter 9 of Part 2 of Division 1
2 of the Insurance Code] . . . and enforce any provision of this article.” This proceeding is a
3 proceeding to enforce Insurance Code sections 1861.05 and 1861.07 pursuant to Insurance Code
4 section 1861.10, subdivision (a), and hence is a proceeding both “permitted” and “established” by
5 Chapter 9. This petition to intervene is also authorized by 10 CCR § 2661.1 et seq. Although
6 consumer presence in departmental proceedings typically results in significant reductions to
7 policyholders’ rates, the amount of savings for each individual consumer is outweighed by the
8 time and expense of hiring individual counsel or an advocacy group to protect his or her rights.
9 Thus, an independent organization like Consumer Watchdog introduces a voice that otherwise
10 would be absent from this proceeding.

11 **VII. PARTICIPATION OF CONSUMER WATCHDOG**

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

15 **VIII. INTENT TO SEEK COMPENSATION**

16 18. The Commissioner has awarded Consumer Watchdog compensation for its
17 reasonable advocacy and witness fees and expenses in past departmental proceedings. The
18 Commissioner issued Consumer Watchdog’s latest Finding of Eligibility on July 26, 2022,
19 effective for two years as of July 12, 2022. Consumer Watchdog was previously found eligible to
20 seek compensation on August 25, 2020, effective as of July 12, 2020; July 12, 2018; July 14,
21 2016; July 24, 2014; July 24, 2012; July 2, 2010; August 25, 2008; July 14, 2006; July 2, 2004;
22 June 20, 2002; October 1, 1997; September 26, 1995; September 27, 1994; and September 13,
23 1993.

24 19. Consumer Watchdog intends to seek compensation in this proceeding. Pursuant to
25 10 CCR § 2661.3(c), Consumer Watchdog’s estimated budget in this proceeding is attached
26 hereto as Exhibit A. Consumer Watchdog has based its estimated budget on several factors
27 including: (1) the technical and legal expertise needed to address these issues; (2) its current best
28 estimate of the time needed to participate effectively in these proceedings, taking into account the


1 time already expended by Consumer Watchdog staff and its consulting actuary and an estimate of
2 time needed to complete remaining tasks through completion of a noticed evidentiary hearing;
3 and (3) past experience in similar rate proceedings before the CDI. The estimated budget is
4 reasonable and the staffing level is appropriate, given the expertise that Consumer Watchdog and
5 its consultants bring to these proceedings when the issues involved are issues at the very core of
6 its organizational mission and strike at the very heart of Proposition 103 itself. The budget
7 presented in the attached Exhibit A is a preliminary estimate, and Consumer Watchdog reserves
8 the right to amend its proposed budget as its expenses become more certain, or in its request for
9 final compensation. Consumer Watchdog will give notice of such modifications as soon as
10 practicable after it discovers the need to revise its estimates and shall comply with the budget
11 revision requirements in the relevant intervenor regulations.

12 WHEREFORE, Consumer Watchdog respectfully requests that the Insurance
13 Commissioner GRANT its petition for hearing and petition to intervene in the proceeding.

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15 DATED: July 10, 2023

Respectfully submitted,
Harvey Rosenfield
Pamela Pressley
Daniel L. Sternberg
Ryan Mellino
CONSUMER WATCHDOG

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20 By:



Pamela Pressley
Attorney for CONSUMER WATCHDOG

**EXHIBIT A
PRELIMINARY BUDGET**

ITEMS

ESTIMATED COST

1. Consumer Watchdog Attorneys and Paralegal

Pamela Pressley (Senior Staff Attorney) @ \$595 per hour, 100 hours \$59,500

- Draft and edit petition for hearing and petition to intervene; supervise Consumer Watchdog counsel; oversee preparation of motions, briefing; confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions with CDI and Applicant’s counsel; assist in all phases of proceeding, evidentiary hearing, and preparation of post-hearing briefing.

Daniel L. Sternberg (Staff Attorney) @ \$350 per hour, 200 hours \$70,000

- Confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions with CDI and Applicant’s counsel; participate in briefing legal issues; conduct discovery, preparation of motions, and preparation for evidentiary hearing; participate in examination of witnesses and all phases of evidentiary hearing and post-hearing legal briefing; prepare request for compensation.

Kaitlyn Gentile (Paralegal) @ \$200 per hour, 50 hours \$10,000

- Draft and edit petition for hearing and petition to intervene; assist with discovery and preparation of motions and briefs; prepare request for compensation.

Harvey Rosenfield (Of Counsel) @ \$695 per hour, 15 hours \$10,425

- Supervise Consumer Watchdog counsel and participate in strategy discussions.

2. Expert Witness: Ben Armstrong

Ben Armstrong, Staff Actuary @ \$425 per hour, 100 hours \$42,500

- Staff actuary to review all discovery documents; prepare actuarial analysis; participate in meet and confers with the parties as needed; prepare written testimony; testify and assist attorneys in preparation for cross-examination of insurer’s expert witnesses.

3. Consumer Watchdog Expenses

Office expenses (photocopies, facsimile, telephone calls, postage, etc.)\$2,000

Travel (ground transportation; airfare; hotel)\$5,000

Consumer Watchdog Subtotal\$199,425

4. Expert Witness: AIS Risk Consultants, Inc.

Allan I. Schwartz, President of AIS Risk Consultants @ \$915 per hour, 100 hours \$91,500

- Lead actuary to review all discovery documents; prepare actuarial analysis; participate in meet and confers with the parties as needed; prepare written testimony; testify and assist attorneys in preparation for cross-examination of insurers' expert witnesses.

Katherine Tollar @ \$415 per hour, 100 hours \$41,500

- Assist Mr. Schwartz in document review, rate level analysis, preparation of testimony.

5. Travel by Mr. Schwartz

Ground transportation; airfare to hearing; hotel \$5,000

AIS Risk Consultants Subtotal \$138,000

TOTAL ESTIMATED BUDGET: \$337,425

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PROOF OF SERVICE
BY OVERNIGHT OR U.S. MAIL, FAX TRANSMISSION,
EMAIL TRANSMISSION AND/OR PERSONAL SERVICE

State of California, City of Los Angeles, County of Los Angeles

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 6330 South San Vicente Boulevard, Suite 250, Los Angeles, California 90048, and I am employed in the city and county where this service is occurring.

On July 10, 2023, I caused service of true and correct copies of the document entitled

**CONSUMER WATCHDOG'S PETITION FOR HEARING, PETITION TO INTERVENE,
AND NOTICE OF INTENT TO SEEK COMPENSATION**

upon the persons named in the attached service list, in the following manner:

1. If marked FAX SERVICE, by facsimile transmission this date to the FAX number stated to the person(s) named.
2. If marked EMAIL, by electronic mail transmission this date to the email address stated.
3. If marked U.S. MAIL or OVERNIGHT or HAND DELIVERED, by placing this date for collection for regular or overnight mailing true copies of the within document in sealed envelopes, addressed to each of the persons so listed. I am readily familiar with the regular practice of collection and processing of correspondence for mailing of U.S. Mail and for sending of Overnight mail. If mailed by U.S. Mail, these envelopes would be deposited this day in the ordinary course of business with the U.S. Postal Service. If mailed Overnight, these envelopes would be deposited this day in a box or other facility regularly maintained by the express service carrier, or delivered this day to an authorized courier or driver authorized by the express service carrier to receive documents, in the ordinary course of business, fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 10, 2023 at Los Angeles, California.



Kaitlyn Gentile

Service List

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