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10  
11 BEFORE THE INSURANCE COMMISSIONER  
12 OF THE STATE OF CALIFORNIA

13  
14 In the Matter of the Request for Finding  
15 Eligibility to Seek Compensation of:

16  
17 Consumer Watchdog

File No. IE-2024-0002

**CONSUMER WATCHDOG'S RESPONSE TO  
INSURANCE INDUSTRY COMMENTS ON ITS  
REQUEST FOR FINDING OF ELIGIBILITY TO  
SEEK COMPENSATION; DECLARATION OF  
PAMELA PRESSLEY**

[Ins. Code §1861.10; Cal. Code Regs, tit. 10,  
§ 2662.2]

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1 Consumer Watchdog submits this Response as provided for in the California Department of  
2 Insurance’s (“Department” or “CDI”) June 19, 2024 Order Concerning Consumer Watchdog’s Request  
3 for Finding of Eligibility to Seek Compensation (“June 19 Order”).

4 **I. Introduction and General Response to Insurance Industry Comments.**

5 Orwellian. That is the best way to describe the current situation: insurance companies argue  
6 Consumer Watchdog does not represent consumers, despite the fact that the group has saved consumers  
7 \$6 billion in insurance premiums since 2002 in over 120 rate proceedings enforcing Proposition 103’s  
8 consumer protections—which, of course, is the precise reason for the industry vendetta playing out now  
9 in the Legislature and at the Department.<sup>1</sup> That consumer savings was achieved, remarkably, with just  
10 \$11.6 million in fees awarded to Consumer Watchdog for its substantial contribution in rate and  
11 rulemaking matters before the Department, about half of which went to outside actuaries and other  
12 experts. All told, that is less than 25 cents for every \$100 saved.<sup>2</sup>

13 As Rex Frazier, head of the insurance trade group Personal Insurance Federation of California  
14 (“PIFC”), recently told *Politico*, the industry is looking to punish Consumer Watchdog for its “bad  
15 behavior.”<sup>3</sup> PIFC’s comments filed with the Department acknowledge that PIFC is targeting Consumer  
16 Watchdog for its advocacy on behalf of consumers in the broader “legislative and regulatory  
17 negotiations” regarding the “California insurance market,” not just for its incredibly successful role in  
18 defending consumers from unfair rate increases in proceedings at the Department.<sup>4</sup> Such an attack from  
19 Mr. Frazier is nothing new. Mr. Frazier was a Deputy Commissioner at the Department under then-  
20 Commissioner Chuck Quackenbush, who resigned from office following a pay-to-play scandal. During  
21  
22

23 <sup>1</sup> Declaration of Pamela Pressley (“Pressley Decl.”), ¶ 5; see [https://consumerwatchdog.org/wp-](https://consumerwatchdog.org/wp-content/uploads/2024/05/Prop103-SavingsAndFees-Chart-5.17.24.pdf)  
24 [content/uploads/2024/05/Prop103-SavingsAndFees-Chart-5.17.24.pdf](https://consumerwatchdog.org/wp-content/uploads/2024/05/Prop103-SavingsAndFees-Chart-5.17.24.pdf).

25 <sup>2</sup> Consumer Watchdog, *How Citizen Enforcement of Proposition 103 Has Saved Californians*  
26 *\$5.5 Billion—and Why the Insurance Industry Hates It*, February 24, 2024, p. 21,  
27 <https://consumerwatchdog.org/wp-content/uploads/2024/01/Prop103CitizenEnforcement.pdf>.

28 <sup>3</sup> Pressley Decl., Exh. 1 (Camille Von Kaenel, *Insurers launch challenge to Consumer Watchdog’s*  
*bottom line*, *Politico*, June 25, 2024).

<sup>4</sup> PIFC, *Opposition to Consumer Watchdog Request for Finding of Eligibility to Seek Compensation*,  
June 12, 2024, p. 2.

1 that time, Mr. Frazier was critical of Consumer Watchdog’s efforts to expose the corruption and was  
2 also instrumental in Commissioner Quackenbush’s attack on the Proposition 103 intervenor system.

3 According to PIFC, consumers would rather pay more, not less, for coverage,<sup>5</sup> which is at odds  
4 with common sense, polls, and the industry’s own reports.<sup>6</sup> PIFC’s comments rely on an article about  
5 “affluent” homeowners,<sup>7</sup> but even well-off consumers would not willingly choose to overpay for  
6 coverage. While Consumer Watchdog is highly attuned to the need for availability, access cannot trump  
7 appropriate review of rates because without affordability, there is no availability.

8 To provide protection against such unilateral insurer decision-making and other industry abuses,  
9 voters granted consumers and consumer groups the right to challenge insurance companies’ compliance  
10 with Proposition 103 as part of the 1988 insurance reform initiative authored by Consumer Watchdog  
11 founder Harvey Rosenfield, which requires insurance companies to open their books and prove their  
12 rates and premiums are reasonable before the Insurance Commissioner can approve them.

13 Not surprisingly, the comments filed by insurance industry-aligned trade groups in opposition to  
14 Consumer Watchdog’s Request for Finding of Eligibility to Seek Compensation (“Request”) attempt to  
15 re-write the long-established legal standards for consumer participation in Proposition 103  
16 proceedings. These groups, who Consumer Watchdog has long stood against to uphold Proposition  
17 103’s protections on behalf of the consumers in matters before the Department, the Legislature, and the  
18 courts for over nearly four decades, are opposed to Consumer Watchdog’s ability to seek compensation  
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24 <sup>5</sup> *Id.*, p. 3 (“In a townhall last week, consumers lamented that they would happily pay the appropriate  
price if it meant access to admitted market insurers.”).

25 <sup>6</sup> See, e.g., Pressley Decl., Exh. 2 (TransUnion, Insurance Trends and 2024 Outlook Report), p. 4.

26 <sup>7</sup> Megan Fan Munce, *Angry homeowners in affluent California city demand faster action on insurance*  
27 *crisis*, San Francisco Chronicle, May 30, 2024, [https://www.msn.com/en-us/news/us/angry-](https://www.msn.com/en-us/news/us/angry-homeowners-in-affluent-california-city-demand-faster-action-on-insurance-crisis/ar-BB1nloch)  
28 [homeowners-in-affluent-california-city-demand-faster-action-on-insurance-crisis/ar-BB1nloch](https://www.msn.com/en-us/news/us/angry-homeowners-in-affluent-california-city-demand-faster-action-on-insurance-crisis/ar-BB1nloch) (“When  
a resident of Orinda suggested that home insurance prices should triple, attendees at a town hall  
Wednesday night had a surprising response. They cheered.”).

1 for its work on behalf of consumers. The insurance industry wants intervenors out of the ratemaking  
2 process because independent public scrutiny of insurance rate increases saves consumers money.

3 The Department’s recent actions regarding requests for finding of eligibility to seek  
4 compensation by Consumer Watchdog and Consumer Federation of California Education Foundation  
5 (“CFCEF”) also depart from the letter of the law. Neither statute nor regulation authorize the  
6 Commissioner to solicit comment or call a hearing on whether organizations “represent the interests of  
7 consumers” for purposes of being eligible to seek compensation in Department proceedings, which is  
8 intended as a threshold showing with a more detailed review of requests for compensation to follow  
9 after the work of the intervenor is complete in a particular proceeding. It is not up to the industry to  
10 decide whether a consumer group represents the interests of consumers, and a finding of eligibility  
11 certainly does not hinge on whether the insurance companies or the Department agree with a consumer  
12 group’s positions. Sixteen consumer and public interest groups all support granting Consumer  
13 Watchdog’s and CFCEF’s requests for finding of eligibility.<sup>8</sup>

14 As detailed in the Request,<sup>9</sup> Consumer Watchdog’s consumer advocacy credentials cannot be  
15 legitimately questioned. Established in 1985, Consumer Watchdog is a non-profit, tax-exempt consumer  
16 research, education, litigation, and advocacy organization. Consumer Watchdog’s legal staff advocates  
17 on behalf of consumers before regulatory agencies, the legislature, and the courts. The staff of Consumer  
18 Watchdog includes some of the nation’s foremost consumer advocates and experts on consumer  
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22 <sup>8</sup> Consumer Protection Policy Center (“CPPC”) at the University of San Diego School of Law,  
23 *Testimony of the Consumer Protection Policy Center – Consumer Intervenor Process*, June 28, 2024,  
24 [https://www.insurance.ca.gov/01-consumers/150-other-prog/01-intervenor/upload/Written-Comment-  
25 by-Marcus-Friedman\\_Consumer-Protection-Policy-Center.pdf](https://www.insurance.ca.gov/01-consumers/150-other-prog/01-intervenor/upload/Written-Comment-by-Marcus-Friedman_Consumer-Protection-Policy-Center.pdf); Public Interest Organizations Submitted  
26 Comments Re: Requests for Finding of Eligibility to Seek Compensation Submitted by Consumer  
27 Watchdog and Consumer Federation of California Education Foundation, June 28, 2024,  
28 [https://www.insurance.ca.gov/01-consumers/150-other-prog/01-intervenor/upload/Written-Comment-  
by-Public-Interest-Organizations.pdf](https://www.insurance.ca.gov/01-consumers/150-other-prog/01-intervenor/upload/Written-Comment-by-Public-Interest-Organizations.pdf).

<sup>9</sup> Consumer Watchdog’s Request for Finding of Eligibility to Seek Compensation, filed with the  
Department on June 3, 2024, [https://www.insurance.ca.gov/01-consumers/150-other-prog/01-  
intervenor/upload/2024-06-03-Request-for-Finding-of-Eligibility.pdf](https://www.insurance.ca.gov/01-consumers/150-other-prog/01-intervenor/upload/2024-06-03-Request-for-Finding-of-Eligibility.pdf).

1 matters.<sup>10</sup> Since 1988, Consumer Watchdog’s attorneys have represented consumers in numerous class  
2 actions, civil lawsuits, and administrative complaints challenging unfair business practices by insurers  
3 and large corporations. A particular focus of that litigation has been to challenge the illegal and unfair  
4 business practices of property-casualty insurance companies. As noted in the Request, Consumer  
5 Watchdog attorneys have helped establish precedential decisions in numerous landmark cases and have  
6 participated in virtually every lawsuit concerning Proposition 103’s constitutionality and scope to  
7 uphold its protections for consumer policyholders. (Request, ¶ 5.)

8 For these reasons, the Commissioner has granted Consumer Watchdog’s 15 prior requests since  
9 1993, finding that it represents the interests of consumers and is eligible to seek compensation. (Request,  
10 ¶ 9.) There is no justification for the Department to alter its course. The Request should be granted  
11 without further delay.

12 **II. Consumer Watchdog Has Met the Legal Standards for a Request for Eligibility Showing**  
13 **That It Represents the Interests of Consumers.**

14 A. Insurance Code Section 1861.10 and the Intervenor Regulations Must Be Interpreted and  
15 Applied to Promote Consumer Participation in Departmental Proceedings.

16 Proposition 103 was enacted to ensure that insurance is fair, available, and affordable for *all*  
17 Californians. (*State Farm Mutual Automobile Ins. Co. v. Garamendi* (“*Garamendi*”) (2004) 32 Cal.4th  
18 1029, 1045, emphasis added.) “To achieve this goal, the drafters established a public hearing process for  
19 reviewing insurance rate changes . . . . In doing so, the drafters sought to enable consumers to  
20 permanently unite to fight against insurance abuse.” (*Ibid.*, internal citations omitted.) Proposition 103  
21 and the intervenor regulations expressly provide for consumer participation in proceedings before the  
22 Department and the courts: “[a]ny person may initiate or intervene in any proceeding permitted or  
23 established pursuant to this chapter, challenge any action of the commissioner under this article, and  
24 enforce any provision of this article.” (Ins. Code § 1861.10(a).)<sup>11</sup> To further encourage public  
25 participation, section 1861.10(b) requires awards of reasonable advocacy and witness fees and expenses

26 <sup>10</sup> A copy of Consumer Watchdog’s Legal Project resume, which includes legal staff bios, is attached  
27 as Exhibit 3 to the Pressley Decl. A listing of other Consumer Watchdog advocacy staff with their bios  
28 is attached as Exhibit 4 to the Pressley Decl.

<sup>11</sup> All further statutory references are to the Insurance Code.



1 for any person who “represents the interests of consumers” and “has made a substantial contribution to  
2 the adoption of any order, regulation, or decision by the commissioner or a court.”

3 As previous insurance commissioners and the courts have consistently recognized, the  
4 involvement and advocacy of “consumer representatives is an important tool to ensure that [insurance  
5 companies] comply with the statutory and regulatory prohibition on ‘excessive, inadequate, and unfairly  
6 discriminatory’ rates, or rates that otherwise violate the law[.]” (*Assn. of California Ins. Cos. v. Poizner*  
7 (2009) (“*ACIC*”) 180 Cal.App.4th 1029, 1041.) Per the voters’ instruction, the mandate of section  
8 1861.10(b), like all of the provisions of Proposition 103, must be “liberally construed and applied in  
9 order to fully promote its underlying purposes.” (Prop 103, Uncodified Section 8(a).) Accordingly,  
10 courts have repeatedly construed section 1861.10(a) and other provisions of Proposition 103 in a manner  
11 “consistent with Proposition 103’s goal of fostering consumer participation in the rate-setting process.”  
12 (*Garamendi, supra*, 32 Cal.4th at 1045; see also *ACIC, supra*, 180 Cal.App.4th at 1052 [stating “the  
13 goal of fostering consumer participation in the administrative rate-setting process” as “one of the  
14 purposes of Proposition 103”]; *Econ. Empowerment Found. v. Quackenbush* (“*EEF*”) (1997) 57  
15 Cal.App.4th 677, 686 [interpreting section 1861.10(b) in a manner “which best facilitates compensation”  
16 consistent with the purpose of the statute “to encourage consumers to participate in insurance rate  
17 proceedings by compensating them for their contribution”]; *State Farm Gen. Ins. Co. v. Lara* (“*SFG*”)  
18 (2021) 71 Cal.App.5th 197, 217 [construing “substantial contribution” standard consistent with purpose  
19 of “broad consumer participation”].)

20 Under the applicable regulations, Cal. Code Regs., title 10 (“10 CCR”), section 2662.2,<sup>12</sup>  
21 intervenors intending to seek compensation in proceedings before the Department may submit “a request  
22 for finding of eligibility to seek compensation” that must include specified documents and information  
23 to meet the threshold showing that the group “represents the interests of consumers.” As applicable to  
24 the intervenor regulations, section 2661.1 broadly defines “represents the interests of consumers” to  
25 mean that “the intervenor represents the interests of individual insurance consumer[s], or the intervenor  
26 is a group organized for the purpose of consumer protection as demonstrated by, but is not limited to  
27 \_\_\_\_\_

28 <sup>12</sup> All further regulation references are to Title 10 of the California Code of Regulations.

1 [sic], a history of representing consumers in administrative, legislative or judicial proceedings.” The sole  
2 purpose of the request for finding of eligibility is to obtain a preliminary determination that a person or  
3 organization does in fact represent consumers for purposes of submitting a request for compensation at  
4 the conclusion of a Departmental proceeding; such a finding is valid in any proceeding commenced  
5 within two years of the finding. (10 CCR § 2662.2(d).)

6 Consistent with section 1861.10’s purpose of promoting consumer participation in the rate-  
7 setting process, in adopting section 2662.2 and other intervenor regulations implementing the statute in  
8 1996, the Commissioner stated that “[c]onsumers and consumer groups are entitled to know in advance  
9 what will be expected of them” and are “entitled to a *streamlined* process to intervene and seek  
10 compensation in [Department] proceedings” and that “[t]hese requirements must be as *uncomplicated as*  
11 *possible*, while ensuring the integrity of the intervention and intervenor compensation system.”<sup>13</sup>

12 Section 2662.2(a)(1) provides that the request include “a showing by the intervenor or participant  
13 that it represents the interests of consumers, including a description of the previous work of the  
14 intervenor or participant[.]” Consumer Watchdog’s Request includes substantial information satisfying  
15 this requirement to show it is a group organized for the purpose of consumer protection as demonstrated  
16 by, but not limited to, its history of representing consumers in administrative, legislative, or judicial  
17 proceedings, including summaries of the different categories of work Consumer Watchdog has  
18 performed and continues to perform on behalf of consumers (Request, ¶ 4); specific civil cases  
19 Consumer Watchdog has initiated and/or intervened in to enforce Proposition 103’s consumer protection  
20 mandates (*id.*, ¶ 5, fn. 2); a list of over 120 rate and rulemaking proceedings in which Consumer  
21 Watchdog has intervened before the Department over the last three decades; collectively, the rate  
22 proceedings in which Consumer Watchdog intervened since 2002 have resulted in over \$6 billion in  
23 annual premium savings for consumers as compared to the rates originally sought by the insurance  
24 companies (*id.*, ¶¶ 7–8);<sup>14</sup> and a summary of highlights of Consumer Watchdog’s work and victories  
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26  
27 <sup>13</sup> Pressley Decl., Exh. 5 (Cal. Dept. of Ins., Final Statement of Reasons, September 25, 1996, RH-341),  
p. 2, emphasis added.

28 <sup>14</sup> See fn. 1, *supra*.

1 representing consumers in administrative, legislative, and judicial proceedings since the last finding of  
2 eligibility in July 2022 (*id.*, Exh. C).

3 Section 2662.2(a)(2) specifies a list of additional information and documents that the Request  
4 must contain, all of which Consumer Watchdog provided in paragraph 10 of its Request and the  
5 appended Exhibits A–E:

6 (A) a copy of the group’s articles of incorporation, by-laws, or (for groups not organized as  
7 corporations) other organizational documents (see Request, ¶ 10.A and Exh. A [original and  
8 amended Articles of Incorporation showing that Consumer Watchdog was organized for the  
9 primary purposes of conducting educational, litigation, and research activities on consumer and  
10 public interest issues, and to represent the interests of ratepayers and insurance policyholders  
11 before administrative agencies and the courts]),

12 (B) *if* the group has members, the approximate number of current members [emphasis added] (see  
13 Request, ¶ 10.B and Exh. B [Bylaws, Article II, stating that Consumer Watchdog has “no  
14 members within the meaning of section 5056 of the California Nonprofit Corporation Law”]),

15 (C) composition of the group’s current Board of Directors -- including the name and business  
16 address of each director and/or the name and business address of the principals of the group if it  
17 is not a corporation (see Request, ¶ 10.C),

18 (D) newsletter circulation, *if any*, along with a representative sample of newsletters and/or any other  
19 publications issued by the intervenor in California during the previous twelve (12) months  
20 [emphasis added] (see Request, ¶ 10.D [stating “Consumer Watchdog updates interested parties  
21 via its website (<http://www.consumerwatchdog.org>), email, and social media—including  
22 Facebook, Twitter, Instagram, and YouTube—and has an annual “Rage for Justice” awards  
23 dinner attended by hundreds of its supporters. (See <http://www.consumerwatchdog.org/rage-for-justice-awards>)”]);

24 (E) *any* annual or year-end report for the prior year [emphasis added] (see Request, ¶ 10.E and  
25 Exh. C [a summary of highlights of Consumer Watchdog’s work and victories representing  
26  
27  
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1 consumers in administrative, legislative, and judicial proceedings since the last finding of  
2 eligibility in July 2022]),

3 (F) a statement as to whether or not the group has been granted non-profit status under Internal  
4 Revenue Code Section 501(c) (see Request, ¶ 10.F and Exh. D [Letter from IRS showing  
5 Consumer Watchdog has been granted nonprofit status under Internal Revenue Code  
6 § 501(c)(3)]), and

7 (G) In order to allow a determination whether the group actually does represent the interests of  
8 consumers, a listing, by general category, of the group's funding sources for the prior twenty-  
9 four (24) months and the approximate total percentage of the group's annual budget from each  
10 funding category. Each foundation, corporate, business, or government grant shall be separately  
11 listed by name of foundation, corporation, business, or government agency and amount of grant.  
12 For each individual who contributed at least five percent of the group's annual budget, the name  
13 of the individual and the total amount of the annual contribution shall be separately listed (see  
14 Request, ¶ 10.G and Exh. E [Consumer Watchdog's funding sources, listed by category and  
15 percentage of its budget for the past 24 months, along with a listing of grants received by name  
16 and amount]).

17 Having included all of the information and documentation specified under the regulation to  
18 demonstrate that it represents the interests of consumers, Consumer Watchdog's Request readily meets  
19 the requirements of section 2662.2(a). An attempt by insurance company trade groups to expand upon or  
20 heighten the requirements of the regulation or section 1861.10, as suggested by their comments, would  
21 directly contravene Proposition 103's purpose of encouraging consumer participation and the expressed  
22 intent of the intervenor regulations to make the process of intervention and seeking compensation "as  
23 uncomplicated as possible." (See Pressley Decl., Exh. 5 [Cal. Dept. of Ins., Final Statement of Reasons,  
24 RH-341], p. 2; see also *Garamendi, supra*, 32 Cal.4th 1029 at 1045; *ACIC, supra*, 180 Cal.App.4th at  
25 1052; *EEF, supra*, 57 Cal.App.4th at 686; *SFG, supra*, 71 Cal.App.5th at 217.)

1 B. The Insurance Industry’s Attempts to Create Additional Standards for a Finding of  
2 Eligibility to Seek Compensation Are Contrary to the Statute and Regulation and Their  
3 Underlying Purpose.

4 A number of comments submitted by the insurance industry and its allies seek to inflate the  
5 requirements for a request for a finding of eligibility beyond the specified showing set forth in section  
6 2662.2(a), contrary to the express language of the regulation and its intent as discussed above.

7 For example, comments submitted by PIFC,<sup>15</sup> the American Property Casualty Insurance  
8 Association (“APCIA”),<sup>16</sup> and parroted in a subsequent comment by the California Building Industry  
9 Association (“CBIA”),<sup>17</sup> allege that in addition to the explicit requirements in section 2662.2(a) to  
10 demonstrate that it “represents the interests of consumers,” Consumer Watchdog must also demonstrate  
11 in its Request that it has made a “substantial contribution” in prior proceedings.

12 These allegations put the cart before the horse and are clearly at odds with the law. The industry-  
13 aligned trade groups seek to transpose the “substantial contribution” standard, which as noted above is  
14 the basis for evaluating a consumer representative’s fee request *at the end of a proceeding* (Ins. Code  
15 § 1861.10(b)), with the “represents the interests of consumers” standard relevant to the Request. (10  
16 CCR § 2662.2.) Logically, establishing that a consumer representative made a “substantial contribution”  
17 to a proceeding can only occur *after* a proceeding concludes, not as part of a request for finding of  
18 eligibility, and the regulations specifically define the “substantial contribution” showing that must be  
19 made at that time (10 CCR § 2661.1(k)).

20 Tellingly, the trade groups cite to no actual authority in regulation or statute for this heightened  
21 requirement for a request for finding of eligibility and demonstrate their unfamiliarity with the  
22 intervenor process itself. It is in fact PIFC that is “out of touch,” then, when it asserts that for each of the  
23 more than 120 rate matters listed in Consumer Watchdog’s Request dating back to 2002, “each filing

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24 <sup>15</sup> PIFC, fn. 4 *supra*, p. 3.

25 <sup>16</sup> APCIA, *APCIA Interested Party Response to Consumer Watchdog’s June 3, 2024 Request for*  
26 *Finding of Eligibility for Compensation*, June 12, 2024, p. 3.

27 <sup>17</sup> CBIA, *Interested Party Response to Consumer Watchdog’s June 3, 2024, Request for Finding of*  
28 *Eligibility for Compensation*, June 28, 2024, p. 1. CBIA’s President and CEO, Dan Dunmoyer, who  
signed CBIA’s comment letter, is a former Senior Vice President and Head of Government and Industry  
Affairs at Farmers Insurance.

1 must be viewed independently to determine whether CW’s contribution can be viewed as a net positive  
2 for the consumer, or if it simply resulted in unnecessary delay.” (PIFC, p. 3.) This is not a required  
3 showing for a request for finding of eligibility under section 2662.2, nor is it a required showing for an  
4 award of compensation under the statute or regulations (see Ins. Code § 1861.10(b); 10 CCR § 2662.3  
5 [setting forth the requirements for a request for compensation]; 10 CCR § 2661.1(k) [defining  
6 “substantial contribution”].) Moreover, as noted *infra* § III.E, insurance company applicants are  
7 responsible for unnecessary delays in the rate review proceedings, not Consumer Watchdog.

8 In any event, for each of 72 proceedings for which Consumer Watchdog sought and was awarded  
9 compensation in just the last *eleven* years from 2013–2023 as listed on the CDI’s website, the  
10 Commissioner has *necessarily already made the determination* that Consumer Watchdog (1) represented  
11 the interests of consumers, and (2) that it made a substantial contribution to the Commissioner’s decision  
12 in the proceeding.<sup>18</sup> Indeed, since Consumer Watchdog’s last Finding of Eligibility was issued in 2022  
13 by Commissioner Lara, in the two most recent Decisions Awarding Compensation to Consumer  
14 Watchdog in rate proceedings in 2023, the Commissioner found that Consumer Watchdog represents the  
15 interests of consumers and made a substantial contribution, resulting in “more relevant, credible, and  
16 non-frivolous information being available than would otherwise have been available to the  
17 Commissioner to make a decision.”<sup>19</sup>

18 The intervenor statute and regulations therefore already provide the guardrails, at the appropriate  
19 stage of a proceeding, that PIFC seeks to impose on Consumer Watchdog to prevent it from being  
20 eligible to seek compensation in any proceeding before any proceeding is even at issue.

21 Relatedly, APCIA takes issue with Consumer Watchdog’s Request including a matter for which  
22 Consumer Watchdog was denied compensation in the list of cases in paragraph 7 of its Request as  
23

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24 <sup>18</sup> See Cal. Dept. of Ins., Total Compensation Awarded to Intervenor, [https://www.insurance.ca.gov/01-](https://www.insurance.ca.gov/01-consumers/150-other-prog/01-intervenor/upload/Total-Compensation-2013-2023-v1.pdf)  
25 [consumers/150-other-prog/01-intervenor/upload/Total-Compensation-2013-2023-v1.pdf](https://www.insurance.ca.gov/01-consumers/150-other-prog/01-intervenor/upload/Total-Compensation-2013-2023-v1.pdf).

26 <sup>19</sup> See Pressley Decl., Exh. 6 (Decision Awarding Compensation, July 12, 2023, *In the Matter of the*  
27 *Rate Applications of Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century*  
28 *Insurance Company*, File No. PA-2022-00007), pp. 13–15; Exh. 7 (Decision Awarding Compensation,  
Nov. 8, 2023, *In the Matter of the Rate Application of CSAA Insurance Exchange*, File No. PA-2023-  
00004], pp. 8–10).

1 evidence that it represents consumers.<sup>20</sup> Consumer Watchdog would encourage APCIA to read the  
2 document to which it cites, however. The June 21, 2023 ALJ Decision in *In the Matter of the Rate*  
3 *Application of Interinsurance Exchange of the Automobile Club* cited by APCIA, while denying  
4 compensation based upon a dispute about whether a “substantial contribution” was made, held that the  
5 Commissioner’s July 26, 2022 finding that “deemed CW eligible for compensation for its representation  
6 of consumers’ interests” was “conclusive on this issue” in that proceeding. (Decision Denying  
7 Compensation, *In the Matter of the Rate Application of Interinsurance Exchange of the Automobile*  
8 *Club*, File No. PA-2022-00005, June 21, 2023, p. 12.)

9 C. The Department’s New and Unprecedented Process for Reviewing the Request Is  
10 Contrary to Law.

11 The new procedures being implemented by the CDI in its June 6, 2024 Notice and June 19 Order  
12 regarding Consumer Watchdog’s Request are not grounded in any legal authority. No statute or  
13 regulation authorizes the Commissioner to solicit comments from the insurance industry or other  
14 “interested parties” or for the insurance industry to weigh in on the completeness of a Request or  
15 whether organizations “represent the interests of consumers” for purposes of being eligible to seek  
16 compensation in Department proceedings. Prominent consumer protection advocacy organizations are  
17 united in the view that the erection of the additional hurdles the CDI seeks to impose on the intervenor  
18 process “would discourage active participation on behalf of consumer protection,” contrary to the intent  
19 of Proposition 103 “to encourage intervenors to voice the concerns of consumers.”<sup>21</sup>

20 Once, as here, the Public Advisor has determined that a request for finding of eligibility is  
21 “complete” under section 2662.2(b), all that remains is for the Commissioner to make a final  
22 determination on the request under section 2662.2(c). Subdivisions (b) and (c) of section 2662.2 set forth  
23 the timeframes under which the Public Advisor must determine completeness and the Commissioner

24 \_\_\_\_\_  
25 <sup>20</sup> APCIA, fn. 16 *supra*, p. 3, fn. 4; CBIA, fn. 17 *supra*, p. 1.

26 <sup>21</sup> See CPPC, fn. 8 *supra*, p. 2; see also Public Interest Organizations, fn. 8 *supra*, pp. 2–3 (coalition of  
27 15 of the nation’s leading consumer protection organizations agrees that the only purpose of soliciting  
28 industry comments and holding an unauthorized hearing on their objections is “to provide the insurance  
industry a forum to further its specious, self-serving complaints to keep consumer organizations from  
objecting to their unjustified rate hikes or advocating for stronger consumer protection regulations”).

1 must rule on the request for eligibility, which are consistent with the “streamlined process” that was  
2 intended when the regulation was adopted.<sup>22</sup> Subsection (b) requires that

3 [w]ithin 10 days of receipt of a request for finding of eligibility to seek compensation, the  
4 Public Advisor shall review the request for completeness. If the request includes all of the  
5 information required by subdivision (a) above, it is complete. If the Public Advisor  
6 determines that the request is not complete because it does not include all of the information  
7 required by subdivision (a), notice stating the grounds for incompleteness will be given to  
8 the person or group who submitted the request within the 10 day period and the request  
9 will be rejected.

10 Subdivision (c) requires that the Commissioner “shall rule on the request for a finding of  
11 eligibility to seek compensation in writing not later than 15 days from the receipt of a complete request.”

12 Here, the Public Advisor did not provide any notice or otherwise determine that Consumer  
13 Watchdog’s June 3, 2024 Request was incomplete within 10 days, which was June 13, 2024. Instead, the  
14 Public Advisor emailed Consumer Watchdog a letter on June 17, 2024, requesting that Consumer  
15 Watchdog waive only the 15-day deadline under section 2662.2(c) by which the Commissioner is  
16 required to rule on a complete request, which the letter acknowledged was June 18, 2024.<sup>23</sup> The June 17,  
17 2024 letter did not request that Consumer Watchdog waive the 10-day completeness determination time  
18 period under section 2662.2(b).<sup>24</sup> In fact, as was confirmed in a phone conversation with Acting Public  
19 Advisor Ed Wu the same day, the Public Advisor had already determined that Consumer Watchdog’s  
20 Request was “complete” under section 2662.2(b), as it contained all of the information specified under  
21 10 CCR § 2662.2(a), leaving only the 15-day timeline to rule on Consumer Watchdog’s Request under  
22 subdivision (c).<sup>25</sup> Moreover, in a letter to the Public Advisor dated June 18, 2024, Consumer Watchdog  
23 agreed to waive the 15-day timeline under section 2662.2(c) until July 12 but did *not* agree to waive the  
24 10-day timeline under section 2662.2(b).<sup>26</sup>

25 \_\_\_\_\_  
26 <sup>22</sup> Pressley Decl., Exh. 5 (Final Statement of Reasons, RH-341), pp. 2, 7.

27 <sup>23</sup> Pressley Decl., Exh. 8 (Public Advisor letter to Consumer Watchdog, June 17, 2024).

28 <sup>24</sup> *Ibid.*

<sup>25</sup> Pressley Decl., ¶ 15.

<sup>26</sup> Pressley Decl., Exh. 9 (Consumer Watchdog letter to Public Advisor, June 18, 2024).



1 The June 19 Order confirmed that the Public Advisor’s June 17 letter “requested a waiver of the  
2 [15-day] deadline in Section 2662.2(c)” to consider “further information” but did not refer to any request  
3 to waive the 10-day completeness determination timeline under section 2662.2(b). (June 19 Order, p. 2.)  
4 The Order further acknowledged that Consumer Watchdog had agreed to extend the 15-day timeline  
5 under section 2662.2(c) to July 12 but stated that “the Commissioner will not issue a decision before  
6 August 2, 2024.” (*Ibid.*) Accordingly, the Public Advisor has determined that Consumer Watchdog’s  
7 Request is complete, and the only remaining determination is for the Commissioner to rule on its  
8 Request under section 2662.2(c).

9 Finally, CDI spokesperson Michael Soller told *Politico* that the purpose of the new procedures  
10 was “part of a new policy to ‘encourage public participation for the first time’ and increase  
11 transparency.”<sup>27</sup> Putting aside the fact that the new procedures have no basis in law or regulation, if  
12 “public participation” was indeed the goal, a review of the timeline shows the Department missed the  
13 mark. The June 19 Order at page 2 stated that a “notice” of Consumer Watchdog’s Request was posted  
14 on the Department’s website “on or about June 4.” However, Consumer Watchdog was unable to locate  
15 any such notice in a Google search of the CDI’s website conducted on June 17, 2024 when the Public  
16 Advisor first sent a letter to Consumer Watchdog requesting that it waive the 15-day deadline to rule on  
17 the Request.<sup>28</sup> On June 19, 2024, after receiving the Order, Consumer Watchdog located for the first  
18 time on the CDI’s website a Notice dated June 6, 2024 regarding Consumer Watchdog’s Request (“June  
19 6 Notice”) posted only on the “Insurers” webpage under “Bulletins & Notices.” The June 6 Notice was  
20 not served on Consumer Watchdog, and it is not posted on the CDI “Intervenor Process” webpage where  
21 Consumer Watchdog’s Request is posted.<sup>29</sup> Yet, the June 6 Notice set an arbitrary deadline of *June 12*  
22 for potential commenters to express an interest in commenting on Consumer Watchdog’s Request.  
23 Therefore, by the time the June 6 Notice was publicly available and the June 19 Order was issued, the  
24 deadline set for registering intent to submit a comment had already passed.

25 \_\_\_\_\_  
26 <sup>27</sup> Pressley Decl., Exh. 1 (Von Kaenel, *Insurers launch challenge to Consumer Watchdog’s bottom line*,  
27 fn. 3 *supra*).

28 <sup>28</sup> See Pressley Decl., ¶ 16.

<sup>29</sup> *Id.*, ¶ 17.

1 **III. The Remainder of the Insurance Industry Comments Misstate the Law, Raise Untimely**  
2 **and Irrelevant Issues, and Are Factually Incorrect.**

3 A. Represents the Interests of Consumers.

4 Several commenters criticized Consumer Watchdog for allegedly failing to show that it  
5 “represents the interests of consumers,” primarily by blaming the organization for the insurance market  
6 “crisis” that the industry itself has created through its own business decisions to restrict new business,  
7 and for *disagreeing with the industry’s views*. Orwellian. If insurers’ actions were aligned with the  
8 interests of consumers, Proposition 103 would not have been enacted in the first place. Putting aside the  
9 irony of insurance industry trade groups making such claims and the fact that neither Proposition 103  
10 nor the intervenor regulations require that an intervenor agree with the positions of insurers or the CDI  
11 on what is in the best interests of consumers, the allegation simply ignores the deep 35+ year history of  
12 California’s most well-known consumer advocacy group whose work on behalf of consumers is  
13 consistently documented in news stories across the state.<sup>30</sup> In 1985, Consumer Watchdog was founded  
14 as a California-based non-profit organization to conduct educational, litigation, and research activities  
15 on consumer and public interest issues, including but not limited to issues affecting consumer protection  
16 and environmental and government reform.<sup>31</sup> Over the years, Consumer Watchdog has fought to save  
17 consumers more than \$6 billion on their insurance premiums, exposed and changed the inhumane  
18 practices of health insurance companies, prevented oil companies from ripping off motorists, won  
19 privacy protections for consumers, and blocked taxpayer bailouts of utility companies.<sup>32</sup> *In just the last*  
20 *two years*, as documented in Exhibit C to its Request, Consumer Watchdog:

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22  
23 <sup>30</sup> Pressley Decl., ¶ 5; see also Public Interest Organizations, fn. 8 *supra*, p. 2 (“It is outrageous for  
24 insurance companies to suggest consumer organizations that have fought for insurance consumers’  
25 rights for decades – and have been confirmed as consumer intervenors by the current Commissioner  
26 and prior Commissioners as far back as 1995 – don’t represent consumers. Rate challenges by  
27 [Consumer Watchdog and Consumer Federation of California Education Foundation] have saved  
28 consumers nearly \$6.5 billion over the last two decades.”).

<sup>31</sup> Consumer Watchdog was originally incorporated as The Network Project in 1985, changed its name  
to The Foundation for Taxpayer and Consumer Rights in 1998, and changed its name to Consumer  
Watchdog in 2008. (See Request, ¶¶ 1–2 and Exh. A thereto; Pressley Decl., ¶ 4.)

<sup>32</sup> Pressley Decl., ¶ 5.

- 1 • Won Medical Board reform in legislation that will give consumers a voice and new rights in the  
2 enforcement process when they file a complaint for harm at the hands of a doctor, and guided  
3 families seeking to file such complaints through the process.<sup>33</sup>
- 4 • Drove the passage of historic legislation that will enable the state to impose a gasoline price  
5 gouging penalty on oil refiners, created expansive new transparency of refiners, and established a  
6 state watchdog bureau for market monitoring of the oil refining and retail industry.<sup>34</sup>
- 7 • Backed newly enacted regulations to protect privacy under California’s strongest-in-the-nation  
8 privacy law that prevent the tracking and selling of sensitive information and sparked a state  
9 investigation of how connected cars track us.<sup>35</sup>
- 10 • Released two reports investigating best practices for consumer recycling in support of tough new  
11 regulations for the state’s bottle deposit reform law to dramatically increase how many  
12 consumers are able to use the system to return their bottles and cans.<sup>36</sup>
- 13 • Won three motions to dismiss brought by CVS in a long-running legal battle over civil rights  
14 violations relating to a CVS drug program that limits people living with HIV to obtaining their  
15 life-saving medications only by mail.<sup>37</sup>
- 16 • Represented the public’s interest in several ongoing Department of Insurance regulatory  
17 proceedings, submitting written and oral comments, and expert and legal analysis, regarding the

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17 <sup>33</sup> See News Release, <https://consumerwatchdog.org/healthcare/governor-signs-medical-board-reform-bill-that-will-expand-patients-voice-in-doctor-disciplinary-process/>; see Los Angeles Times article,  
18 <https://www.latimes.com/california/story/2023-09-15/lawmakers-take-up-bill-to-overhaul-state-board-that-investigates-doctors#>.

19 <sup>34</sup> See News Release, <https://consumerwatchdog.org/energy/why-cas-oil-refiner-accountability-law-is-a-big-deal/>; see Los Angeles Times article, [https://www.latimes.com/california/story/2023-03-27/california-lawmakers-approve-legislature-passes-newsom-oil-bill?utm\\_id=91387&sfmc\\_id=2159508](https://www.latimes.com/california/story/2023-03-27/california-lawmakers-approve-legislature-passes-newsom-oil-bill?utm_id=91387&sfmc_id=2159508).

22 <sup>35</sup> See News Release, <https://consumerwatchdog.org/privacy/news-release-consumer-watchdog-applauds-ca-privacy-agencys-investigation-into-car-data/>; see Reuters article,  
23 <https://www.reuters.com/business/autos-transportation/california-agency-probes-automakers-data-privacy-practices-2023-07-31/>.

24 <sup>36</sup> See News Release, <https://consumerwatchdog.org/energy/new-watchdog-report-lays-out-checklist-for-calrecycle-to-make-bottle-deposit-refunds-easy-as-buying-the-beverages/>; see also News Release,  
25 <https://consumerwatchdog.org/energy/sf-bottlebank-pilot-to-refund-crv-bottle-deposits-a-bust-coalition-gives-calrecycle-checklist-for-reform/>.

26 <sup>37</sup> See News Release, <https://consumerwatchdog.org/in-the-courtroom/federal-court-rules-cvs-acted-with-deliberate-indifference-when-it-adopted-rx-program-that-discriminates-against-people-living-with-hiv/>.

1 proposed “Complete Property and Casualty Rate Applications” and “Catastrophe Modeling and  
2 Ratemaking” regulations.<sup>38</sup>

- 3 • Sponsored pending legislation to protect the health of people living within 3200 feet of oil wells  
4 by fining any operator whose community wells only produce a marginal number of barrels of oil  
5 daily.<sup>39</sup>
- 6 • Organized a statewide team of volunteer consumer advocates whose testimony spurred the  
7 Medical Board of California to hold its first-ever hearing focused on maternal and infant  
8 mortality—and first-ever meeting in Kern County.<sup>40</sup>
- 9 • Brought a legal action with the *Los Angeles Times* that won disclosure of FBI warrants and  
10 related documents that detail the United States Attorney’s Office’s investigation into unethical  
11 and illegal activity at the Los Angeles City Attorney’s Office and the Department of Water and  
12 Power.<sup>41</sup>
- 13 • Released three reports spotlighting the profiling flaws of algorithms, the dangers of automated  
14 decision-making and artificial intelligence, and advocated for strong consumer opt-out and  
15 disclosure rights in proposed automated decision-making privacy regulations.<sup>42</sup>

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16 <sup>38</sup> See News Release and Consumer Watchdog Testimony in CDI workshops on “Catastrophe Modeling  
17 and Ratemaking” proposed regulations, [https://consumerwatchdog.org/insurance/consumer-watchdog-](https://consumerwatchdog.org/insurance/consumer-watchdog-to-testify-that-five-loopholes-in-lara-rule-will-stand-in-the-way-of-new-coverage-in-fire-zones/)  
18 [to-testify-that-five-loopholes-in-lara-rule-will-stand-in-the-way-of-new-coverage-in-fire-zones/](https://consumerwatchdog.org/insurance/consumer-watchdog-to-testify-that-five-loopholes-in-lara-rule-will-stand-in-the-way-of-new-coverage-in-fire-zones/); see  
19 Consumer Watchdog Comments in CDI rulemaking hearing on “Complete Property and Casualty Rate  
20 Applications” regulations, [https://consumerwatchdog.org/wp-content/uploads/2024/07/2024-03-26-](https://consumerwatchdog.org/wp-content/uploads/2024/07/2024-03-26-CWD-Comments-Complete-Rate-App-Regulation.pdf)  
21 [CWD-Comments-Complete-Rate-App-Regulation.pdf](https://consumerwatchdog.org/wp-content/uploads/2024/07/2024-03-26-CWD-Comments-Complete-Rate-App-Regulation.pdf).

22 <sup>39</sup> See News Release, [https://consumerwatchdog.org/energy/bill-charging-low-production-oil-wells-](https://consumerwatchdog.org/energy/bill-charging-low-production-oil-wells-advances-in-california-senate/)  
23 [advances-in-california-senate/](https://consumerwatchdog.org/energy/bill-charging-low-production-oil-wells-advances-in-california-senate/); see Politico article, [https://consumerwatchdog.org/in-the-](https://consumerwatchdog.org/in-the-news/california-bill-targets-low-production-wells-in-3200-foot-setback-zone/)  
24 [news/california-bill-targets-low-production-wells-in-3200-foot-setback-zone/](https://consumerwatchdog.org/in-the-news/california-bill-targets-low-production-wells-in-3200-foot-setback-zone/).

25 <sup>40</sup> See KVPR news story, [https://consumerwatchdog.org/in-the-news/bakersfield-family-lost-daughter-](https://consumerwatchdog.org/in-the-news/bakersfield-family-lost-daughter-and-grandson-one-day-they-turned-their-pain-advocacy/)  
26 [and-grandson-one-day-they-turned-their-pain-advocacy/](https://consumerwatchdog.org/in-the-news/bakersfield-family-lost-daughter-and-grandson-one-day-they-turned-their-pain-advocacy/); see also KVPR news story,  
27 [https://consumerwatchdog.org/in-the-news/kvpr-kern-county-maternal-mortality-at-the-center-of-a-](https://consumerwatchdog.org/in-the-news/kvpr-kern-county-maternal-mortality-at-the-center-of-a-state-medical-board-meeting/)  
28 [state-medical-board-meeting/](https://consumerwatchdog.org/in-the-news/kvpr-kern-county-maternal-mortality-at-the-center-of-a-state-medical-board-meeting/).

<sup>41</sup> See Los Angeles Times article, [https://www.latimes.com/california/story/2024-05-16/former-la-city-](https://www.latimes.com/california/story/2024-05-16/former-la-city-attorney-mike-feuer-lied-to-investigators-and-obstructed-justice-according-to-fbi-affidavit)  
attorney-mike-feuer-lied-to-investigators-and-obstructed-justice-according-to-fbi-affidavit.

<sup>42</sup> See News Release, [https://consumerwatchdog.org/privacy/last-minute-proposed-changes-could-](https://consumerwatchdog.org/privacy/last-minute-proposed-changes-could-weaken-landmark-ca-privacy-rules-consumer/)  
weaken-landmark-ca-privacy-rules-consumer/; see also News Release,  
[https://consumerwatchdog.org/privacy/privacy-news-releases/news-release-how-new-ca-privacy-](https://consumerwatchdog.org/privacy/privacy-news-releases/news-release-how-new-ca-privacy-regulations-can-be-drawn-to-stop-biased-algorithms/)  
regulations-can-be-drawn-to-stop-biased-algorithms/; see also News Release,  
[https://consumerwatchdog.org/privacy/consumer-watchdog-report-shows-how-wall-street-ai-could-](https://consumerwatchdog.org/privacy/consumer-watchdog-report-shows-how-wall-street-ai-could-cause-a-financial-crisis-and-how-it-can-be-stopped/)  
cause-a-financial-crisis-and-how-it-can-be-stopped/; see also Bloomberg Law article,  
[https://consumerwatchdog.org/in-the-news/bloomberg-law-california-privacy-agency-faces-lobbying-](https://consumerwatchdog.org/in-the-news/bloomberg-law-california-privacy-agency-faces-lobbying-in-writing-ai-rules/)  
in-writing-ai-rules/.

- 1 • Settled a class action lawsuit on behalf of consumers whose confidential medical information, including HIV status, was accessed and shared without their consent; impacted Californians received financial compensation and the right to have their data deleted.<sup>43</sup>
- 2
- 3 • Won statewide and county declarations of Latina Maternal Health Month to raise awareness and education around the maternal mortality crisis and sponsored the second and third annual
- 4 Maternal Health Fair in Kern County.<sup>44</sup>
- 5
- 6 • Maintained public pressure on the Newsom Administration to reduce oil and gas permitting in the state at the website [www.newsomwellwatch.com](http://www.newsomwellwatch.com), an interactive map tracking well permits granted by Newsom.<sup>45</sup>
- 7
- 8 • Produced reports and testimony analyzing the big five oil refiners' profit reports and refining margins to show the need to speed implementation of a price-gouging penalty on unjustified price spikes.<sup>46</sup>
- 9
- 10 • Saved policyholders approximately \$2.5 billion by intervening to challenge excessive rate hikes under Prop 103, including in:
- 11
  - 12 ○ *In the Matter of the Rate Application of the Standard Fire Ins. Co.*, PA-2023-00017 (Cal. Ins. Comm'r 2024), resulting in annual savings of \$37.8 million in dwelling, tenant, condo, landlord dwelling, and landlord condo insurance as compared to the rates the company originally requested;
  - 13
  - 14 ○ *In the Matter of the Rate Application of CSAA Ins. Exch.*, PA-2023-00021 (Cal. Ins. Comm'r 2024), resulting in annual savings of \$525 million in auto insurance premiums;
  - 15
  - 16 ○ *In the Matter of the Rate Applications of GEICO Ind. Co., GEICO Cas. Co., GEICO Gen. Ins. Co., and Gov't Emps. Ins. Co.*, PA-2023-00013 (Cal. Ins. Comm'r 2023), resulting in annual savings of \$356 million in auto insurance premiums;
  - 17
  - 18
  - 19
  - 20

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21 <sup>43</sup> See News Release, <https://consumerwatchdog.org/in-the-courtroom/one-of-the-largest-hiv-privacy-breach-payments-arriving-in-mailboxes-this-week/>.

22 <sup>44</sup> See News Release <https://consumerwatchdog.org/healthcare/healthcare-news-releases/kern-county-proclaims-may-2023-as-latina-maternal-health-awareness-month/>.

23 <sup>45</sup> See News Release, <https://consumerwatchdog.org/energy/oil-drilling-permit-approvals-fall-to-zero-for-first-time-since-newsom-came-to-office-making-history-consumer-watchdog-and-fractracker-alliance-say/>.

24 <sup>46</sup> See News Release, <https://consumerwatchdog.org/energy/watchdog-exposes-phony-oil-refiner-arguments-in-price-gouging-penalty-proceeding-makes-case-for-maximum-gross-refining-margin-of-70-cents-per-gallon/>; see also News Release, <https://consumerwatchdog.org/energy/california-oil-refiners-windfall-profits-require-windfall-profits-tax-bring-gas-prices-under/>; see also Politico article, <https://consumerwatchdog.org/in-the-news/politico-pressure-at-the-pump/>.

- 1 ○ *In the Matter of the Rate Application of State Farm Mut. Auto. Co.*, PA-2023-00012 (Cal.  
2 Ins. Comm'r 2023), resulting in annual savings of \$151.7 million in auto insurance  
3 premiums;
- 4 ○ *In the Matter of the Rate Application of State Farm Gen. Ins. Co.*, PA-2023-00007 (Cal.  
5 Ins. Comm'r 2023), resulting in annual savings of \$199.7 million in homeowners  
6 insurance.
- 7 ○ *In the Matter of the Rate, Rule, and Form Application of Pacific Specialty Ins. Co.*, PA-  
8 2020-00009 (Cal. Ins. Comm'r 2023), resulting in annual savings of \$6.3 million in  
9 homeowners insurance;
- 10 ○ *In the Matter of the Rate Application of Allstate Northbrook Ind. Co.*, PA-2023-00014  
11 (Cal. Ins. Comm'r 2023), resulting in annual savings of \$149.5 million in auto insurance  
12 premiums;
- 13 ○ *In the Matter of the Rate Application of State Farm Gen. Ins. Co.*, PA-2023-00006 (Cal.  
14 Ins. Comm'r 2023), resulting in annual savings of \$21.5 million in renters insurance;
- 15 ○ *In the Matter of the Rate Application of Farmers Ins. Exch., Fire Ins. Exch., and Mid-  
16 Century Ins. Co.*, PA-2023-00009 (Cal. Ins. Comm'r 2023), resulting in annual savings of  
17 \$276 million in renters, condo, and homeowners insurance;
- 18 ○ *In the Matter of the Rate Application of Farmers Ins. Exch., Mid-Century Ins. Co., and  
19 Truck Ins. Exch.*, PA-2023-00008 (Cal. Ins. Comm'r 2023), resulting in annual savings of  
20 \$535 million in auto insurance premiums;
- 21 ○ *In the Matter of the Rate Application of CSAA Ins. Exch.*, PA-2023-00004 (Cal. Ins.  
22 Comm'r 2023), resulting an annual savings of \$192.4 million in auto insurance  
23 premiums;
- 24 ○ *In the Matter of the Rate Applications of First Nat'l Ins. Co. of Am., Safeco Ins. Co. of  
25 Am., and Safeco Ins. Co. of Ill.*, PA-2022-00002 (Cal. Ins. Comm'r 2023), resulting in  
26 annual savings of \$7.8 million in homeowners multiple peril insurance;
- 27 ○ *In the Matter of the Rate Applications of Garrison Prop. and Cas. Ins. Co. and USAA-  
28 Cas. Ins. Co.*, PA-2021-00004 (Cal. Ins. Comm'r 2023), resulting in annual savings of  
\$8.47 million in homeowners, unit-owners, renters contents, and renters liability  
insurance;
- *In the Matter of the Rate Applications of Farmers Ins. Exch., Fire Ins. Exch., and Mid-  
Century Ins. Co.*, PA-2022-00007 (Cal. Ins. Comm'r 2023), resulting in annual savings  
of \$121 million in homeowners multiple peril insurance; and

- *In the Matter of the Rate Application of Med. Ins. Exch. of Cal.*, PA-2021-00003 (Cal. Ins. Comm’r 2023), resulting in annual savings of \$1.41 million in medical professional liability insurance.

In all 15 of the above rate proceedings concluding in 2023 and 2024, Consumer Watchdog’s advocacy was instrumental in reaching Settlement Stipulations with the Department and the insurance company Applicants pursuant to which the Commissioner approved lower overall rates than originally requested by the companies.<sup>47</sup> In each of those Stipulations, the parties expressly agreed that the stipulated rates were supportable and neither excessive nor inadequate under the applicable regulations.<sup>48</sup> Moreover, Consumer Watchdog has consistently advocated for companies to make insurance more available by lifting restrictions on new business, with some companies stating they would not do so even under the rates they had originally requested (e.g., State Farm General in *In the Matter of the Rate Application of State Farm Gen. Ins. Co.*, PA-2023-00007), and other companies expressly agreeing to provisions in the Stipulations advocated by Consumer Watchdog to lift such restrictions such as by reactivating online quote systems and making payment plan options consistent between new and renewal business (e.g., State Farm Mutual in *In the Matter of the Rate Application of State Farm Mut. Auto. Co.*, PA-2023-00012 and Allstate in *In the Matter of the Rate Application of Allstate Northbrook Ind. Co.*, PA-2023-00014).<sup>49</sup> And, in its written and oral comments in the workshops and hearings over the last two years regarding the CDI’s proposed “Complete Property and Casualty Rate Applications” and “Catastrophe Modeling and Ratemaking” regulations, Consumer Watchdog has consistently advocated for consumers’ interests in favor of public disclosure of models that are used to determine rates and premiums in order to determine their reliability, and that such models used for rating and deciding whether to insure or nonrenew a consumer should take into account mitigation measures that consumers take to harden their homes against wildfire risk.<sup>50</sup> No one can

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<sup>47</sup> See 2023-20244 Settlement Stipulations in 15 CDI rate proceedings, [https://consumerwatchdog.org/wp-content/uploads/2024/07/2024\\_2023-Settlement-Stipulations.pdf](https://consumerwatchdog.org/wp-content/uploads/2024/07/2024_2023-Settlement-Stipulations.pdf).

<sup>48</sup> *Ibid.*

<sup>49</sup> Pressley Decl., ¶ 11; see fn. 47 *supra* (Settlement Stipulations in PA-2023-00012 [regarding State Farm Mutual’s auto rate application] and 2023-00014 [regarding Allstate’s auto rate application]).

<sup>50</sup> See fn. 38, *supra*.

1 legitimately question that Consumer Watchdog represented the interests of consumers in each of the  
2 above-listed proceedings to enforce Proposition 103 and other consumer protection laws.<sup>51</sup>

3 B. Members.

4 Certain industry commenters criticized Consumer Watchdog on the basis it does not have  
5 “members” or failed to comply with section 2662.2(a)(2)(B) by providing documentation of its  
6 membership. This is a non-issue. The regulation does not require a consumer group to have members in  
7 order to be eligible to seek compensation, but only to state “if the group has members, the approximate  
8 number of current members.” (10 CCR § 2662.2(a)(2)(B), emphasis added.) As documented in its  
9 Request, and as explicitly stated in the organization’s Articles of Incorporation, Consumer Watchdog’s  
10 purpose is “to conduct educational and research activities on consumer and public interest issues,”<sup>52</sup>  
11 while the By-Laws explicitly acknowledge the organization has no members “within the meaning of  
12 section 5056 of the California Nonprofit Corporation Law.”<sup>53</sup> Simply, having “members” is not a  
13 requirement of the intervenor regulations or for being a non-profit consumer group under California law.  
14 (Corp. Code § 5000 et seq.) And, notwithstanding the fact it does not have members, Consumer  
15 Watchdog has been granted nonprofit status by the IRS under Internal Revenue Code section  
16 501(c)(3).<sup>54</sup> Consumer Watchdog does, however, routinely communicate directly to consumers in  
17 various ways, including responding to consumer complaints received via phone and over its website  
18 about insurance premiums and the availability of insurance.<sup>55</sup> As documented in its Request, Consumer  
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22 <sup>51</sup> APCIA and CBIA also claim that Consumer Watchdog failed to comply with section  
23 2662.2(a)(2)(E). (APCIA, *supra*, fn. 16, p. 2; CBIA, *supra*, fn. 17, p. 2). Once again, the industry  
24 groups misread the regulation, which provides for the submission of “any annual or year-end report for  
25 the prior year.” Consumer Watchdog does not produce an annual or year-end report. (Pressley Decl.,  
26 ¶ 8.) However, in lieu of such a report, it provided as Exhibit C to its Request a summary of highlights  
27 of Consumer Watchdog’s work and victories.

28 <sup>52</sup> Request, ¶ 10.A & Exh. A, p. 1.

<sup>53</sup> Request, ¶ 10.B & Exh. B, p. 1.

<sup>54</sup> Request, ¶ 10.F & Exh. D.

<sup>55</sup> Pressley Decl., ¶ 7.



1 Watchdog’s email subscriber list and social media pages have more than 170,000 individual and  
2 organizational followers.<sup>56</sup>

3 C. Consumer Watchdog’s Staff and Board.

4 The National Association of Mutual Insurance Companies (“NAMIC”) raised absurd ad  
5 hominem attacks on the basis that Consumer Watchdog has “no consumers as officers on their ‘Board of  
6 Directors,’ [and] no consumer consultants or representatives formally advising their organization . . . .”<sup>57</sup>  
7 Though it is unclear what relevancy the statement has, it also just plain wrong. Consumer Watchdog’s  
8 staff and consultants include some of the nation’s foremost consumer advocates and experts on  
9 insurance ratemaking matters under Proposition 103 and other consumer issues.<sup>58</sup> The insurance  
10 industry is well aware that Consumer Watchdog consults with outside actuaries and other experts with  
11 special knowledge, such as geologists and economists, as part of our work on behalf of consumers in  
12 Proposition 103 proceedings at the Department. Moreover, Consumer Watchdog’s Board of Directors  
13 are the epitome of consumers and consumer advocates:

- 14 • Jamie Court. Consumer Watchdog’s President and Chair of the Board is an award-winning and  
15 nationally recognized consumer advocate. Jamie has led dozens of major corporate and political  
16 campaigns to reform insurers, banks, technology companies, oil companies, utilities, and  
17 political practices. He helped to pioneer the HMO patients’ rights movement in the United  
18 States, sponsoring successful laws in California and aiding them elsewhere, and was an early  
19 champion of many of the most important consumer protections in the federal Affordable Care  
20 Act years before they were enacted. He authored the health insurance rate regulation reform  
21 Proposition 45 on the November 2014 California ballot. A frequent media commentator and op-  
22 ed contributor, Jamie is a high-profile and stalwart defender of consumers’ rights. The *Los*  
23 *Angeles Times* calls him “a tireless consumer advocate.” His public interest career began as an  
24 advocate for the homeless and as a community organizer.
- 25 • Scott Olsen. Scott has traveled the state and the nation advocating for increased patient  
26 protections and fighting efforts to limit the rights of people and families harmed by medical  
27 malpractice like his son, who was permanently disabled following a failed medical diagnosis.

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28 <sup>56</sup> Request, ¶ 10.B; Pressley Decl., ¶ 7.

<sup>57</sup> NAMIC, *Consumer Watchdog’s Request for Finding of Eligibility to Seek Compensation - NAMIC’s Request for Further Clarification and Documentation, and Request for a Public Hearing*, June 10, 2004 (sic), p. 1.

<sup>58</sup> Request, ¶ 2; see also Pressley Decl., ¶ 6 & Exhs. 3 (legal staff bios) and 4 (advocacy staff bios).

1 Scott's late wife, Kathy Olsen, was a Consumer Watchdog Director until 2015. Scott stepped in  
2 to carry on her legacy and the fight for patient rights.

- 3 • Tammy Smick. Tammy and her husband Tim were thrust into the fight for patient safety after the  
4 tragic and needless death of their 20-year-old son, Alex, due to a doctor's negligence and  
5 reckless opioid overprescribing. She has traveled the state of California fighting for patient safety  
6 and physician accountability.
- 7 • RoseAnn DeMoro. Retiring after 32 years with the California Nurses Association, RoseAnn  
8 DeMoro was executive director of National Nurses United, as well as the California Nurses  
9 Association/National Nurses Organizing Committee—the largest professional and labor  
10 organization of registered nurses in the U.S. She is one of the nation's preeminent advocates for  
11 genuine healthcare reform and working people.
- 12 • Ellen Snortland. Ellen is a writing coach who works with both individuals and groups, an author,  
13 columnist, empowerment self-defense advocate, actor, lawyer, radio and TV personality, and  
14 more. A regular columnist for the *Pasadena Weekly*, Ellen was recognized as the LA Press  
15 Club's Journalist and Columnist of the Year in 2024. She just completed her next book, *Biting  
16 the Hands That Squeeze Us*, a hybrid "biting" social commentary/memoir about her career in  
17 Media and Entertainment.<sup>59</sup>

18 D. Funding Sources and Identity of Consumer Watchdog Donors.

19 PIFC, APCA, and CBIA state<sup>60</sup> or intimate<sup>61</sup> that Consumer Watchdog's Request failed to  
20 comply with section 2662.2(a)(2)(G), which requires a group to provide:

21 a listing, by general category, of the group's funding sources for the prior twenty-four (24)  
22 months and the approximate total percentage of the group's annual budget from each  
23 funding category. Each foundation, corporate, business, or government grant shall be  
24 separately listed by name of foundation, corporation, business, or government agency and  
25 amount of grant. For each individual who contributed at least five percent of the group's  
26 annual budget, the name of the individual and the total amount of the annual contribution  
27 shall be separately listed.

28 However, the Request *did* comply with this this requirement. The required summary listing Consumer  
Watchdog's funding sources for the prior 24 months, the approximate percentage of its total budget from

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<sup>59</sup> Pressley Decl., ¶ 6; Request, ¶ 10.C.

<sup>60</sup> APCA, fn. 16 *supra*, p. 2; CBIA, fn. 17 *supra*, p. 2.

<sup>61</sup> PIFC, fn. 4 *supra*, p. 4.

1 each funding category, and a listing of each grant and grant amount is attached as Exhibit E to the  
2 Request.

3 To the extent that the true thrust of this attack is intended to obtain a list of the names of  
4 Consumer Watchdog’s individual donors, as Consumer Watchdog stated in its Request, since no  
5 individual contributed at least 5 percent of Consumer Watchdog’s annual budget, the disclosure of the  
6 identity of individual donors is not required under the regulation.<sup>62</sup> In response to comments by The  
7 Proposition 103 Enforcement Project (Consumer Watchdog’s predecessor organization) in the  
8 rulemaking proceeding adopting section 2662.2, the Commissioner confirmed that “[t]he regulation does  
9 not seek information about individuals who make modest contributions to consumer organizations. It is  
10 designed to obtain general information about a group’s major funding sources to allow for a  
11 determination that the group represents consumer interests, not other interests.”<sup>63</sup> In response to another  
12 comment by Consumers Union, the Commissioner confirmed that “[t]he Department has amended this  
13 section to provide that the petition list the group’s funding sources by *general category*. For example, if  
14 the group received 75% of its annual budget for each of the last two years from the minimum annual  
15 membership dues, it would simply list that fact.”<sup>64</sup> That is precisely what Consumer Watchdog did here  
16 in Exhibit E to its Request. Such a summary breakdown by funding category and listing of grants by  
17 name and amounts has been found acceptable in each of Consumer Watchdog’s prior requests that have  
18 been granted over the last 30 years.

19 Moreover, not only is such disclosure of individual donor names not required under the  
20 regulation, but insurance company attempts to obtain a list of donors to a non-profit advocacy  
21 organization that they seek to “punish” also raise serious First Amendment concerns. (See Request,  
22 p. 10, fn. 3; see also, e.g., *NAACP v. Alabama* (1958) 357 U.S. 449, 462 [“It is hardly a novel perception  
23 that compelled disclosure of affiliation with groups engaged in advocacy may constitute [] [an] effective  
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25 <sup>62</sup> Request, ¶ 10.G & fn. 3.

26 <sup>63</sup> Pressley Decl., ¶ 9, Exh. 10 (CDI Summary of and Response to Public Comment on July 9, 1996,  
Regulation Text, RH-341), p. 11.

27 <sup>64</sup> Pressley Decl., ¶ 10, Exh. 11 (CDI Summaries of and Responses to Public Comments on September  
28 14, 1995, Version of the Regulations, RH-341), p. 19.

1 [] restraint on freedom of association . . . particularly where a group espouses dissident beliefs.”]; *Perry*  
2 *v. Schwarzenegger* (9th Cir. 2009) 591 F.3d 1126, 1131–32, 1139 [cautioning against the “chilling”  
3 effect of discovery that “would have the practical effect of discouraging the exercise of constitutionally  
4 protected political rights” and finding the “compelled disclosure of political associations can have just  
5 such a chilling effect.”]) For example, the Supreme Court’s concern in *NAACP* was that compelled  
6 disclosure of the identity of its members would “expose[] these members to economic reprisal, loss of  
7 employment, threat of physical coercion, and other manifestations of public hostility . . . [and] it may  
8 induce members to withdraw from the Association and dissuade others from joining it because of fear of  
9 exposure of their beliefs shown through their associations and of the consequences of this exposure.”  
10 (357 U.S. at 462–463.) Given the industry’s vendetta against Consumer Watchdog, compelled disclosure  
11 of Consumer Watchdog’s individual donors raises similar concerns.

12 E. Delays.

13 NAMIC, PIFC, APCIA, and CBIA accuse Consumer Watchdog of delaying rate proceedings in  
14 which it intervenes and harming consumers as a result. Not so. In fact, information in the public record  
15 shows that insurance companies are often responsible for delays that add months or even years to the  
16 review process. Consumer Watchdog identified at least eight challenges completed during  
17 Commissioner Lara’s tenure that were significantly delayed by the insurance company applicant, by up  
18 to 19 months. Such delays routinely occur when insurance companies fail to file all of the data and  
19 information required as part of a rate application, refuse to cooperate with requests from the Department  
20 and Consumer Watchdog for information that is needed to assess the validity of the proposed rate,  
21 “update” their requests with new data, slow walk the entire process when a rate decrease is required, or  
22 assign a lower priority to the review of their application.<sup>65</sup>

23 Department scheduling also drives the timeline for review of rate applications. After a consumer  
24 challenges an insurance company’s application for a rate increase, a critical step in the review process is

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27 <sup>65</sup> *How Citizen Enforcement of Proposition 103 Has Saved Californians \$5.5 Billion*, fn. 2 *supra*, pp. 5,  
28 28–29 and fn. 51.

1 a request by the Department to schedule an initial conference between the Department staff, the  
2 insurance company, and Consumer Watchdog.<sup>66</sup>

3         Once CDI scheduled the first conference, it took an average of one month for the conference to  
4 occur, and an average of 3.7 months to resolve the matter.<sup>67</sup>

5         2022 saw a growing backlog of delayed applications for auto insurance at the CDI.  
6 Commissioner Lara imposed a de facto moratorium on the processing and approval of automobile rate  
7 increases during most of the pandemic.<sup>68</sup> However, the moratorium ended shortly after Commissioner  
8 Lara’s re-election in November 2022.

9         According to publicly available information, for approved rate applications publicly noticed in  
10 2022 and 2023 filed by insurance companies ranked in the top 30 by market share, on average:  
11 (1) private passenger auto rate applications on which Consumer Watchdog did *not* intervene were  
12 approved in 6.5 months and auto rate applications on which it *did* intervene were approved in 5.8  
13 months; and (2) personal line homeowners rate applications on which Consumer Watchdog did *not*  
14 intervene were approved in 9.2 months and auto rate applications on which it *did* intervene were  
15 approved in 9.1 months. This data demonstrates, contrary to the industry’s claims, that Consumer  
16 Watchdog’s intervention has not caused significant delays in the approval of rate applications, and often  
17 results in faster reviews, while saving consumers billions of dollars.<sup>69</sup>

18         F.         Consumer Benefit of Consumer Watchdog’s Rate Interventions.

19         Several insurance industry trade group commenters claimed that Consumer Watchdog experts  
20 did not add any benefit to the process and any rate savings in matters that Consumer Watchdog  
21 intervened in was attributable solely to the actions of Department staff.<sup>70</sup> Not only do these allegations  
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23 <sup>66</sup> *Id.*, p. 5.

24 <sup>67</sup> *Id.*, pp. 6, 31.

25 <sup>68</sup> *Id.*, pp. 6, 32.

26 <sup>69</sup> Pressley Decl., ¶ 12; see Consumer Watchdog analysis of approved private passenger auto and  
27 homeowners rate applications noticed in 2022 and 2023 filed by companies ranked in the top 30 by  
28 market share, <https://consumerwatchdog.org/wp-content/uploads/2024/07/2022-2023-HO-and-Auto-Rate-Filings-as-of-7.9.24.xlsx>.

<sup>70</sup> See e.g., APCIA, fn. 16 *supra*, p. 4 (“ . . . completely disregarding any impact on rate resulting from  
CDI’s rate review/evaluation.”)

1 misstate the law and intervenor regulations, they are also absurd. As noted above, the group has saved  
2 consumers \$6 billion in insurance premiums since 2002. Moreover, in a recent report, Consumer  
3 Watchdog compared the outcome of the rate requests that Consumer Watchdog challenged with the ones  
4 it did not challenge between January 2022 and October 2023. In rate applications for homeowners  
5 insurance that Consumer Watchdog did not challenge, the Commissioner approved the applications at an  
6 average of 97% of the rate originally requested by the insurance company. In matters in which  
7 Consumer Watchdog participated, the approved rate averaged 62% of the rate requested.<sup>71</sup> Similarly, in  
8 auto insurance rate applications, the Commissioner approved rate increases at an average of 98% of the  
9 rate requested. When Consumer Watchdog participated, the Commissioner approved an average of 71%  
10 the rate requested.<sup>72</sup>

11 G. Consumer Watchdog's Hourly Rates and Fee Requests.

12 Several of the industry-aligned commenters complained generally about the amount of  
13 Consumer Watchdog's past fee awards and its hourly rates. Yet, insurance companies consistently  
14 refuse to disclose their own fees, rates, and costs as required by section 2662.3(g) when questioning the  
15 market rates or the reasonableness of any amount of a fee request.<sup>73</sup>

16 As discussed in Section II.A above, the intervenor system and intervenors are essential to the  
17 healthy functioning of the California insurance market, and as a result, intervenors are allowed to seek  
18 attorneys' fees when they make a substantial contribution to Prop 103 proceedings. Without reasonable  
19 attorney fee awards, non-profit consumer groups like Consumer Watchdog could simply not afford to  
20 participate in rate challenges. In each of the decisions awarding Consumer Watchdog compensation that  
21 the industry complains about, the Commissioner necessarily found that it represented the interests of  
22 consumers and made a substantial contribution to the ultimate decision, that its awarded fees were  
23 reasonable, and that its hourly rates were consistent with market rates. If the criticism is that Consumer  
24 Watchdog is one of very few consumer groups who intervene in CDI proceedings and are awarded

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26 <sup>71</sup> *How Citizen Enforcement of Proposition 103 Has Saved Californians \$5.5 Billion*, fn. 2 *supra*, p. 21  
27 and fn. 29.

27 <sup>72</sup> *Ibid.*

28 <sup>73</sup> Pressley Decl., ¶ 14.

1 compensation, then the goal should be to make it easier for consumer groups to intervene, rather than  
2 erecting new barriers to requesting eligibility to seek compensation.

3 In any case, determining the reasonableness of hourly rates is not appropriate as part of a request  
4 for finding of eligibility. The reasonableness of hourly rates are proved up by intervenors when they file  
5 requests for compensation at the close of a proceeding. (See 10 CCR §§ 2662.3, 2661.1(c).)

6 Moreover, the United States Supreme Court has consistently held that attorneys for non-profits  
7 have a right to charge hourly rates commensurate with those charged by attorneys in the private sector.  
8 (See, e.g., *Blum v. Stenson* (1984) 465 U.S. 886, 895.) Hourly rates charged by non-profit attorneys  
9 should approximate the rates charged by other attorneys of comparable skill, experience, and reputation  
10 in the relevant legal market, who are engaged in similarly complex litigation, regardless of whether the  
11 attorneys work for a non-profit, represent individuals on contingency, serve as in-house counsel, or  
12 charge a minimal rate with the possibility of receiving a market rate award if successful. (See *Nadarajah*  
13 *v. Holder* (9th Cir. 2009) 569 F.3d 906, 916 [finding that “the award of prevailing market rates—  
14 regardless whether the claimant is represented by private counsel or a non-profit legal services  
15 organization”—is justified].) This principle was also affirmed by the California Supreme Court. (See  
16 *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094 [concluding that there should be no  
17 reduction in attorneys’ fees merely because counsel work in-house].)

18 Consistent with these principles, section 2661.1(c), which applies to CDI proceedings under  
19 Proposition 103, defines “market rates” for attorneys seeking fees at the close of a proceeding as “the  
20 prevailing rate for comparable services in the private sector in the Los Angeles and San Francisco Bay  
21 Areas at the time of the Commissioner’s decision awarding compensation for attorney advocates, non-  
22 attorney advocates, or experts with similar experience, skill and ability.” (Emphasis added.) In the two  
23 most recent Decisions Awarding Compensation to Consumer Watchdog in rate proceedings in 2023, the  
24 Commissioner found that the 2023 rates used by Consumer Watchdog for its attorneys, paralegal, and  
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1 actuaries were reasonable and did not exceed market rates in the private market in Los Angeles and the  
2 San Francisco Bay Area.<sup>74</sup>

3 Finally, as the Department and insurer commentators know, Consumer Watchdog attorneys'  
4 hourly rates are in fact *well below* comparable rates of other attorneys of comparable skill and  
5 experience, and therefore are *per se* reasonable.<sup>75</sup> Mr. Rosenfield and Ms. Pressley are currently billing  
6 at the same hourly rates that have been found by the Commissioner to be reasonable and not in excess of  
7 market rates since 2018.<sup>76</sup> In fact, Consumer Watchdog attorneys' hourly rates have been determined to  
8 be reasonable by the Commissioner in every proceeding that Consumer Watchdog has sought fees and  
9 been awarded compensation in over the last 30 years.<sup>77</sup>

10 **IV. Conclusion.**

11 For the reasons stated herein, the Department should grant the Request without further delay.

12 DATED: July 11, 2024

Respectfully Submitted,

14 Jerry Flanagan  
15 Harvey Rosenfield  
16 Pamela Pressley  
17 Benjamin Powell

**CONSUMER WATCHDOG**

18 By:



19 Jerry Flanagan  
20 Attorneys for Consumer Watchdog

21  
22  
23  
24 <sup>74</sup> Pressley Decl., ¶ 13 & Exh. 6 [Decision Awarding Compensation, July 12, 2023, *In the Matter of the*  
25 *Rate Applications of Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century*  
26 *Insurance Company*, File No. PA-2022-00007], pp. 9–11, 15; and Exh. 7 [Decision Awarding  
27 Compensation, Nov. 8, 2023, *In the Matter of the Rate Application of CSAA Insurance Exchange*, File  
28 No. PA-2023-00004], pp. 4–7, 10.

<sup>75</sup> Pressley Decl., Exh. 12 (Declaration of attorneys' fees expert Richard M. Pearl).

<sup>76</sup> Pressley Decl., ¶ 13.

<sup>77</sup> *Ibid.*



1 **DECLARATION OF PAMELA PRESSLEY IN SUPPORT OF CONSUMER WATCHDOG'S**  
2 **RESPONSE TO INSURANCE INDUSTRY COMMENTS ON ITS REQUEST FOR FINDING**  
3 **OF ELIGIBILITY**

4 I, Pamela Pressley, declare:

5 1. I am Senior Staff Attorney at Consumer Watchdog. If called as a witness, I could and  
6 would testify competently to the facts stated in this declaration filed in support of Consumer Watchdog's  
7 Response to Insurance Industry Comments on Its Request for Finding of Eligibility.

8 2. All of the factual matters alleged in the Response and herein are true of my own personal  
9 knowledge, or I believe them to be true after conducting some inquiry and investigation.

10 3. The documents attached as Exhibits 1 through 12 as cited in Consumer Watchdog's  
11 Response are true and correct copies of the following documents:

- 12 • **Exhibit 1** is an article by Camille Von Kaenel entitled *Insurers launch challenge to*  
13 *Consumer Watchdog's bottom line* published by *Politico* on June 25, 2024.
- 14 • **Exhibit 2** is the TransUnion Insurance Trends and 2024 Outlook Report.
- 15 • **Exhibit 3** is Consumer Watchdog's Legal Project resume with a list of legal staff bios.
- 16 • **Exhibit 4** is a list of Consumer Watchdog's advocacy staff bios.
- 17 • **Exhibit 5** is the CDI's Final Statement of Reasons in File No. RH-341, dated September  
18 25, 1996.
- 19 • **Exhibit 6** is the Decision Awarding Compensation to Consumer Watchdog in *In the*  
20 *Matter of the Rate Applications of Farmers Insurance Exchange, Fire Insurance*  
21 *Exchange, and Mid-Century Insurance Company*, File No. PA-2022-00007, dated July  
22 12, 2023.
- 23 • **Exhibit 7** is the Decision Awarding Compensation to Consumer Watchdog in *In the*  
24 *Matter of the Rate Application of CSAA Insurance Exchange*, File No. PA-2023-00004,  
25 dated November 8, 2023.
- 26 • **Exhibit 8** is a letter from the Public Advisor to Consumer Watchdog dated June 17,  
27 2024.

- 1           • **Exhibit 9** is a letter from Consumer Watchdog to the Public Advisor, dated June 18,  
2           2024.
- 3           • **Exhibit 10** is the CDI's Summary of and Response to Public Comment on June 10, 1996  
4           and July 9, 1996 Regulation Text in File No. RH-341.
- 5           • **Exhibit 11** is CDI's Summaries of and Responses to Public Comments on September 14,  
6           1995, Version of the Regulations in File No. RH-341.
- 7           • **Exhibit 12** is the Declaration of Richard M. Pearl in Support of Consumer Watchdog's  
8           Motion for Attorneys' Fees and Expenses, filed in *State Farm Gen. Ins. Co. v. Lara*, Case  
9           No. 37-2016-00041750-CU-MC-CTL in the Superior Court of California, County of San  
10          Diego on April 8, 2022.

11           4.       Consumer Watchdog (originally incorporated as The Network Project) was founded in  
12          1985 as a California-based non-profit organization to conduct educational, litigation, and research  
13          activities on consumer and public interest issues, including but not limited to issues affecting consumer  
14          protection and environmental and government reform. The organization changed its name to The  
15          Foundation for Taxpayer and Consumer Rights in 1998 and changed its name to Consumer Watchdog in  
16          2008. (See Request, ¶¶ 1–2 and Exh. A thereto [Articles of Incorporation].)

17           5.       Consumer Watchdog has a deep 35+ year history as California's most well-known  
18          consumer advocacy group whose work on behalf of consumers is consistently documented in news  
19          stories across the state. Over the years, Consumer Watchdog has initiated and intervened in hundreds of  
20          rulemaking and rate proceedings before the Department of Insurance to enforce voter-enacted  
21          Proposition 103's consumer protections, participated in virtually every lawsuit concerning Prop 103's  
22          constitutionality and scope, exposed and changed the inhumane practices of health insurance companies,  
23          prevented oil companies from ripping off motorists, won privacy protections for consumers, and blocked  
24          taxpayer bailouts of utility companies. Collectively, the over 120 rate proceedings in which Consumer  
25          Watchdog has intervened since 2002 have resulted in over \$6 billion in annual premium savings for  
26          consumers as compared to the rates originally sought by the insurance companies.

27           6.       Consumer Watchdog's staff and consultants include some of the nation's foremost  
28          consumer advocates and experts on insurance ratemaking matters under Proposition 103 and other

1 consumer issues. (See Exhibits 3 and 4.) Consumer Watchdog consults with outside actuaries and other  
2 experts with special knowledge, such as geologists and economists, as part of our work on behalf of  
3 consumers in Proposition 103 proceedings at the Department. Consumer Watchdog’s Board of Directors  
4 is composed of consumers and consumer advocates:

- 5 • Jamie Court. Consumer Watchdog’s President and Chair of the Board is an award-  
6 winning and nationally recognized consumer advocate. Jamie has led dozens of major  
7 corporate and political campaigns to reform insurers, banks, technology companies, oil  
8 companies, utilities, and political practices. He helped to pioneer the HMO patients’  
9 rights movement in the United States, sponsoring successful laws in California and aiding  
10 them elsewhere, and was an early champion of many of the most important consumer  
11 protections in the federal Affordable Care Act years before they were enacted. He  
12 authored the health insurance rate regulation reform Proposition 45 on the November  
13 2014 California ballot. A frequent media commentator and op-ed contributor, Jamie is a  
14 high-profile and stalwart defender of consumers’ rights. The Los Angeles Times calls  
15 him “a tireless consumer advocate.” His public interest career began as an advocate for  
16 the homeless and as a community organizer.
- 17 • Scott Olsen. Scott has traveled the state and the nation advocating for increased patient  
18 protections and fighting efforts to limit the rights of people and families harmed by  
19 medical malpractice like his son, who was permanently disabled following a failed  
20 medical diagnosis. Scott’s late wife, Kathy Olsen, was a Consumer Watchdog Director  
21 until 2015. Scott stepped in to carry on her legacy and the fight for patient rights.
- 22 • Tammy Smick. Tammy and her husband Tim were thrust into the fight for patient safety  
23 after the tragic and needless death of their 20-year-old son, Alex, due to a doctor’s  
24 negligence and reckless opioid overprescribing. She has traveled the state of California  
25 fighting for patient safety and physician accountability.
- 26 • RoseAnn DeMoro. Retiring after 32 years with the California Nurses Association,  
27 RoseAnn DeMoro was executive director of National Nurses United, as well as the  
28 California Nurses Association/National Nurses Organizing Committee—the largest  
professional and labor organization of registered nurses in the U.S. She is one of the  
nation’s preeminent advocates for genuine healthcare reform and working people.
- Ellen Snortland. Ellen is a writing coach who works with both individuals and groups, an  
author, columnist, empowerment self-defense advocate, actor, lawyer, radio and TV  
personality, and more. A regular columnist for the Pasadena Weekly, Ellen was  
recognized as the LA Press Club’s Journalist and Columnist of the Year in 2024. She just  
completed her next book, *Biting the Hands That Squeeze Us*, a hybrid “biting” social  
commentary/memoir about her career in Media and Entertainment.

7. Although the organization has no members “within the meaning of section 5056 of the  
California Nonprofit Corporation Law,” (Request, Exh. B [Bylaws]), Consumer Watchdog does  
routinely communicate directly to consumers in various ways, including responding to consumer

1 complaints received via phone and over its website about insurance premiums and the availability of  
2 insurance. As documented in its Request, Consumer Watchdog’s email subscriber list and social media  
3 pages have more than 170,000 individual and organizational followers.

4 8. Consumer Watchdog does not produce an annual or year-end report.

5 9. In response to comments by The Proposition 103 Enforcement Project (Consumer  
6 Watchdog’s predecessor organization) in the CDI rulemaking proceeding adopting section 2662.2 and  
7 other provisions of the intervenor regulations in 1996, the Commissioner confirmed that “[t]he  
8 regulation does not seek information about individuals who make modest contributions to consumer  
9 organizations. It is designed to obtain general information about a group’s major funding sources to  
10 allow for a determination that the group represents consumer interests, not other interests.” (Exh. 10  
11 [Summary of and Response to Public Comment on June 10 and July 9, 1996, Regulation Text, RH-341],  
12 p. 11.)

13 10. In response to another comment by Consumers Union in the same rulemaking  
14 proceeding, the Commissioner confirmed that “[t]he Department has amended this section to provide  
15 that the petition list the group’s funding sources by *general category*. For example, if the group received  
16 75% of its annual budget for each of the last two years from the minimum annual membership dues, it  
17 would simply list that fact.” (Exh. 11 [Summaries of and Responses to Public Comments on September  
18 14, 1995, Version of the Regulations, RH-341], p. 19.)

19 11. In 15 rate proceedings concluding in 2023 and 2024, Consumer Watchdog’s advocacy as  
20 a Petitioner and Intervenor was instrumental in reaching Settlement Stipulations with the Department  
21 and the insurance company Applicants pursuant to which the Commissioner approved lower overall  
22 rates than originally requested by the companies. (See Settlement Stipulations posted at  
23 [https://consumerwatchdog.org/wp-content/uploads/2024/07/2024\\_2023-Settlement-Stipulations.pdf](https://consumerwatchdog.org/wp-content/uploads/2024/07/2024_2023-Settlement-Stipulations.pdf).) In  
24 each of those Stipulations, the parties expressly agreed that the stipulated rates were supportable and  
25 neither excessive nor inadequate under the applicable regulations. Consumer Watchdog has consistently  
26 advocated for companies to make insurance more available by lifting restrictions on new business, with  
27 some companies stating they would not do so even under the rates they had originally requested (e.g.,  
28 State Farm General in *In the Matter of the Rate Application of State Farm Gen. Ins. Co.*, PA-2023-

1 00007), and other companies expressly agreeing to provisions in the Stipulations advocated by  
2 Consumer Watchdog to lift such restrictions such as by reactivating online quote systems and making  
3 payment plan options consistent between new and renewal business (e.g., State Farm Mutual in *In the*  
4 *Matter of the Rate Application of State Farm Mut. Auto. Co.*, PA-2023-00012 and Allstate in *In the*  
5 *Matter of the Rate Application of Allstate Northbrook Ind. Co.*, PA-2023-00014).

6 12. According to publicly available information, for approved rate applications publicly  
7 noticed in 2022 and 2023 filed by insurance companies ranked in the top 30 by market share, on  
8 average: (1) private passenger auto rate applications on which Consumer Watchdog did *not* intervene  
9 were approved in 6.5 months and auto rate applications on which it *did* intervene were approved in 5.8  
10 months; and (2) personal line homeowners rate applications on which Consumer Watchdog did *not*  
11 intervene were approved in 9.2 months and auto rate applications on which it *did* intervene were  
12 approved in 9.1 months. This data demonstrates, contrary to the industry's claims, that Consumer  
13 Watchdog's intervention has not caused significant delays in the approval of rate applications, and often  
14 results in faster reviews, while saving consumers billions of dollars.<sup>78</sup>

15 13. Consumer Watchdog attorneys' hourly rates have consistently been determined by the  
16 Commissioner to be reasonable and commensurate with market rates in every proceeding that Consumer  
17 Watchdog has sought fees and been awarded compensation in over the last 30 years. Mr. Rosenfield and  
18 I are currently billing at the same hourly rates that have been found by the Commissioner to be  
19 reasonable and not in excess of market rates since 2018. In the two most recent Decisions Awarding  
20 Compensation to Consumer Watchdog in rate proceedings in 2023, the Commissioner found that the  
21 2023 rates used by Consumer Watchdog for its attorneys, paralegal, and actuaries were reasonable and  
22 did not exceed market rates in the private market in Los Angeles and the San Francisco Bay Area. (Exh.  
23 6 [Decision Awarding Compensation, July 12, 2023, *In the Matter of the Rate Applications of Farmers*  
24 *Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company*, File No. PA-

25  
26 \_\_\_\_\_  
27 <sup>78</sup> See Consumer Watchdog analysis of approved private passenger auto and homeowners rate  
28 applications noticed in 2022 and 2023 filed by companies ranked in the top 30 by market share,  
<https://consumerwatchdog.org/wp-content/uploads/2024/07/2022-2023-HO-and-Auto-Rate-Filings-as-of-7.9.24.xlsx>.

1 2022-00007], pp. 9–11, 15; and Exh. 7 [Decision Awarding Compensation, Nov. 8, 2023, *In the Matter*  
2 *of the Rate Application of CSAA Insurance Exchange*, File No. PA-2023-00004], pp. 4–7, 10.)

3 14. Section 2662.3(g) requires insurance companies to disclose their own fees, rates, and  
4 costs when questioning the market rates or the reasonableness of any amount of a fee request, but they  
5 have consistently refused to do so when opposing Consumer Watchdog’s fee requests.

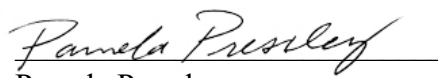
6 15. Consumer Watchdog filed its Request for Finding of Eligibility on June 3, 2024. On June  
7 17, 2024, the Public Advisor sent a letter to Consumer Watchdog requesting that it waive the 15-day  
8 deadline to rule on its Request. That same day, I confirmed in a phone conversation with Acting Public  
9 Advisor Ed Wu that he had already determined that Consumer Watchdog’s Request was “complete”  
10 under section 2662.2(b), as it contained all of the information specified under 10 CCR § 2662.2(a),  
11 leaving only the 15-day timeline to rule on Consumer Watchdog’s Request under subdivision (c).

12 16. Upon receipt of the Public Advisor’s letter, Consumer Watchdog Staff Attorney Ryan  
13 Mellino conducted a Google search of the CDI’s website on June 17, 2024, but he was unable to locate  
14 any notice of Consumer Watchdog’s Request, although the June 19, 2024 Order at page 2 stated that a  
15 “notice” of Consumer Watchdog’s Request was posted on the Department’s website “on or about June  
16 4.”

17 17. On June 19, 2024, after receiving the Order, I located for the first time on the CDI’s  
18 website a Notice dated June 6, 2024 regarding Consumer Watchdog’s Request (“June 6 Notice”) posted  
19 only on the “Insurers” webpage under “Bulletins & Notices.” The June 6 Notice was not served on  
20 Consumer Watchdog, and it is not posted on the CDI “Intervenor Process” webpage where Consumer  
21 Watchdog’s Request is posted.

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

24 Executed July 11, 2024, at Los Angeles, California.

25  
26   
27 Pamela Pressley  
28

# **EXHIBIT 1**

# Insurers launch challenge to Consumer Watchdog's bottom line

By Camille von Kaenel

06/25/2024 06:03 PM EDT

SACRAMENTO, California — Insurance and business groups are pushing back on ratepayer advocacy group Consumer Watchdog's participation in rate-setting proceedings — at the encouragement of Insurance Commissioner Ricardo Lara.

**Why it matters:** The move comes as state regulators are weighing faster rate increases to keep insurers from fleeing fire-prone areas. Consumer Watchdog, a firebrand group that sponsored Prop. 103, the 1988 ballot initiative requiring state approval of property and casualty insurance rates, is often [the only advocacy group](#) participating in the proceedings.

Property insurers fleeing the rising costs of climate change have grown increasingly frustrated with Consumer Watchdog because of the group's opposition to Lara's proposed reforms to entice companies back to California, including faster rate hikes and the use of proprietary forward-looking climate models. The insurers asked the Insurance Department to require Consumer Watchdog to provide more information about the consumers it claims to represent and to hold a public hearing on the group's role.

If the Insurance Department were to determine Consumer Watchdog ineligible as an intervenor, it would effectively neuter the group. It received 96 percent of the fees the Insurance Department paid to intervenors last year, adding up to over \$21 million for the group since 1988.

Consumer Watchdog says it has saved consumers [\\$5.5 billion](#) by advocating for lower rates.

**Background:** The renewal of groups' intervenor status has been [mostly pro forma](#) — until now. In the past, Lara and other insurance commissioners have approved Consumer Watchdog's eligibility to intervene in rate setting and collect fees every time it comes up for renewal every two years without any public back-and-forth.

Most property insurers didn't know the process even existed, said Rex Frazier, the president and CEO of the insurance trade group Personal Insurance Federation of California. He learned about it from Lara's [June 4 public notice](#) and decided to file an [objection June 12](#).

"I hope that we start to have expectations placed on them to be responsible participants in the system, rather than just bomb-throwers who ignore the downsides of their bad behavior," Frazier said.

Insurance Department spokesperson Michael Soller said the notice was part of a new policy to "encourage public participation for the first time" and increase transparency. He described the changes as "long-overdue and necessary" and said they also include a proposal to require insurance companies to provide more information in their rate requests.

"This is the Department holding all parties to the rate filing process accountable, including intervenors," Soller said in an email. "We don't want the intervenor process to continue to be a black box."

**More details:** In addition to PIFC, the [National Association of Mutual Insurance Companies](#), the [Western Insurance Agents](#), the [American Property Casualty Insurance Association](#) and the California Building Industry Association have all submitted letters challenging Consumer Watchdog's claims that it represents consumer interests.

The American Agents Alliance, the California Association of Winegrape Growers and insurance agency owner Karl Susman have written that they intend to submit more thorough letters soon.

State lawmakers are also getting involved. Assemblymember Jim Wood and Sens. Steven Glazer and Shannon Grove [have written in](#) to reserve the right to comment in more detail later.



Cathy Mudge, a spokesperson for Wood, said he submitted the letter as a placeholder and has not yet decided whether to comment. Both Wood and Glazer represent fire-prone districts in the North Coast and the East Bay, respectively, and their constituents have struggled to get insurance. Wood also sits on the Assembly Insurance Committee.

Glazer and Grove, a Bakersfield Republican, did not respond to a requests for comment by publication time.

**Reaction:** Jamie Court, president and CEO of Consumer Watchdog, accused Lara of inviting the insurers' challenges by issuing the public notice of CW's renewal of its intervenor status.

“He’s willing to turn the helm of the insurance commissioner's office over to the companies to muddy us up,” said Court. “That tells me everything about the fact that we need to be involved in these proceedings, because otherwise, the companies are gonna get rubber stamps on their rates.”

Soller, responding to Court’s allegation, said consumers have a right to know who is intervening on their behalf.

“The California Department of Insurance is not a rubber stamp for any regulatory process,” Soller said. “We ask all parties involved in the regulatory process to provide data we can verify. This is no different.”

**What’s next:** The Insurance Department is accepting comments on Consumer Watchdog’s petition of eligibility until June 28, according to an [order issued Tuesday](#). Consumer Watchdog then has until July 12 to respond. Lara is planning to decide on the group’s status by Aug. 2, unless he decides a hearing is needed.

Consumer Watchdog’s current eligibility expires July 12.

## **EXHIBIT 2**



**REPORT**

# Insurance Trends and 2024 Outlook Report

Get a first look at the trends, challenges and opportunities reshaping personal, life and commercial lines.

In 2023, the US economy faced many uncertainties surrounding the US Federal Reserve's monetary policy to fight recent, record-high inflation. Many experts predicted a likely recession at some point in 2023, but despite the Federal Reserve's aggressive interest rate hikes and persistently higher prices for goods and services, consumer spending and employment stayed positive throughout most of the year.

For the property and casualty insurance market, 2023 did not reveal the light at the end of the tunnel many hoped for regarding profitability challenges. As overall inflation abated, many loss costs remained significantly higher than experienced in the recent past — while several key insurance loss costs continued to increase. In the life insurance market, new policy sales increased in 2023 but continued a longer-term trend of declining sales volume.

**As the property and casualty and life industries prepare for 2024, several key trends are certain to shape the landscape:**



**Continued profitability challenges in the property and casualty market:**

Recent price increases have helped close the gap between premium and loss trends, but more work remains in 2024 to achieve price and expense adequacy.



**Consumer expectations and digitalization:**

Consumers increasingly expect insurers to offer personalized, secure and streamlined digital experiences across the policy lifecycle.



**Financial inclusion:**

The insurance industry faces uncertainty as regulatory bodies discuss and define methods to explore the concepts of fairness and equity in the use of consumer data for insurance transactions. More broadly, the industry should maximize opportunities to improve the affordability and availability of insurance.



**In this report, we'll explore how these trends are transforming the business of personal (auto and property), life and commercial insurance carriers.**

## PERSONAL AUTO AND PROPERTY INSURANCE LINES: CONSUMERS AND CARRIERS MAKING HARD DECISIONS

The past few years of economic turmoil have disrupted personal insurance profitability. Based on a recent study by the Insurance Information Institute, while personal auto and homeowners insurance markets are showing improvements, these two lines are not expected to see combined ratios approaching 100% before 2025 — and all else being equal, it will take up to five years of normal premium growth and a decade of normal replacement cost increases for the industry to fully absorb the effects of the last four years of inflation.<sup>1</sup>

Further exacerbating loss cost inflationary trends are more frequent and increasingly destructive weather events. Catastrophic losses hit the industry hard in 2023, and future years are not expected to improve as instances of severe weather becomes more common. To shore up profitability, insurers aggressively pursued rate and underwriting actions and reduced expenses where feasible — cutting back on marketing and administrative expenses and even reducing headcount.

Yet another threat compounding rising loss cost inflation and catastrophic weather activity in recent years is the magnitude of underinsurance in insurers' portfolios. Stay-at-home orders and travel limitations since 2020 led to a much-publicized surge in home renovation projects, many of which went unreported to insurers.

According to TransUnion's October 2023 survey of 3,003 consumers, only half of those who made additions or alterations to their properties this year reported these changes to their insurance providers.<sup>2</sup> Even when utilizing methods to identify recent home renovations for potential underinsurance, without aggressive follow-up and proper valuation tools, having the resulting value be substantially lower than the true replacement cost value is a risk insurers run.

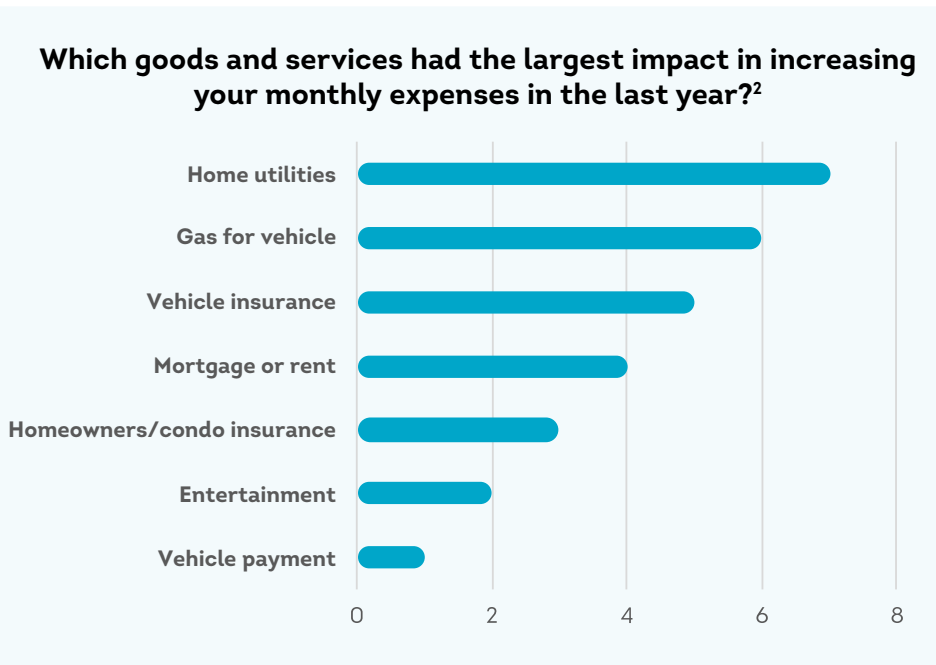
“Only half of consumers who made additions or alterations to their properties in 2023 reported these changes to their insurance providers.”



## Households facing affordability pressures

In addition to insurers' efforts to reestablish profitable growth within their personal lines portfolios, consumers are facing economic headwinds of their own. While inflation may be showing signs of moderating, wages haven't sufficiently maintained pace with everyday expenses, including insurance. According to TransUnion's October 2023 consumer survey, auto insurance ranked among the top 3 expenses that increased in 2023, and homeowners insurance was in the top 5 (see Figure 1).<sup>2</sup>

**FIGURE 1.**



As consumers tighten their wallets and reduce costs, many may be considering new insurance providers that can offer them more affordable premiums. Unfortunately, as many insurance providers have tightened their new business eligibility criteria and implemented rate hikes, consumers may find themselves subject to greater underwriting scrutiny or higher premiums with a new carrier.

In fact, TransUnion's October 2023 consumer survey indicated 68% of consumers shopping for new property coverage experienced being subjected to more rigorous underwriting via inspections or higher deductibles, or they were required to commit to moving their personal auto coverage to obtain a quote or bind a policy.<sup>2</sup>

## Carriers focus on acquiring and retaining profitable customers through value-added services

As the industry gets closer to rate adequacy, insurers are increasingly focusing on acquisition and retention of customers with preferred risk profiles while continuing to reduce costs. For many providers, claim-free customers with multiple lines of insurance, favorable financial histories, three or more years of tenure with their current insurers, and who live in less catastrophe-prone regions are the ideal acquisition and retention targets – and they're likely to benefit from the most competitive pricing.

Strategic marketing and retention efforts will be key as we move into 2024. According to TransUnion's October 2023 consumer survey, loyalty ranked highest amongst consumers with three or more years of tenure who may have shopped for a better price but ultimately chose to stay with their current providers.<sup>2</sup>

Though few insurers are in a position to reduce rates to retain customers, they can deepen their relationships through value-added services as a means of increasing retention. One such opportunity is in the realm of cyber insurance and anti-fraud tools.

According to TransUnion's October 2023 consumer survey, one out of four consumers indicated they or their family members experienced a cyber-related incident like identity fraud, and more than half expressed concern about being victimized by some scam over the phone.<sup>2</sup> Personal cyber coverage represents a growth opportunity for insurers to offer unique, add-on, preventive coverages.

## An industry-wide push for fairness

The use of consumer data and risk-based pricing have positively impacted insurance markets; however, some have argued their use can raise fairness and equity concerns. As regulatory bodies discuss and define methods to explore the concepts of fairness and equity in insurance practices, Colorado's recent law<sup>3</sup> and proposed regulations on the use of external consumer data and information sources, algorithms and predictive models, and the National Association of Insurance Commissioners' (NAIC) model bulletin on insurers' use of artificial intelligence systems<sup>4</sup> are examples of new governance to establish requirements to help address these concerns with the industry.

TransUnion recently completed several studies using Bayesian Improved Surname Geocoding (BISG)\* to estimate race/ethnicity of consumers and analyzed the relationship between personal auto rating variables and BISG race/ethnicity.

### These studies revealed:



Credit-based insurance scores effectively predict risk and do not have a close relationship to BISG race/ethnicity



Some potential relationship between other rating variables and BISG race/ethnicity



Where some potential relationship between rating variables and BISG race/ethnicity exists, new modeling techniques could help address the potential relationship

The insurance industry must prepare for new regulations and requirements surrounding fair and equitable use of consumer data. Solving for greater inclusion and equity is multifaceted — incorporating new, alternative data and enhancing consumer education are also important.



## LIFE INSURANCE FACES THE FUTURE: HIGH TECH AND A YOUTH WAVE

Life insurance sales have been in decline for decades — but that trend saw a short-term reversal as the COVID-19 pandemic found consumers grappling with possible financial consequences of mortality for their families.

While the initial COVID spike in sales has subsided somewhat, insurance carriers are seeking to hold on to new potential business segments, with younger people showing increasing interest in life insurance. And the traditionally conservative life insurance industry is also embracing new technologies and data sources as it looks ahead to changing consumer demographics and expectations.

\* Source: Using publicly available information to proxy for unidentified race and ethnicity; Consumer Financial Protection Bureau; 2014. Rand Corporation: [www.rand.org](http://www.rand.org).

## Meeting young people where they live

The October 2023 TransUnion consumer survey showed 32% of consumers shopped for life or health insurance in the past year — up from 24% a year earlier. That increase was driven by young people: 47% of Gen Z respondents said they had shopped, along with 45% of Millennials, as seen in Figure 2.<sup>2</sup>

What are the drivers here? Coming of age during a worldwide pandemic is probably one of them. Access to a wealth of financial planning information online has also helped, and the social dynamic that finds younger people eager to share information with one another on platforms from Reddit to TikTok can't be overlooked.

But insurers aren't leaving matters to chance and are embracing the opportunity to actively sell to younger people.

### Carriers see their missions as threefold:



**Educate** younger people on the value of life insurance. TransUnion's survey found 30% of younger people don't feel they need life insurance at all, and 78% of those who have it don't believe they need to be further insured.<sup>2</sup> That's an opportunity for carriers to educate consumers and ensure they're adequately protected.



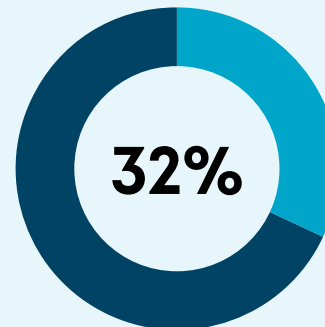
Offer products that meet their **unique needs**. For instance, one way today's young people are different from their parents is they're much less likely to stay at one job for most of their lives. That makes traditional group life policies offered by employers less attractive to them. As a result, carriers are beginning to tailor policies that begin as part of a group sale but can follow the consumer from job to job.



**Sell** to younger people where they live — and that means online. Internet and social media are the largest sources of information for Gen Z, and according to TransUnion's survey, 26.4% of younger consumers who received quotes did so online.<sup>2</sup>



**FIGURE 2.**



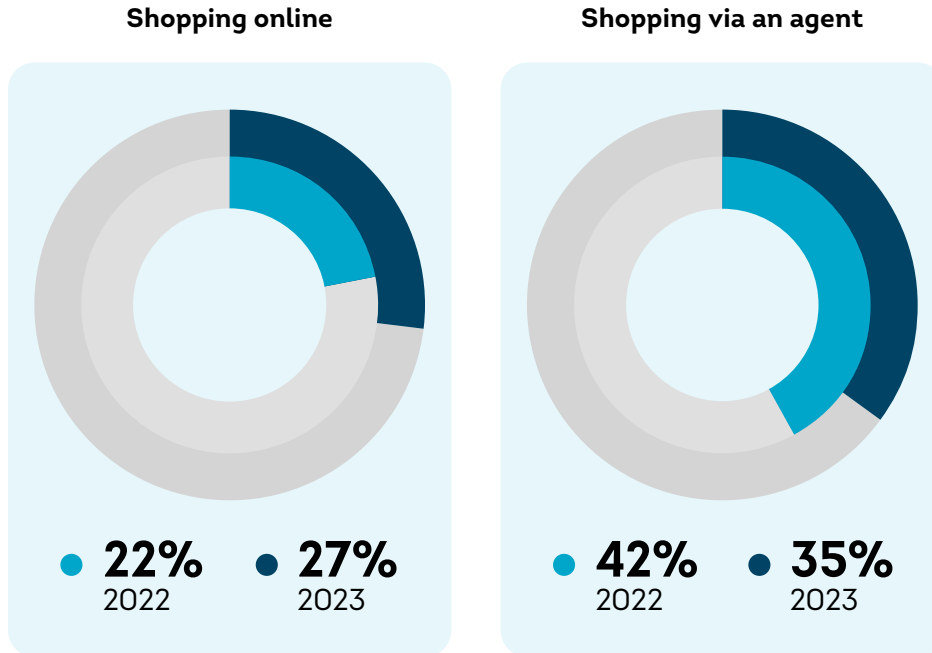
of consumers shopped for life or health insurance in the past year — up from 24%.<sup>2</sup>



## Embracing technology

It's not surprising young people are embracing online communications channels to shop for life insurance, but they're not the only ones: TransUnion's consumer survey found the overall number of consumers shopping online over the past year rose from 22% to 27%, and the number who shopped via an agent dropped from 42% to 35% (see Figure 3).<sup>2</sup>

**FIGURE 3.** Method of shopping changed dramatically 2022–2023<sup>2</sup>



But that doesn't mean the personal touch is obsolete. Innovative insurtech startups and big carriers alike are generating leads from online interactions and using social media or email to connect agents with potential customers. Furthermore, they're conducting education on the value of life insurance in one-on-one interactions. (And yes, sometimes they do eventually end up picking up the telephone.)

Beyond sales and marketing efforts, carriers are increasingly leveraging technology, third-party data and advanced analytics to streamline and automate the underwriting process, fight fraud and improve the customer experience. These advancements are crucial to success in a highly competitive market and help to improve the availability and affordability of life insurance for consumers.

The concerns regarding fair and equitable use of consumer data that exists in other forms of insurance are relevant to the life insurance market as well. For more details, see "An industry-wide push for fairness" above.

## COMMERCIAL LINES: FACING INFLATION AND EMBRACING AUTOMATION

Commercial auto and small business insurance has been gripped by a slow-rolling profitability crisis for decades. Today, the industry is amid a cycle in which carriers are aggressively moving to underwrite to match risks and increase efficiency so as to restore profit fundamentals. While the post-COVID-19 inflation bout has made this task more difficult, new automated tools and data sources are helping insurers in this fight.



## Inflation at the repair shop and in the courts

Like personal auto insurance, commercial auto was hit hard by the waves of inflation over the past few years. Disruptions in the auto supply chain were on the leading edge of this inflationary period — resulting in new vehicles being harder to come by and old vehicles harder to repair because parts were scarce. Physical-damage loss-cost inflation hit 44% from 2019 through 2022.<sup>1</sup> The good news is by the end of 2024, much of this inflation should be absorbed into premium rates — though still causing short-term pain.

Another, more pernicious form of inflation representing a greater threat to long-term industry profitability is *social inflation*, representing liability claim payouts that are increasing at much higher rates than costs in the overall economy. Two major drivers of this trend have been 1) increasingly aggressive marketing by personal injury lawyers and 2) the increased role of litigation finance companies that, by financially backing lawsuits, help plaintiffs wage a lengthy court case rather than settling quickly before trial. The end result has been an increase in so-called nuclear verdicts that overwhelm a customer's entire insurance coverage.

The Casualty Actuarial Society estimated that increases in liability losses in the industry attributable to social inflation were \$30 billion above normal inflation from 2009 to 2019<sup>5</sup>.

## Better data means quicker quotes

One significant reason small business insurance in particular has traditionally struggled with profitability is because its underwriting processes have required more human intervention. Personal Auto insurance, for instance, involves a more homogeneous set of risk profiles relative to commercial auto and businessowners (BOP), making it easier to establish algorithms to properly set rates with minimal underwriter involvement.

Because small businesses and commercial fleets vary across customers, these policies have historically been more difficult to price at scale, necessitating underwriter involvement even in smaller premium segments where margins are tightest.

The availability of larger pools of high-quality, third-party data derived from everything from firmographic data to public records, along with sophisticated algorithms designed to find relevant information in large datasets, is starting to transform this industry segment. Algorithmic pricing is even beginning to come into play in mid-range companies. This improves the bottom line not just because it makes for more efficient deployment of human capital, but also because algorithms simplify quote and bind processes and improve agent and customer experiences, enabling adopters to outcompete rival carriers.

While small business owners have signaled an openness to this shift, they continue to rely heavily on agents in the quote and bind process: 85% of small business owners in TransUnion's October 2023 consumer survey indicated they'd be willing to shop for an insurance quote online; however, only 35% were able to successfully do so (see Figure 4).<sup>2</sup> This clearly represents an industry opportunity.

**FIGURE 4.**



## ABOUT TRANSUNION (NYSE: TRU)

TransUnion is a global information and insights company that makes trust possible in the modern economy. We do this by providing an actionable picture of each person so they can be reliably represented in the marketplace. As a result, businesses and consumers can transact with confidence and achieve great things. We call this Information for Good.<sup>®</sup>

A leading presence in more than 30 countries across five continents, TransUnion provides solutions that help create economic opportunity, great experiences and personal empowerment for hundreds of millions of people.

[transunion.com](https://www.transunion.com)

### Citations

<sup>1</sup> "Insurance Economics and Underwriting Projections: A Forward View." Insurance Information Institute. November 22, 2023. [https://www.iii.org/sites/default/files/docs/pdf/q4\\_2023\\_triple-i\\_milliman\\_underwriting\\_projections\\_11022023.pdf](https://www.iii.org/sites/default/files/docs/pdf/q4_2023_triple-i_milliman_underwriting_projections_11022023.pdf).

<sup>2</sup> TransUnion's October 2023 survey of 3,003 consumers.

<sup>3</sup> Insurers' Use of External Consumer Data and Information Sources, Algorithms, and Predictive Models. Colo. Rev. Stat. Ann. § 10-3-1104.9.

<sup>4</sup> "Use of Artificial Intelligence Systems by Insurers. National Association of Insurance Commissioners." December 2, 2023. [https://content.naic.org/sites/default/files/inline/files/2023-12-4%20Model%20Bulletin\\_Adopted\\_0.pdf](https://content.naic.org/sites/default/files/inline/files/2023-12-4%20Model%20Bulletin_Adopted_0.pdf).

<sup>5</sup> Lynch, Jim and Dave Moore. "Social Inflation and Loss Development – an Update." Casualty Actuarial Society and Insurance Information Institute. 2023. [https://www.iii.org/sites/default/files/docs/pdf/cas\\_social\\_inflation\\_03062023.pdf](https://www.iii.org/sites/default/files/docs/pdf/cas_social_inflation_03062023.pdf).



In the face of a rapidly shifting market, TransUnion has answers. Contact your TransUnion representative or email us at [inssupt@transunion.com](mailto:inssupt@transunion.com) to learn how we can help.



# **EXHIBIT 3**



## 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

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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 \$6 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 FTOR) – 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 of 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.

Pressley 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 \$6.5 billion.

In May 2010, Pressley 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.

Pressley 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).

### **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.

### **Ben Armstrong**

Ben Armstrong, FCAS, MAAA is the staff actuary at Consumer Watchdog. In this capacity, Mr. Armstrong performs independent analyses of insurer rate filings, including assessments of their accuracy and actuarial soundness. His duties also include participation in rate discussions between Consumer Watchdog, insurance companies, and the California Department of Insurance, preparation of the actuarial portions of requests for information submitted to insurers, and research tasks such as catastrophe modeling in insurance ratemaking.

Mr. Armstrong is a Fellow of the Casualty Actuarial Society (2019) and a Member of the American Academy of Actuaries with over 12 years of professional experience. Prior to joining Consumer Watchdog, he was employed by Markel Insurance (formerly FirstComp) as a Senior Actuary, performing various actuarial tasks including pricing, reserving, and reinsurance work.

### **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.

# **EXHIBIT 4**



## Consumer Watchdog Advocacy Team

### **Jamie Court**

Consumer Watchdog's President and Chairman of the Board is an award-winning and nationally recognized consumer advocate. Capitol Weekly, naming Jamie to its "Top 100" list of unelected movers and shakers in California politics, wrote, "Court has made a career of battling all comers in the interest of the public, and his take-no-prisoners approach has earned him plenty of enemies."

Jamie's latest book is [The Progressive's Guide To Raising Hell: How To Win Grassroots Campaigns, Pass Ballot Box Laws And Get The Change You Voted For](#) (Chelsea Green, 2010). "Americans angry about the state of their government might find in Court's persuasive manifesto a cause for action," Publishers Weekly writes. "With great accessibility and a fired-up attitude, Court brings his lessons in empowerment to the people." He is also the author of [Corporateering: How Corporate Power Steals Your Freedom And What You Can Do About It](#) (Tarcher Putnam, 2003) and co-author of [Making A Killing: HMOs and the Threat To Your Health](#) (Common Courage Press, 1999).

Jamie has led dozens of major corporate and political campaigns to reform insurers, banks, technology companies, oil companies, utilities and political practices. He helped to pioneer the HMO patients' rights movement in the United States, sponsoring successful laws in California and aiding them elsewhere, and was an early champion of many of the most important consumer protections in the federal Affordable Care Act years before they were enacted. He authored the health insurance rate regulation reform Proposition 45 on the November 2014 California ballot.

A frequent media commentator and op-ed contributor, Jamie is a high-profile and stalwart defender of consumers' rights. The Los Angeles Times calls him "a tireless consumer advocate." The Wall Street Journal writes, "He's notorious for his dramatic, sharp-tongued attacks on the health- and auto-insurance industries, and on any politician who takes their campaign cash."

His public interest career began as an advocate for the homeless and as a community organizer. Jamie's Alma mater is Pomona College, where he graduated with a BA in History in 1989.

## **Carmen Balber**

Consumer Watchdog executive director Carmen Balber has been with the organization for over two decades. She spent four years directing the group's Washington, D.C. office where she advocated for key health insurance market reforms that were ultimately enacted into law as part of the Affordable Care Act.

Balber is recognized as a leading expert on a wide range of personal insurance issues and has authored or co-authored numerous reports on the auto, health and medical malpractice insurance industries, and insurance rate regulation. She leads Consumer Watchdog's advocacy to improve patient safety in California, including the recent historic update to the state's malpractice damage cap, passage of first-in-the-nation legislation requiring doctors to disclose when they are on probation for sexual misconduct to patients, and legislation requiring doctors to check a patient's prescription history before prescribing opioids and other drugs. In 2012, she managed the coalition effort to defeat Prop 33, a \$17 million insurance industry initiative that would have raised rates on good drivers. Her commentaries have appeared in publications across the country, from the Boston Globe, to the Houston Chronicle, to the Los Angeles Times.

As an organizer with Consumer Watchdog, Balber ran campaigns to pass volunteer-qualified ballot measures enacting the nation's strongest municipal conflict of interest protections in five cities across California. She also coordinated citizen organizing efforts in Consumer Watchdog's successful volunteer lobbying effort to block a legislative utility bailout in Sacramento in 2001.

Before joining Consumer Watchdog, Balber learned the ropes at the Colorado and Washington PIRGs. She holds a B.A. in Politics from Pomona College in Claremont, California and is a graduate of the Armand Hammer United World College of the American West (now UWC-USA) in Montezuma, New Mexico, one of 17 secondary schools across the globe dedicated to making education a force for peace, sustainability and change by bringing together youth from a diversity of countries and cultures to live and learn. She is an enrolled member of the Red Cliff Band of Lake Superior Chippewa.

## **Mary Kozanian**

Mary Kozanian is Consumer Watchdog's operations manager, consumer advocate, and researcher. She is a Glendale native who graduated with a B.A. in Communication and Public Relations from California State University Los Angeles in 2014. After five years in the Marketing industry, she went on to manage a brick & mortar shop that specialized in manufacturing and distribution throughout Southern California. She has accreditations in marketing, consumer relations, and operations management. In her spare time, she serves as Director of Public Relations for Society of Orphaned Armenian Relief and commits herself to being of service to her community. Outside of work, her passions are theatre and quality time with friends and family.



## **Evan King**

Evan King came to Consumer Watchdog to serve as the chief technology officer after spending years as a production director and designer in the television and film worlds. He has worked for industries such as entertainment, finance, animation, computer technology, and design. Prior to that, Evan spent several years working in the programming and IT fields for software companies all over the world. He has various accreditation and certifications in design, production, and technology.

## **John Ennis**

John Ennis is a filmmaker and author who is Consumer Watchdog's creative director. His feature films are PAY 2 PLAY: Democracy's High Stakes, exploring the role of money in politics, FREE FOR ALL! One Dude's Quest to Save Our Elections, chronicling widespread voter disenfranchisement, and the Upright Citizens Brigade's Wild Girls Gone starring Amy Poehler and Matt Walsh. Ennis has written for The Huffington Post, The Onion, and Melrose & Fairfax. He is a co-founder of Video the Vote, a citizen journalism project exposing election problems, and served as executive director and board member for Public Interest Pictures. He attended the film schools at New York University and University of Southern California and has taught documentary filmmaking at UCLA Extension. His book, Where Else But The Streets: A Street Art Dossier, chronicles political street art in Los Angeles.

## **Liza Tucker**

Liza Tucker is a consumer advocate for Consumer Watchdog, following everything from oil and gas to the regulation of toxic substances in the state of California. She comes to us from Marketplace, the largest U.S. broadcast show on business and economics heard by ten million listeners each week on 400 radio stations. Liza worked at this public radio show for a decade, first as Commentary Editor and then as Senior Editor for both Washington and Sustainability News. At Marketplace, Liza produced and edited several special feature series from who funds Washington think tanks to the BP oil spill. Liza has worked as a journalist, consultant, teacher, and translator.

Prior to moving to Los Angeles, Liza spent a few years in Bologna, Italy. She covered business at The Washington Post and later free-lanced her way through the Soviet Union, covering its collapse for Time, Newsweek and The Wall Street Journal. Liza is fluent in Russian and speaks Italian. She taught journalism at Allegheny College. She also served as a consultant to the MacArthur Foundation awarding individual grants in the areas of independent media, women's rights, and legal reform, and to US AID on how to support independent media in Ukraine. She translated Alexandra's letters to Nicholas for The Fall of the Romanovs, published by Yale University Press. She traveled through Europe in 2009 as a German Marshall Fund Fellow studying German, French, Danish, and British approaches to sustainability. She holds a B.A. from Oberlin College and an M.F.A. in poetry from Columbia University's School of the Arts.

## **Michele Monserratt-Ramos**

Michele Ramos is the Kathy Olsen Patient Safety Advocate for Consumer Watchdog focusing on health care, patient safety, legislation, and regulatory board matters in California. She has 20 years experience working in the public interest. She is a statewide and national patient advocate and brings that experience to Consumer Watchdog leading the effort to organize advocates to work on medical board public policy, medical board sunset review, legislation, and public participation in legislative hearings.

With a passion for public advocacy, Michele worked in politics at Los Angeles City Hall and spent years on the campaign trail throughout the State of California. Following graduation from UC Irvine, she worked for two Los Angeles City Councilmembers based out of Los Angeles City Hall. As a Communications Director, she covered media and public relations at Los Angeles City Hall and throughout the district including managing public relations staff at El Pueblo de Los Angeles Historical Monument otherwise known as Olvera Street. Her greatest accomplishments in the community include contributing to the foundation of the Boyle Heights Youth Opportunity Movement and the many landmarks throughout the district which are still serving generations of constituents throughout the Eastside and Northeast Los Angeles.

Michele worked to promote water issues by managing the media and public relations for two water districts. She brought the issue of water conservation and access to drinking water to communities from the South Bay to the San Gabriel Valley through community outreach and education.

She managed and consulted for political campaigns across California. She was the campaign manager for successful Los Angeles City Council races, she was the political consultant for winning municipal races, and she organized the Latino community in Oxnard. The tools she learned in political organizing served her well as she transitioned from political organizing to the politics of health care.

Michele's career in health care public advocacy was born in the trials of personal tragedy. Her life, activism, love for community and public service mirrored the background, interests, and goals of her then fiancé Lloyd Monserratt. Months before their wedding, Lloyd entered a Los Angeles hospital and died tragically in 2003 three days following elective surgery.

Michele's determined tenacity uncovered that Lloyd was a victim of surgical errors that remained unaddressed by complicit hospital staff and was committed by a doctor with a disreputable medical practice, a significant criminal record, and a history of substance abuse.

Determined to change public policy and legislation to improve patient safety, Michele spent the next 15 years working on improving medical board transparency, legislation to improve consumer protection, and building coalitions to focus on the lack of consumer

protection. Some of Michele's accomplishments include the 2008 passage of SB 1441 which called for the Uniform Standards for the evaluation, monitoring, and discipline of all substance abusing health care professionals in the State of California. The Uniform Standards provide consequences for minor and major violations and is one of the few tools that the Medical Board of California possesses to issue a cease practice order. Another legislative accomplishment that Michele worked on is the 2018 passage of the Patients Right to Know Act. Michele spent two years lobbying for the legislation that requires some doctors on probation to notify their patients of their probation for negligence related to substance abuse, sexual misconduct, criminal conviction involving patient harm, and over prescribing resulting in harm to patients. This groundbreaking legislation originated from her advocacy group's earlier policy efforts and national advocates mirrored these efforts to produce similar legislation in Washington State.

Michele's focus is on Consumer Watchdog's advocacy to improve patient safety in California. She works with families across the state to educate the region on medical negligence and the movement to update the cap on medical negligence lawsuits. Michele's expertise in political organizing has led her to oversee a campaign in the Central Valley to educate families on maternal health issues, medical negligence, the medical negligence cap, and physician accountability. She helps families navigate through the state regulatory process while empowering them to transition from victims to advocates working for the betterment of Californians.

## **Justin Kloczko**

Justin Kloczko is an advocate who follows tech and privacy for Consumer Watchdog, spotlighting emerging issues such as connected cars and the implementation of privacy laws. Prior to Consumer Watchdog he worked for over a decade in daily newspapers, covering local government, police and the court system. At the Los Angeles Daily Journal he won an LA Press Club award for coverage of the Los Angeles Department of Water and Power corruption scandal, which resulted in resignations and criminal indictments of government officials.

Justin also authors The Debaser, a newsletter about power in Los Angeles that's been mentioned by the Los Angeles Times. It garnered him an appearance in the ABC-Hulu documentary, "The Housewife and the Hustler" about the fall of plaintiff lawyer Tom Girardi.

Justin has fact-checked podcasts for Crooked Media, Neon Hum and Lemonada. And his stories on crime, politics and culture have appeared in Vice, Daily Beast, KCRW, Ringer, and Los Angeles Magazine. Justin also speaks Polish and hopes he never forgets it.

# **EXHIBIT 5**

STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 FREMONT STREET, 21ST FLOOR  
SAN FRANCISCO, CALIFORNIA 94105

FINAL STATEMENT OF REASONS

FILE No. RH-341

DATE: SEPTEMBER 25, 1996

The Insurance Commissioner of the State of California is proposing the adoption of Title 10, Chapter 5, Articles 13 and 14, §§2661.1 - 2662.8 of the California Code of Regulations. At the same time, the Commissioner proposes the repeal of Title 10, Chapter 5, §§2615.1 - 2622.5 of the California Code of Regulations. The proposed regulations specify the procedures for intervention or participation in Department proceedings, as well as the procedures for requesting an award of compensation and the requirements for awarding and paying compensation.

The purpose of the proposed regulations is to implement, interpret, and make specific the provisions of California Insurance Code §1861.10.

**DESCRIPTION OF THE PUBLIC PROBLEM AND STATEMENT OF SPECIFIC PURPOSE**

Proposition 103, which was enacted by voters on November 8, 1988, expanded regulation of property and casualty insurance in California. It provided for rate regulation of most property and casualty insurance; it required a one time rate rollback; and, it permitted expanded public participation in Department proceedings, including hearings convened to implement the provisions of the Proposition. Proposition 103 added §1861.10 to the California Insurance Code. That Section provides as follows:

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

(b) The Commissioner or a court shall award reasonable advocacy and witness fees and expenses to any person who demonstrates that (1) the person represents the interests of consumers, and, (2) that he or she has made a substantial contribution to the adoption of any order, regulation or decision by the commissioner or a court. Where such advocacy occurs in response to a rate application, the award shall be paid by the applicant.

Section 1861.10(c), not listed here, was held unconstitutional in the case *CalFarm Insurance Company v. Deukmejian*.

On February 2, 1993, former Insurance Commissioner John Garamendi adopted his permanent regulations implementing §1861.10 (Department of Insurance File No. RH-298, OAL File No. 92-1217-02C). Those regulations were found at Title 10, Chapter 5, Subchapter 4.5, §§2615.1 - 2622.5, California Code of Regulations. Those regulations were in effect until August 18, 1995. On August 18, 1995, Commissioner Quackenbush adopted the proposed regulations on an emergency basis (Department of Insurance File No. ER-29, OAL File No 95-0808-03 E). At the same time Commissioner Quackenbush repealed, on an emergency basis, Title 10, Chapter 5, Subchapter 4.5, §§2615.1, 2616.1, 2617.1 - 2617.5, 2618.1, 2619.1 - 2619.2, 2620.1 - 2620.11, 2621.1 - 2621.10, and 2622.1 - 2622.5.

Since its passage in November 1988, Proposition 103 has been the subject of extensive litigation. Proposition 103 was substantially upheld by the California Supreme court in *CalFarm* in May 1989. In August 1994, the California Supreme Court upheld the Commissioner's rate regulatory system, both for the rollback and prior approval of insurance rates, in *20th Century v. Garamendi*. In February 1995, the United States Supreme Court declined to hear the insurers' challenge to the California Supreme Court decision. As a result, the Commissioner began holding rollback hearings for all insurers which had not yet complied with the rollback refund provisions of Proposition 103. Additionally, in some circumstances, hearings are required for the prior approval of insurance rates.

The Commissioner expected that persons representing the interests of consumers would seek to intervene in those hearings. Consumers and consumer groups are entitled to know in advance what will be expected of them in order to make a substantial contribution, allowing them to receive compensation. They are entitled to a streamlined process to intervene and seek compensation in these proceedings. They are entitled to know, for example, what record-keeping they must maintain and submit in connection with a request for an award of compensation. These requirements must be as uncomplicated as possible, while ensuring the integrity of the intervention and intervenor compensation system. The Commissioner believes that these regulations accomplish those objectives.

#### **CONTENT OF REGULATIONS AND COMPARISON WITH EXISTING REGULATIONS.**

The nature and purpose of each proposed regulation, and a comparison with the existing regulations is set forth below.

#### **SECTION 2661.1 -- DEFINITIONS**

Insurance Code §1861.10(b) requires the award of reasonable advocacy and/or witness fees and

expenses to consumer representatives who make a substantial contribution to the adoption of any order, regulation or decision by the Commissioner or a court. However, existing law (California Insurance Code §1861.10) does not specify the procedures for awarding such compensation nor does it define terms such as "substantial contribution."

Subsection (a) defines "advocacy fees" as the costs, not in excess of "market rates," for the services of an advocate. An advocate need not be an attorney.

Subsection (b) defines "compensation" as payment for advocacy fees, witness fees, and other expenses associated with the participation in a given proceeding.

Subsection (c) specifies that "market rate" is the prevailing rate for comparable services in the private market in Los Angeles and San Francisco at the time of the Commissioner's decision awarding compensation for advocates and experts with comparable experience and skill. Moreover this subsection prohibits the billing of rates that are higher than market rates.

Subsection (d) defines "other expenses" as the actual out of pocket costs of a consumer representative, including the costs associated with preparing a request for an award of compensation. The consumer representative has the burden of providing substantiating documentation of such costs.

Subsection (e) defines "proceeding" to include those permitted or established pursuant to Chapter 9 of the Insurance Code (§§1850.4 - 1861.16) and the challenge of any action of the commissioner under Article 10 of Chapter 9, or the enforcement of any provision of Article 10 of Chapter 9 (Insurance Code §§1861.01 - 1861.16).

Subsection (f) defines "proceeding other than a rate hearing" to be any proceeding, pursuant to Chapter 9, which is not conducted pursuant to Insurance Code §§1861.01 and 1861.05.

Subsection (g) states that the "public advisor" monitors and assists public participation in the Department's proceedings. The public advisor is prohibited from advocating a substantive position for or representing a member of the public on any issue before the Commissioner.

Subsection (h) defines "rate hearing" as Proposition 103 rate rollback hearings (§1861.01) and hearings on rate applications (§1861.05).

Subsection (i) provides that the phrase "represents the interests of consumers" means that the intervenor is a person who represents the interests of individual insurance consumers or is a group organized for the demonstrated purpose of consumer protection. A party which represents any entity regulated by the Commissioner shall not be eligible for compensation.

Subsection (j) specifies that "substantial contribution" occurs where the consumer representative presents relevant issues, evidence, or arguments during the proceeding which are different from

those emphasized by any other party and which, as a whole, substantially contributes to a decision, order, regulation, or other action of the Commissioner. This subsection also requires that the consumer representative's participation made available to the Commissioner additional relevant and credible information.

Subsection (k) defines "witness fee" as the recorded or billed costs or expenses for a witness. Costs and expenses for a witness are limited to market rate.

Comparison with existing law:

With the exception of the last paragraph of subsection (j), and changes in the definition of "market rate" and "represents the interests of consumers", the proposed regulation is essentially the same as the existing emergency regulation (Department File No. ER-29, OAL File No. 95-0808-03E) adopted on August 18, 1995.

**Section 2661.2 -- Intervention of Right**

Existing law, Insurance Code §1861.10(a), provides that any person may initiate or intervene in any proceeding permitted or established pursuant to Chapter 9 of the Insurance Code (§§1850 - 1861.16); challenge any action of the Commissioner under the provisions of Proposition 103; and enforce any provision of the Proposition.

This section provides a relevance standard to intervention in the subject Department proceedings. This section also requires consumer representatives desiring to intervene in a proceeding to use standard forms.

Comparison with existing law:

With the exception of the last four words, the proposed regulation is identical to the existing emergency regulation (Department File No. ER-29, OAL File No. 95-0808-03E) adopted on August 18, 1995

**Section 2661.3 -- Procedure for Intervention in a Rate Hearing**

Existing law, Insurance Code §1861.10(a), provides that any person may initiate or intervene in any proceeding permitted or established pursuant to Chapter 9 of the Insurance Code (§§1850 - 1861.16); challenge any action of the Commissioner under the provisions of Proposition 103; and enforce any provision of the Proposition. Existing law also requires the Commissioner to award reasonable compensation to persons who represent the interests of consumers and make a substantial contribution to the proceeding.

Subsection (a) requires the filing of a petition to intervene which complies with the Department's Procedural Regulations. Subsection (b) specifies that the petition to intervene must: cite to the



law authorizing the intervention; contain the petitioner's interest in the proceeding; to the extent known at the time of the petition, a list of the specific issues to be raised and the positions to be taken by the petitioner; the name address and telephone number of the petitioner; and a statement that the consumer representative will be able to participate in the proceeding without delaying the proceeding or any other proceeding before the Commissioner.

Subsection (c) requires the that the petition to intervene specify whether the consumer representative intends to seek compensation and contain an itemized estimated budget which sets forth: the name and rates for each advocate or witness, and in the case of a witness - their area of expertise; and the work to be performed by each and a time and cost estimate for that work.

Subsection (d) requires the submission of an amended budget as soon as possible after the consumer representative learns that its total estimated budget will increase by \$10,000.00 or more.

Subsection (e) requires that the Petition to Intervene be filed with the Department's Administrative Law Bureau and a copy served on all parties and the Public Advisor. This subsection also clarifies that the Petition is an "additional pleading" for the purposes of the Administrative Procedure Act's discovery provisions (Government Code §11507.6). A Petition to Participate in a proceeding other than a rate hearing is required to be submitted to the Department contact person for the specific proceeding and a copy served on the Public Advisor.

Subsection (f) provides that any other party to the proceeding may file a response to a Petition to Intervene within 10 days. If there is an accusation that the Petitioner does not represent consumers, supporting documentation must be submitted. The Petitioner has 8 days to reply to any response to the Petition.

Subsection (g) requires the Administrative Law Judge to rule on the Petition within 20 days of its filing.

In order to prevent unnecessary duplication and delay in the underlying proceeding, Subsection (h) specifies that issues decided before the granting of a Petition to intervene may not be reopened by the petitioner absent a showing of good cause.

Comparison with existing law:

With the exception of increased time limits, the proposed regulation is essentially identical to the existing emergency regulation (Department File No. ER-29, OAL File No. 95-0808-03E) adopted on August 18, 1995

**Section 2661.4 - - Procedure For Participation in a Proceeding Other Than a Rate Hearing.**  
Existing law, Insurance Code §1861.10(a), provides that any person may initiate or intervene in any proceeding permitted or established pursuant Chapter 9 of the Insurance Code (§§1850 - 1861.16); challenge any action of the Commissioner under the provisions of Proposition 103; and

enforce any provision of the Proposition. Existing law also requires the Commissioner to award reasonable compensation to persons who represent the interests of consumers and make a substantial contribution to the proceeding.

Subsection (a) requires the filing of a petition to participate in a proceeding other than a rate hearing, which complies with the Department's Procedural Regulations, with the Department's contact person for the specific proceeding.

Subsection (b) requires a ruling on the Petition to Participate within 15 days of its submission to the Department's contact person.

Subsection (c) specifies that absent a showing of good cause, a participant may not reopen matters decided before the granting of the petition.

Subsection (d) provides that this section does not limit any person from submitting relevant comments in a proceeding other than a rate hearing if compensation is not sought.

Comparison with existing law:

The proposed regulation effectively replaces section 2618.1.

**Section 2662.1 - - Purpose.**

Existing law, Insurance Code Section 1861.10(b) requires the Commissioner to award reasonable compensation to persons who represent the interests of consumers and make a substantial contribution to the pertinent proceeding. However, existing law does not specify the procedures for awarding such compensation.

This section states that the purpose of Article 14 of the regulations is to establish the procedures for awarding compensation for participation in proceedings before the Insurance Commissioner.

Comparison with existing law:

The proposed regulation is essentially identical to the existing emergency regulation (Department File No. ER-29, OAL File No. 95-0808-03E) adopted on August 18, 1995. Additionally, it replaces section 2621.1.

**Section 2662.2 - - Request for Finding of Eligibility; Time; Contents; Effective for Two Years.**

Subsection (a) specifies that a person, or group, representing consumers may make a verified request to the Public Advisor for a finding of eligibility to seek compensation in Department proceedings. The request may be submitted at any time in conjunction with an ongoing

proceeding in which the person or group has sought intervention. The request must meet the requirements of the Department's procedural regulations.

Subpart (1) requires showing that the requesting party represents consumers. Subpart (2) lists the items that must be submitted by a group claiming to represent the interests of consumers.

Subsection (b) provides that the request will be reviewed by the Public Advisor within 10 days of its submission for completeness and that if incomplete, a notice stating the grounds of incompleteness shall be given within the 10 day period providing notification of the rejection of the request.

Subsection (c) states that a ruling on the request shall be made no more than 15 days from the receipt of a complete request.

Subsection (d) provides that a finding of eligibility remains valid for the purposes of any proceeding which commences in the ensuing two years, as long as the person or group still represents the interests of consumers. This subsection also specifies that a finding of eligibility does not guarantee the payment of compensation.

Subsection (e) provides that the finding of Eligibility does not limit a person or group's ability to make an otherwise admissible presentation at the proceeding.

#### Comparison with existing law:

Except for changes made in subsection (a)(2), the proposed regulation is essentially identical to the existing emergency regulation (Department File No. ER-29, OAL File No. 95-0808-03E) adopted on August 18, 1995. Additionally, it replaces sections 2621.2, 2621.3, 2621.4, and 2621.5.

#### **Section 2662.3 - - Request for Award.**

Subsection (a) specifies that where a petition to intervene or participate has been granted and the consumer representative has been deemed eligible to seek compensation, a request for award of compensation may be submitted to the Public Advisor within 30 days after the conclusion of the entire proceeding or within 30 days after service of the order, decision, regulation, or other action of the Commissioner.

Subsections (b) and (c) require the request to be verified and include: a detailed description of services and expenditures; legible time/billing records created at or about the time the work was performed and showing the exact amount of time - in either 5 minute or 10th of an hour increments - spent on each specifically described task; and, specific citations to the administrative record substantiating that a substantial contribution has been made.

Subsection (d) provides that any other party may respond to the request for award within 15 days. The requesting party then has 15 days to reply to any such response.

Subsection (e) provides that the Public Advisor shall audit or inspect the books and records of the requesting party to the extent necessary to verify the basis for an award. To the extent required by law, the Public Advisor is required to maintain the confidentiality of the books and records.

Subsection (f) specifies that any party challenging the requested market rate or the reasonableness of the requested fees must provide a statement setting forth the fees and costs it expects to expend in the proceeding.

Comparison with existing law:

Except for a minor editing change in subsection (b), the proposed regulation is identical to the existing emergency regulation (Department File No. ER-29, OAL File No. 95-0808-03E) adopted on August 18, 1995. Additionally, it replaces section 2621.6.

**Section 2662.4 - - Amended Request for Award.**

This section provides that an amended request for award may be submitted whenever the requesting party incurs additional fees and costs which arise or are discovered subsequent to the original request for an award. The amended request and responses thereto must meet the requirements of Section 2662.3

Comparison with existing law:

The proposed regulation is identical to the existing emergency regulation (Department File No. ER-29, OAL File No. 95-0808-03E) adopted on August 18, 1995.

**Section 2662.5 - - Requirements for Award.**

Subsection(a) specifies that, subject to subsection (b), fees and expenses for participation in a proceeding shall be awarded to an intervenor or participant who: represents the interests of consumers; meets the requirements of Section 2662.3; and, made a substantial contribution - as evidenced by specific citations to the administrative record.

Subsection (b) provides that the award may be reduced to the extent the claimed substantial contribution is duplicative of the contribution of any other party and was not authorized in the ruling of the Petition to Intervene or Participate. Participation by the staff of the Department will not preclude an award of compensation so long as the requesting party's contribution is not a mere duplication of the Department's work. Duplication will be gauged by whether the requesting party presented relevant issues, evidence, or argument which is separate and distinct from the issues, evidence of argument presented by any other party or the Department staff.

Comparison with existing law:

Except for clarifying changes in subsection (b), the proposed regulation is identical to the existing emergency regulation (Department File No. ER-29, OAL File No. 95-0808-03E) adopted on August 18, 1995.

**Section 2662.6 - - Decision Awarding Compensation, Allowance of Award.**

Subsection (a) specifies that the Commissioner's written decision shall be issued within 90 days after receipt of all of the information required by Section 2662.3. The decision will include a determination whether the requesting party has made a substantial contribution.

Subsection (b) requires that the substantial contribution be set forth in the written decision as well as the amount of compensation, at market rate for the services provided, to be paid.

Subsection (c) requires that the decision be served on all parties.

Subsection (d) provides that any award of compensation paid by an insurer shall be allowed as an expense for the purpose of establishing the insurer's rates.

Comparison with existing law:

The proposed regulation is identical to the existing emergency regulation (Department File No. ER-29, OAL File No. 95-0808-03E) adopted on August 18, 1995. Additionally, this section replaces section 2621.7.

**Section 2662.7 - - Time for Payment.**

Subsection (a) requires an insurer ordered to pay compensation to remit payment within 30 days of the award. If payment is not made by the expiration of the 30 days, interest on the award shall accrue at the legal rate until the date that the award is actually paid,

Subsection (b) defines the phrase "within 30 days" to mean, absent the filing of a timely petition for reconsideration or judicial challenge, within 30 days after the issuance of the Commissioner's decision awarding compensation. In the cases where a petition for reconsideration or judicial challenge are filed, payment will be not be required until 30 days after the decision on the petition or judicial challenge.

Comparison with existing law:

The proposed regulation is identical to the existing emergency regulation (Department File No. ER-29, OAL File No. 95-0808-03E) adopted on August 18, 1995. Additionally, this section replaces sections 2621.8 and 2621.10.

**Section 2662.8 - - Securing Payment.**

This section requires the commissioner to make every reasonable effort to secure the payment of the award.

**Comparison with existing law:**

The proposed regulation is identical to the existing emergency regulation (Department File No. ER-29, OAL File No. 95-0808-03E) adopted on August 18, 1995. It also replaces section 2621.9.

**PUBLIC COMMENTS**

A summary of and response to public comments received on the regulation is included in this rulemaking file.

**IDENTIFICATION OF STUDIES**

No technical studies, reports, or similar documents were relied upon in proposing the adoption of these regulations.

**MANDATES**

Adoption of these regulations as proposed would not mandate the use of specific technologies or equipment, or impose mandate on local agencies or school districts.

**COSTS OR SAVINGS AND IMPACT ON SMALL BUSINESS**

Adoption of these regulations as proposed would result in no cost or savings to any other state agency, no cost or savings to any local agency or school district that is required to be reimbursed, and would result in no other nondiscretionary costs or savings imposed on local agencies or costs or savings in federal funding to the state. The regulation has no adverse impact on small business because it involves intervention and intervenor finding for groups representing the interests of consumers in Proposition 103 matters.

**ALTERNATIVES**

As set forth in the rulemaking file, the Commissioner has determined that no alternatives would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

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# **EXHIBIT 6**

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA**

In the Matter of the Requests for Compensation of  <b>CONSUMER WATCHDOG,</b>  Intervenor.	) FILE NO. RFC-2023-006 ) ) ) ) <i>In the Matter of the Rate Application of</i> ) <i>Farmers Exchange, Fore Insurance, and</i> ) <i>Mid-Century Insurance Company</i> ) ) <i>PA-2022-00007</i> ) ) ) )
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**DECISION AWARDING COMPENSATION**

In this Request for Compensation (RFC) Consumer Watchdog (CW or Petitioner) seeks \$82,814.50 in compensation for its intervention in a Rate Application (RA) filed by Farmers Exchange, Fore Insurance, and Mid-Century Insurance Company (Farmers or Applicant). The RA sought a 24.9 percent increase in its homeowners multiple peril insurance line of insurance, but was ultimately resolved by a stipulation, granting Farmers a 17.7% increase. Farmers did not oppose CW’s Request for Compensation arising therefrom. For the reasons explained below, the Request for Compensation is GRANTED.

**FINDINGS OF FACT**

Farmers’ Rate Application

On June 15, 2022, Farmers filed a Rate Application with the Department of Insurance (Department) seeking a 24.9 percent increase in its homeowners’ multiple peril insurance line.<sup>1</sup>

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<sup>1</sup> RFC, p. 3.



The Department assigned the RA to Darjen Kuo for investigation.<sup>2</sup> On July 8, 2022, Farmers' RA was made public.<sup>3</sup> Several events occurred on August 22, 2022. The Department requested that Applicant waive the deemer period,<sup>4</sup> Applicant responded by waiving both the 60-day and the 180-day deemer periods,<sup>5</sup> and CW filed a Petition for Hearing, Petition to Intervene, and Notice of Intent to Seek Compensation (collectively, "Petition").<sup>6</sup>

In its Petition, CW raised a number of concerns, which may be briefly described as Farmers': (a) failure to demonstrate that its proposal to non-renew 10,000 policies will not create excessive and/or unfairly discriminatory rates;<sup>7</sup> (b) use of only one model for Fire Following Earthquake (FFEQ);<sup>8</sup> (c) use of quarterly rather than annual paid loss development;<sup>9</sup> (d) failure to demonstrate that the use of incurred rather than paid loss development is the most actuarially sound method;<sup>10</sup> (e) failure to demonstrate that the selected trend factors and trend data period used were the most actuarially sound, and how the non-renewal of policies would likely impact the trend;<sup>11</sup> (f) failure to demonstrate that all institutional advertising expenses were accounted for;<sup>12</sup> (g) failure to justify for the loss trend factors proposed in the Variance 7B request;<sup>13</sup> (h) failure to justify the loss trend factors proposed in the variance 8B request;<sup>14</sup> and (i)

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<sup>2</sup> Rate Applications may be found online at

[https://interactive.web.insurance.ca.gov/apex\\_extprd/f?p=186:1:13936543914997](https://interactive.web.insurance.ca.gov/apex_extprd/f?p=186:1:13936543914997). An administrative agency may take official notice of its own records, (See Evid. Code, § 452, subd. (d).) Official Notice is hereby taken of the Rate Application number 22-1617, as well as the related Rate Applications numbered 22-1617-A, and 22-1617-B. Citations in this decision to a Rate Application ("RA") utilize the State Tracking number. Although Rate Applications do not contain continuous internal pagination, page numbers are referenced according to their order of appearance in the .pdf.

<sup>3</sup> RFC, p. 3.

<sup>4</sup> RA #22-1617, p. 17.

<sup>5</sup> RA #22-1617, p. 38.

<sup>6</sup> Exh. 3, attached to Powell Decl., RFC, p. 4.

<sup>7</sup> Petition, ¶ 8.a.

<sup>8</sup> Petition, ¶ 8.b.

<sup>9</sup> Petition, ¶ 8.c.

<sup>10</sup> Petition, ¶ 8.d.

<sup>11</sup> Petition, ¶ 8.e.

<sup>12</sup> Petition, ¶ 8.f.

<sup>13</sup> Petition, ¶ 8.g.

<sup>14</sup> Petition, ¶ 8.h.

failure to comply with filing instructions and submission of exhibits in searchable Excel and PDF format.<sup>15</sup>

On September 6, 2022, the Commissioner granted CW's Petition to Intervene.<sup>16</sup> The Commissioner found that CW complied with the procedural requirements in the Insurance Regulations, and that the issues it sought to address were relevant to the ratemaking process.<sup>17</sup> The decision withheld a ruling on the Petition for Hearing.<sup>18</sup>

On October 4, 2022, the Department issued an Objection Letter asking Farmers to respond to eight concerns. In brief, the concerns raised by the Department seek the following information: (1) how the decision to non-renew 10,000 policies due to wildfire risk will affect the proposed rate and premium; (2) a justification for the use of only one model to calculate FFEQ; (3) a justification for the use of quarterly time rather than annual in calculating catastrophe adjustment; (4) an explanation for why using incurred losses to develop ultimate losses is the most actuarially sound selection; (5) a justification for the use of 12-point for premium trends and 12-point with closed Frequency and Total Paid Severity; (6) a standard exhibit 7 for Smart Plan Home data only; (7) given annual losses and exposures, a correction to the assigned 0% credibility for Smart Plan Home's experiences in calculating the loss trends and loss development factors; and (8) the resubmission of multiple exhibits in Excel and PDF formats according to specifications.<sup>19</sup> Six of the eight Objections raised by the Department had already been raised or partially raised by CW in its August 22 Petition.

On October 11, 2022, Farmers responded to the Department's inquiries by resubmitting

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<sup>15</sup> Petition, ¶ 8.i.

<sup>16</sup> RFC, p. 6.

<sup>17</sup> Exh. 4, attached to Powell Decl.

<sup>18</sup> *Ibid.*

<sup>19</sup> RA #22-1617, p. 16.

exhibits in Excel and PDF formats.<sup>20</sup> In its response, Farmers rescinded the non-renewal plan and declared that it was not moving forward with any “wildfires non-renewals.”<sup>21</sup> In explanation for its use of only one model to calculate FFEQ, Farmers argued that use of only one model was the commonly accepted practice among its competitors. It referenced other rate applications by various competitors where only one model was used and argued that the RMS model complies with “actuarial statutory standards.”<sup>22</sup> Farmers’ explanation for calculating quarterly, rather than annual, catastrophe ratios, was because the main contributor to catastrophe losses in California—wildfires—occur more frequently in the 4th quarter of the fiscal year. According to Farmers, “this causes the total to [*sic*] non-CAT factor to be inflated in years experiencing extreme Q4 event[s] and extraordinary CAT losses,” as was the case in years 2003, 2007, 2018, and 2020.<sup>23</sup> To explain its use of incurred losses, Farmers argued that, paid losses are driven by smaller damage claims, while incurred losses more accurately reflect rising inflation and other repair costs and ALE expenses.<sup>24</sup> As explanation for its use of 12-point, rather than 20-point, loss experience, Farmers explained that the shorter period gave greater weight to the pandemic and recent inflation, which it believed would be more suited to prospective rate making.<sup>25</sup> In response to the Department’s request for a standard Exhibit 7 for Smart Plan Home data only, Farmers provided it in an electronic attachment.<sup>26</sup> Farmers did not provide corrected loss trends and loss development factors in response to the Department’s concerns about its use of 0% credibility for Smart Plan Home’s experiences. It did, however, provide a reasoned explanation for its failure to do so. Essentially, Farmers stated its willingness to make the requested changes,

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<sup>20</sup> RA #22-1617, p. 33; see also Exh. C, attached to Powell Decl.

<sup>21</sup> Exh. C, attached to Powell Decl.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

as soon as sufficient data became available.<sup>27</sup> Finally, Farmers provided Excel files for each exhibit requested by the Department.<sup>28</sup>

On November 21, 2022, CW made a request for information, seeking the following additional information from Farmers: (1) A new table showing competitors' filings where more than one model was used for FFEQ; (2) support for Applicant's claim that inflation has caused longer cycle time on repairs, higher lumber costs, higher material costs, and increasing ALE expenses, and support for the claim that paid losses are driven by smaller damage claims; (3) a complete description and explanation of the impact from the pandemic on California homeowners insurance costs; (4) a basis for the claim that the response to Item 5 was the most actuarially sound choice for frequency and severity analysis; (5) an annual distribution of modeled losses used to obtain the expected average annual losses for the RMS FFEQ model results; (6) which portion of the AAL is attributable to the use of Loss Amplification factors in the RMS FFEQ model results; (7) any analyses performed showing the underwriting and operating results of the Applicants for Homeowners Insurance in California covering 2019 to the present; (8) a description of any changes in operations related to California homeowners insurance that has occurred from 2019 to the present, as well as any such changes anticipated for the future; and (9) a list of the actions taken or expected to be taken by Farmers regarding homeowners insurance in California.<sup>29</sup>

On November 18, 2022, the Department issued an Objection Letter in which it asserted that Farmers, through subsidiaries, was applying the Supergroup Exemption and Multi-policy Discount at the same time.<sup>30</sup> To correct for this error, the Department ordered Farmers to revise

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<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> Powell Decl., ¶ 42; Exh. D, attached to RFC.

<sup>30</sup> RA # 22-1617, p. 15.

its manuals to indicate which companies the multi-policy discounts could be applied to. On November 23, 2022 Farmers responded to the Department's Objections by disputing the Department's apparent contention that the Super Group Exemption applies to all Farmers programs, including Homeowners programs.

On November 26, 2022, the Department issued an Objection Letter, demanding that Farmers provide premiums, losses, and loss ratios information for each peril in Excel format to justify the proposed base rate change by peril, for each policy form.

On November 28, 2022, Farmers responded to the November 26 Objection Letter, stating, "Current base rates used to develop proposed base rates already reflect the latest loss experience by peril; therefore, no further adjustments at the peril level were needed and applied in this filing. As a result, base rates were revised uniformly for each peril to achieve overall rate proposal for each form." In short, Farmers made no changes to its Application, and provided no additional documents.

On December 6, 2022, the Department issued an Objection Letter following up on Farmers' October 11 response. In particular, the Department sought further explanation for: (1) why incurred ultimate loss is the most actuarially sound selection, given that there had been a drastic increase of Average Case Reserve on Open Claims for each of the perils in the three most recent accident years; (2) "why the closed frequencies for 'All Other' peril are so high ranging from 17.9% to 76.98% for Smart Plan Renter, and from 3.9% to 32.92% for Next Generation form. What perils are included in 'All Other' Peril?"; (3) proof that all institutional advertising expenses had been reflected in the excluded expense provision.<sup>31</sup>

On December 7, 2022, Farmers provided a response to CW's November 21 inquiry. In brief, Farmers responded: (1) with a list of other companies using a single model to develop

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<sup>31</sup> RA #22-1617, p.12.

FFEQ losses, and a list of their SERFF filing numbers; (2) documentation supporting trends toward higher prices for lumber and other repair materials, as well as shortages in those materials resulting in smaller damage claims dominating paid losses, making accurate future predictions more difficult; (3) supply chain issues, increased cost of goods, and a strong demand for building materials in the California market have increased materials costs, as well as putting pressure on labor costs; (4) the basis for this claim is that this approach provides the closest match in terms of timing of when a claim is counted as fully paid and the total dollar amount associated with that claim; (5) Farmers identified the exhibit that shows annual aggregate losses by policy form for various return periods underlying the expected average annual losses; (6) Farmers provided a graph with breakdown of the percentage of total AAL attributable to the demand surge for each policy form; (7) Farmers provided a table showing the results for its most recent five year history; (8) a statement affirming that there have been no significant changes in operations since 2019, and no future changes are planned; and (9) a statement affirming that all major actions have been filed with the Department, with a supporting list of filings/tracking numbers.

On January 19, 2023, the parties participated in a teleconference.<sup>32</sup> In late January and early February 2023, CW and Farmers engaged in a series of communications both seeking and providing additional information and explanation regarding the Rate Application.<sup>33</sup>

On January 31, 2023, CW made two Requests for Information. It sought a list of payments to affiliates for the period 2019-2021, with supporting documentation, and requested a discussion of the loss reserving methods used to derive the values for homeowners insurance reserves contained in the Annual and Quarterly financial statements submitted to the

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<sup>32</sup> Powell Decl., ¶ 44.

<sup>33</sup> Powell Decl., ¶ 45; Exh. F, attached to Powell Decl.

Department.<sup>34</sup> On February 1, 2023, Farmers partially responded to the January 31 request for information, but also disputed, to some degree, CW's asserted need for the information.<sup>35</sup> CW provided a justification for the requested information on February 3, 2023, followed by its actuarial analysis of the Rate Application on February 6.<sup>36</sup> On February 8, the parties participated in another teleconference, which resulted in Farmers providing additional information regarding its trend selections, loss development method, and management fees.<sup>37</sup> On February 9, 2023, CW sought more data directly arising from the February 8 response by Farmers.<sup>38</sup> Farmers provided the data the same day.<sup>39</sup>

On March 10, 2023, the parties reached a Settlement Stipulation.<sup>40</sup> In it, the parties agreed that a 17.7 percent increase was "supportable" and should be implemented with an effective date of June 17, 2023.<sup>41</sup> In return, CW agreed to withdraw its Petition for Hearing upon the Commissioner's approval of the Settlement Agreement.<sup>42</sup>

On March 14, 2023, the Commissioner gave his approval of the Settlement Stipulation and, accordingly, CW withdrew its Petition for Hearing, effective March 24, 2023.<sup>43</sup>

This Request for Compensation was filed on April 11, 2023. In total, CW seeks \$42,425.50 in fees for its employees' time, and \$40,389 in expert witness fees.<sup>44</sup>

#### CW's Request for Compensation

CW is a non-profit, public interest organization that conducts its education and advocacy

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<sup>34</sup> Powell Decl., ¶ 45.

<sup>35</sup> Powell Decl., ¶46; Exh. G, attached to RFC.

<sup>36</sup> Powell Decl., ¶ 47, Exh. H, attached to RFC.

<sup>37</sup> RFC, p. 8.

<sup>38</sup> RFC, pp. 8-9.

<sup>39</sup> RFC, p. 9; Exh. K, attached to RFC.

<sup>40</sup> Exh. 5, attached to Powell Decl.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> Exh. 6, attached to Powell Decl.

<sup>44</sup> Exh. A, attached to RFC.

efforts as a public interest service.<sup>45</sup> As a result of its intervention in Farmers' RA, CW's attorneys and paralegal incurred 80.6 hours of labor in the proceeding.<sup>46</sup> Attached to Benjamin Powell's Declaration as Exhibit 1.a. are detailed billing records for CW's attorneys Pamela Pressley, Harvey Rosenfield, and Benjamin Powell, as well as for CW Paralegal, Kaitlyn Gentile.<sup>47</sup>

In total, Pressley performed 51.6 hours of work on this matter, for which she billed \$595 per hour.<sup>48</sup> Pressley has over 26 years' experience as a consumer advocate.<sup>49</sup> In that role, she has litigated a number of matters of first impression involving the implementation and enforcement of Proposition 103.<sup>50</sup> She has also participated in a number of rulemaking proceedings involving implementation of Proposition 103's rating factor requirements.<sup>51</sup> Pressley's hourly rate is within the range of rates charged by similarly-qualified attorneys in the Los Angeles area.<sup>52</sup>

CW's attorney Benjamin Powell performed 15.4 hours of work on this matter, at an hourly rate of \$350.<sup>53</sup> Powell began working at CW before he was admitted to the California State Bar in 2016. His employment at CW has included work on civil litigation matters as well as on matters relating to Proposition 103.<sup>54</sup> Powell's hourly rate of \$350 is within the range of rates charged by similarly-qualified attorneys in Los Angeles and the San Francisco Bay Area.<sup>55</sup>

CW's attorney Harvey Rosenfield is an attorney with over 40 years of experience in

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<sup>45</sup> Powell Decl., ¶ 4.

<sup>46</sup> Powell Decl., ¶ 6.

<sup>47</sup> Exh. 1.a., attached to Powell Decl.

<sup>48</sup> *Ibid.*

<sup>49</sup> Powell Decl., ¶ 13.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> Exh. 2, attached to Powell Decl.

<sup>53</sup> Exh. 1.a., attached to Powell Decl.

<sup>54</sup> Powell Decl., ¶ 16.

<sup>55</sup> Powell Decl., ¶ 19; Exh. 2, attached to Powell Decl.



insurance regulatory and litigation matters.<sup>56</sup> He is the founder of CW and author to Proposition 103. As such, he has participated in numerous lawsuits involving the interpretation and enforcement of Proposition 103.<sup>57</sup> He has also participated in numerous rulemaking proceedings implementing Proposition 103.<sup>58</sup> Rosenfield spent 7.3 hours working on this matter, for which he billed his hourly rate of \$695.<sup>59</sup> Rosenfield's hourly rate is within the range of hourly rates charged by similarly-qualified attorneys in Los Angeles and the San Francisco Bay Area.<sup>60</sup>

Finally, CW's paralegal, Kaitlyn Gentile, has over 14 years of professional experience.<sup>61</sup> Gentile worked 6.3 hours on this matter, for which she billed \$200 per hour.<sup>62</sup> Gentile's hourly rate is within the range of hourly rates charged by paralegals in Los Angeles and the San Francisco Bay Area.<sup>63</sup>

In addition to seeking fees for work performed by its own staff, CW seeks fees for 56.6 hours performed by its expert witnesses, AIS Risk Consultants, in the amount of \$40,389.<sup>64</sup> Allan I. Schwarz is an actuary with over 40 years of consulting actuarial experience.<sup>65</sup> He performed 34.3 hours of work on this matter at his rate of \$915 per hour. Data regarding consulting actuarial rates are typically not made public.<sup>66</sup> However, Schwarz's prior approved rates are known. For example, in 2021 and 2022, Schwarz's hourly rate was \$835 and \$870, respectively.<sup>67</sup> In a 2023 request for compensation, Schwarz's hourly rate of \$870 was deemed

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<sup>56</sup> Powell Decl., ¶ 9.

<sup>57</sup> *Ibid.*

<sup>58</sup> Powell Decl., ¶ 10.

<sup>59</sup> Powell Decl., p. 19.

<sup>60</sup> Exh. 2, attached to Powell Decl.

<sup>61</sup> Powell Decl., ¶ 20.

<sup>62</sup> Powell Decl., p. 19.

<sup>63</sup> Exh. 2, attached to Powell Decl.

<sup>64</sup> Exh. 8, attached to Schwarz Decl.

<sup>65</sup> Schwarz Decl., ¶ 1.

<sup>66</sup> Schwarz Decl., ¶ 2.

<sup>67</sup> Schwarz Decl., ¶¶ 2-3.

reasonable for work performed in 2022.<sup>68</sup> His current rate of \$915 represents a 5.2% increase over his 2022 billing rate. This increase is lower than the rate of inflation in the U.S. for the same period.<sup>69</sup>

Katherine Tollar is an Actuarial Assistant with over 30 years of professional experience.<sup>70</sup> Tollar worked for 17.3 hours on this matter, for which she billed \$415 per hour.<sup>71</sup>

Marianne Dwyer is an Actuarial Assistant with over 30 years of professional experience.<sup>72</sup> She spent 5 hours on this matter, for which she billed \$365 per hour.<sup>73</sup>

## DISCUSSION

### I. Prior Approval Framework and Public Participation

The 1988 approval of Proposition 103 by California's voters added Article 10, "Reduction and Control of Insurance Rates" to Division 1, Part 2, Chapter 9 of the Insurance Code. Proposition 103 establishes a system of "prior approval" for changes to insurance rates in automobile, home, and other property-casualty policies.<sup>74</sup> The application for rate change and any hearings arising therefrom are subject to public notice and scrutiny.<sup>75</sup> Thus, as of November 8, 1989, "insurance rates . . . must be approved by the Commissioner prior to their use."<sup>76</sup>

Insurance Code section 1861.05(a) prohibits the Commissioner from approving any rate that is "excessive, inadequate, unfairly discriminatory, or otherwise in violation of this chapter," or from allowing such rates to remain in effect. The primary consideration in the

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<sup>68</sup> Schwarz Decl., ¶ 8.

<sup>69</sup> Schwarz Decl., fn. 5.

<sup>70</sup> Exh. 6, attached to Schwarz Decl.

<sup>71</sup> Exh. 8, attached to Schwarz Decl.

<sup>72</sup> Exh. 7, attached to Schwarz Decl.

<sup>73</sup> Exh. 8, attached to Schwarz Decl.

<sup>74</sup> Cal. Code Regs., tit. 10, § 1861.05, subd. (b).

<sup>75</sup> Cal. Code Regs., tit. 10, § 1861.05, subd. (c), and §§ 1861.06 – 1861.07.

<sup>76</sup> Cal. Code Regs., tit. 10, § 1861.01, subd. (c).

Commissioner's determination must be "whether the rate mathematically reflects the insurance company's investment income."<sup>77</sup>

In order to encourage consumer participation, Section 1861.10 of the Insurance Code authorizes any person to initiate a proceeding to enforce any provision of Proposition 103.<sup>78</sup> To that end, the Commissioner has promulgated regulations setting forth the substantive and procedural requirements for those seeking compensation under the code.<sup>79</sup> Given the statute's purpose to encourage public participation, the regulations should be liberally construed in favor of compensation.<sup>80</sup> The statute and regulations set forth both procedural and substantive requirements for an award of compensation.

Intervenors who represent the interests of consumers and make a substantial contribution to the adoption of any order, regulation, or decision by the Commissioner are to be compensated for reasonable advocacy and witness fees.<sup>81</sup>

#### **A. CW Met the Procedural Prerequisites to Compensation for Public Participation**

Before an intervenor may file a request for compensation, they must first obtain a finding from the Commissioner's Public Advisor that they are eligible to seek compensation—i.e., that they represent the interests of the consumer.<sup>82</sup> An intervenor is found to represent the interests of the consumer if it represents the interests of individual insurance consumer(s), or the intervenor is a group organized for the purpose of consumer protection as demonstrated by, but is not limited to, a history of representing consumers in administrative, legislative or judicial

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<sup>77</sup> Ins. Code, § 1861.05, subd. (a).

<sup>78</sup> Ins. Code, § 1861.10, and *State Farm Insurance Co. v. Lara* (2021) 71 Cal.App.5th 197

<sup>79</sup> Cal. Code Regs., tit. 10, §§ 2661.3 – 2661.4.

<sup>80</sup> *State Farm Insurance Co. v. Lara*, *supra*, 71 Cal.App.5th 197.

<sup>81</sup> Ins. Code, § 1861.10, and Cal. Code Regs., tit. 10, § 2662.5.

<sup>82</sup> Cal. Code Regs., tit. 10, § 2662.3.

proceedings.<sup>83</sup>

Once granted, a Finding of Eligibility to Seek Compensation is valid in any proceeding in which the intervenor's participation commences within two years of the finding of eligibility, provided the intervenor still meets all the requirements in the initial request.<sup>84</sup>

In addition to establishing that it represents the interests of the consumer the intervenor must also submit a request for an award of compensation within 30 days after the Commissioner's decision or action in the proceeding for which intervention was sought, or within 30 days after conclusion of the entire proceeding.<sup>85</sup> A "proceeding" is any action conducted pursuant to Proposition 103, including a proceeding other than a rate proceeding.<sup>86</sup>

Failing to comply with the procedural as well as substantive requirements may be fatal to a Request for Compensation. For example, where the Commissioner failed to grant permission to intervene in a particular matter, a later request for compensation by the putative intervenor was denied.<sup>87</sup>

### **1. CW Represents the Interests of Consumers**

On July 26, 2022, the Commissioner issued CW its most recent Finding of Eligibility, effective for two years from July 12, 2022.<sup>88</sup> The Commissioner's finding of eligibility to seek compensation under Insurance Regulation 2662.2 is conclusive on this matter.

### **2. CW Made a Timely Request for Compensation**

CW filed the present RFC on April 11, 2023, less than 30 days from the Commissioner's March 14 approval of the Settlement Stipulation. Accordingly, CW has made a timely Request

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<sup>83</sup> Cal. Code Regs., tit. 10, § 2661.1, subd. (j).

<sup>84</sup> Cal. Code Regs., tit. 10, § 2662.2

<sup>85</sup> Cal. Code Regs., tit. 10, § 2662.3, subd. (a).

<sup>86</sup> Cal. Code Regs., tit. 10, § 2661.2, subd. (f).

<sup>87</sup> RFC-2021-002.

<sup>88</sup> RFC, p. 2, fn. 3.

for Compensation, per Insurance Regulation section 2662.3, subdivision (a).

### **B. CW Met the Substantive Requirements for Compensation**

Once the intervenor has established that it is eligible to seek compensation, and has made a timely request for compensation, it must then establish that it has made a “substantial contribution” to the proceedings.

An intervenor’s contribution is substantial when, viewed as a whole, their contribution results in more relevant, credible, and non-frivolous information being available than would otherwise have been available to the Commissioner to make a decision.<sup>89</sup> In the context of an application for a rate change, a substantial contribution may be found whether a petition for hearing is granted or denied.<sup>90</sup> Moreover, the intervenor need not be a prevailing party in order to be deemed to have made a substantial contribution.<sup>91</sup>

#### **1. CW Made a Substantial Contribution to the Commissioner’s Decision**

In its RFC, CW describes its asserted “substantial contribution” as: initiating the proceeding and raising issues through its Petition; identifying issues regarding Farmers’ payments of management fees and the proper accounting therefor; eliciting Farmers’ responses to its requests for information; teleconferences; and participation discussions leading to the Settlement Stipulation.

Of particular importance to the determination whether CW’s contribution was relevant, were the requests for information that prompted Farmers’ response thereto. In particular, Farmers’ December 7 response to CW’s November 21 request for information resulted in more relevant, credible, and non-frivolous information being available to the commissioner.

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<sup>89</sup> Cal. Code Regs., tit. 10, § 2661.1, subd. (k).

<sup>90</sup> *Ibid.*

<sup>91</sup> *State Farm Insurance Co. v. Lara, supra*, 71 Cal.App.5th 197.

Specifically, this data came in the form of lists of other companies utilizing similar models for FFEQ losses, documentation of economic factors affecting damages claims, as well as graphic breakdowns and tables justifying the requested increase. Accordingly, CW has made a substantial contribution to these proceedings.

### **C. An Intervenor is Entitled to Reasonable Fees and Expenses**

Reasonable advocacy and witness fees are determined according to the prevailing rate for comparable services in the private sector in the Los Angeles and San Francisco Bay Areas at the time of the Commissioner's decision awarding compensation.<sup>92</sup> This standard is applied to attorney advocates, non-attorney advocates, and experts with similar experience, skill and ability. Reasonable, actual out of pocket costs may also be compensated.<sup>93</sup> Billing rates shall not exceed the market rate.<sup>94</sup>

The requirement that fees be reasonable preserves the Commissioner's discretion to reduce fees for unnecessary, excessive, or duplicative work.<sup>95</sup> For example, when an intervenor seeks contributions for efforts that were not authorized in the ruling on the Petition to Intervene, and when those efforts duplicate the contribution of another party, the request for compensation may be reduced accordingly.<sup>96</sup> An intervenor may not reopen matters that were decided prior to their petition being granted.<sup>97</sup> The intervenor is required to file a "detailed description of services and expenditures," "legible time and/or billing records," and citations to the record of the proceedings.<sup>98</sup>

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<sup>92</sup> Cal. Code Regs., tit. 10, § 2661.1, subd. (c).

<sup>93</sup> Cal. Code Regs., tit. 10, § 2661.1, subds. (b) and (d).

<sup>94</sup> *Ibid.*

<sup>95</sup> *State Farm Insurance Co. v. Lara, supra*, 71 Cal.App.5th 197.

<sup>96</sup> Cal. Code Regs., tit. 10, § 2662.5, subd. (b).

<sup>97</sup> Cal. Code Regs., tit. 10, § 2661.3, subd. (h).

<sup>98</sup> Cal. Code Regs., tit. 10, § 2662.3, subd. (b).

**1. Petitioner's Requested Fees are Reasonable.**

CW has provided detailed billing records for the staff and expert witnesses who worked on this matter. Moreover, it has established through the Declarations of Richard M. Pearl and Allan I. Schwarz that the hourly rates charged by its staff and expert witnesses were reasonable and/or comparable to services in the private sector in the Los Angeles and San Francisco Bay Area at the time they were incurred. Accordingly, CW's fees are reasonable.

**CONCLUSIONS**

CW is entitled to advocacy and witness fees in the amount of \$82,814.50 for its substantial contribution to the *Matter of the Rate Application of Farmers Exchange, Fore Insurance, and Mid-Century Insurance Company*, PA-2022-00007. The award shall be paid by Respondent.


**ORDER**

1. Consumer Watchdog is hereby awarded \$82,814.50 in advocacy fees in connection with the *Matter of the Rate Application of Farmers Exchange, Fore Insurance, and Mid-Century Insurance Company*, PA-2022-00007.

2. Respondent shall pay the award no later than thirty (30) days after the date of this Decision and shall notify the Department's Office of the Public Advisor<sup>99</sup> upon making payment.

Date: July 12, 2023

RICARDO LARA  
Insurance Commissioner

By:   
\_\_\_\_\_  
Alicia A. Clement  
Administrative Law Judge

<sup>99</sup> Jamie Katz, 1901 Harrison Street, 4<sup>th</sup> Floor, Oakland, California 94612 or jamie.katz@insurance.ca.gov.

## PROOF OF SERVICE

Case Name/Number: In the Matter of the Request for Compensation of  
**CONSUMER WATCHDOG**  
File No. **RFC-2023-006**

I, Camille E. Johnson, declare that:

I am employed by the California Department of Insurance, Administrative Hearing Bureau, in the City of Oakland and County of Alameda. I am over the age of eighteen (18) years and not a party to this action. My business address is 1901 Harrison Street, 3<sup>rd</sup> Floor, Oakland, CA 94612.

I am readily familiar with the business practices of the California Department of Insurance for collecting and processing correspondence for mailing, electronic filing and electronic mail. On July 12, 2023, I served the **DECISION AWARDING COMPENSATION** regarding in the **Matter of the Request for Compensation of CONSUMER WATCHDOG**.

  X   **(By U.S. Mail)** on those identified parties in said action, 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.

  X   **(By Intra-Agency Mail)** on those identified parties in said action, by placing this correspondence in a place designated for collection for delivery by Department of Insurance intra-agency mail.

       **(By Facsimile transmission)** on those identified parties in said action, by transmitting said document(s) from our office by facsimile machine to facsimile machine number(s) shown below. Following the transmission, I received a "Transmission Report" from our fax machine indicating that the transmission had been transmitted without error.

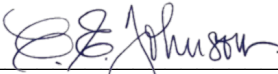
  X   **(By Email)** on those identified parties in said action, in accordance with Code of Civil Procedure §1013, by emailing true copies thereof at the address set forth below.

### ***SEE ATTACHED PARTY SERVICE LIST***

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Oakland, California, on July 12, 2023.

July 12, 2023

DATE

  
C. E. JOHNSON



## PARTY SERVICE LIST

Name/Address

Method of Service

Harvey Rosenfield, SBN 123082

(via Email and U. S. Mail)

Pamela Pressley, SBN 180362

Benjamin Powell, SBN 311624

Ryan Mellino, SBN 342497

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# **EXHIBIT 7**



## FINDINGS OF FACT<sup>1</sup>

On February 1, 2023, CSAA filed a Rate Application<sup>2</sup> with the Department, seeking a 25 percent increase in its Auto Liability and Physical Damage lines. Over the course of the ensuing investigation, the Department issued five objection letters.<sup>3</sup> CSAA responded to each of the Objection Letters in a timely fashion.<sup>4</sup> On April 10, 2023, CW filed a Petition for Hearing, Petition to Intervene, and Notice of Intent to Seek Compensation.<sup>5</sup> In its Request for Hearing, CW provided a non-exhaustive list of issues related to the Rate Application that it intended to explore, along with a list of evidence it intended to produce.<sup>6</sup> On April 14, 2023, CSAA filed an Answer to the Request for Hearing, refuting CW's claims that the RA was actuarially unsound.<sup>7</sup> On April 24, 2023, the Department granted CW's Petition to Intervene.<sup>8</sup> In it, the Department found that CW "has raised and seeks to address issues that are relevant to the ratemaking process."<sup>9</sup>

On May 2, 2023, CW submitted a Request for Information to CSAA that sought responses to 24 separate inquiries.<sup>10</sup>

On May 3, 2023, CSAA submitted a "Response to Consumer Watchdog's Petition to

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<sup>1</sup> All findings of fact in this matter are derived from the Petitioner's filings and attachments, and from the Department's official files. Neither CSAA nor the Department filed a response to the RFC.

<sup>2</sup> Rate applications may be found online at [https://interactive.web.insurance.ca.gov/apex\\_extprd/f?p=186:1:13936543914997](https://interactive.web.insurance.ca.gov/apex_extprd/f?p=186:1:13936543914997). An administrative agency may take official notice of its own records, such as the Rate Application filed with the Department of Insurance on February 1, 2023, and assigned State Tracking Number 23-385. (See Evid. Code, § 452, subd. (d).) Official Notice is hereby taken of the Rate Application number 23-385. Citations in this decision to the Rate Application ("RA") utilize the State Tracking # 23-385. Although the document does not contain continuous internal pagination, page numbers are referenced according to their order of appearance in the .pdf.

<sup>3</sup> RA #23-385, p. 4.

<sup>4</sup> *Ibid.*

<sup>5</sup> Exh. 3 attached to Declaration of Daniel L. Sternberg.

<sup>6</sup> Request for Hearing, ¶¶ 7-9.

<sup>7</sup> Answer to Request for Hearing.

<sup>8</sup> Ruling Granting Consumer Watchdog's Petition to Intervene.

<sup>9</sup> Ruling Granting Consumer Watchdog's Petition to Intervene, ¶ 5.

<sup>10</sup> Exh. B, attached to RFC.

Intervene.”<sup>11</sup> In its response, CSAA included argument and “a detailed explanation for how [it] derived the selected trends for the four largest coverages....”<sup>12</sup> It also provided excerpts of financial statements from 2020 and 2021 to support its variance for loss development.<sup>13</sup>

On May 4, 2023, CSAA provided an extensive “Response to Consumer Watchdog’s Requests for Information.” In its point-by-point response to CW’s information request, CSAA included, among other things, additional annual statements from 2019 through 2022, additional consolidated annual statements from 2019 through 2022, corrected tables of data (upon discovery of an error), and comparison data between the trends filed in the RA compared against the actuarial reserve report for 2022.<sup>14</sup>

On May 16, 2023, CW submitted a “Second Set of Requests for Information” to CSAA.<sup>15</sup>

On May 17, 2023, CSAA provided a detailed “Response to Consumer Watchdog’s Second Set of Requests for Information.”<sup>16</sup> In CSAA’s response to the second set of information requests, CSAA defined its newly-coined phrase, “*reverse catastrophe*” as “a rare phenomenon (once in a century) that led to *fewer* than expected losses.”<sup>17</sup> CSAA also provided additional data justifying its application of annual trends to trend historical losses to 2022 levels.<sup>18</sup>

On May 23, 2023, the parties and the Department participated in the first of two teleconferences.<sup>19</sup>

On June 20, 2023, in advance of a second teleconference scheduled for June 23, CSAA

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<sup>11</sup> Exh. C, attached to RFC.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> Exh. D, attached to RFC.

<sup>15</sup> Exh. E, attached to RFC.

<sup>16</sup> Exh. F, attached to RFC.

<sup>17</sup> *Ibid.*, emphasis added.

<sup>18</sup> *Ibid.*

<sup>19</sup> Sternberg Decl., ¶ 43.

provided CW with advance copies of its yet-to-be filed updated rate templates.<sup>20</sup> CSAA prefaced its e-mail to which these updated rate templates were attached, with the statement, “These differ from the filing in selected trends, which we’ll be prepared to fully discuss on Friday.”<sup>21</sup> A second teleconference was convened on June 23, 2023.

On July 17, 2023, the parties entered into a settlement stipulation that includes a rate change of 16.7 percent, rather than the 25 percent increase sought in the RA.<sup>22</sup>

The Commissioner approved the Stipulated Settlement on July 20, 2023.<sup>23</sup>

In keeping with the terms of the Stipulated Settlement, CW subsequently withdrew its Petition for Hearing on July 28, 2023.<sup>24</sup>

At various times during their intervention, the attorneys for CW engaged in the following tasks: conferred regarding overall strategy and positions; drafted, reviewed, and edited CW’s filed documents; reviewed CSAA’s RA and updated filings; prepared the requests for information; exchanged correspondence regarding and participated in the two conference calls; consulted with CW’s actuary; negotiated the stipulated settlement; and drafted the Request for Compensation, including supporting declarations and exhibits.<sup>25</sup> In addition to this generalized list, CW includes detailed records of how each attorney, paralegal, and expert witness spent their time on this matter.

An extensive survey of hourly rates charged by attorneys in the Los Angeles area in 2022, correlated to their relative level of experience demonstrates that the rates CW charged in 2022 were comparable and competitive at that time.<sup>26</sup> In April 2023 the Department approved of

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<sup>20</sup> Exh. G, attached to RFC.

<sup>21</sup> *Ibid.*

<sup>22</sup> RFC, pp.1, 8.

<sup>23</sup> RFC, p. 8.

<sup>24</sup> *Ibid.*

<sup>25</sup> Decl. of Sternberg, ¶ 8.

<sup>26</sup> Exh. 2, attached to Sternberg Decl.

CW's current hourly rates in its Ruling Granting Consumer Watchdog's Petition to Intervene in the Application of CSAA Insurance Exchange, application number 23-385.<sup>27</sup>

Pamela Pressley is an attorney with over 26 years of experience in consumer advocacy. She has spent 16 years as an attorney with CW, focusing primarily on insurance regulatory and litigation matters before the Department.<sup>28</sup> Detailed time records of Pressley's work demonstrate that she was heavily involved in this matter from its inception and continuing until the RFC was filed, from April through August 2023.<sup>29</sup> Pressley spent a total of 33.9 hours on this matter. At her hourly rate of \$595.00, she billed a total of \$20,170.50.<sup>30</sup>

Harvey Rosenfield is an attorney with over 40 years of experience in insurance regulatory and litigation matters.<sup>31</sup> As the author of Proposition 103, he has participated in a number of major lawsuits interpreting and enforcing the statute.<sup>32</sup> Detailed time records of Rosenfield's work tend to demonstrate that he provided oversight ("review") of CSAA's RA from April through June 2023.<sup>33</sup> Rosenfield spent a total of 2.3 hours on this matter. At his hourly rate of \$695.00, his bill for services amounts to \$1,598.50.<sup>34</sup>

Daniel L. Sternberg is an attorney with seven years of professional experience in litigation and advocacy.<sup>35</sup> He has been with CW for less than a year, but has spent the majority of that time litigating matters before the Department.<sup>36</sup> Detailed records of Sternberg's work reveal that his involvement in this matter was concentrated on reviewing CW's correspondence with CSAA as well as CW's internal work product, including e-mails, requests for information,

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<sup>27</sup> Exh. 5, attached to Sternberg Decl.

<sup>28</sup> Sternberg Decl., ¶13.

<sup>29</sup> Exh. 1a, attached to Sternberg Decl.

<sup>30</sup> Sternberg Decl., ¶ 7; Exh. 1a, attached to Sternberg Decl.

<sup>31</sup> Sternberg Decl., ¶ 9.

<sup>32</sup> *Ibid.*

<sup>33</sup> Exh. 1a, attached to Sternberg Decl.

<sup>34</sup> Sternberg Decl., ¶ 7; Exh. 1a, attached to Sternberg Decl.

<sup>35</sup> Sternberg Decl., ¶ 16.

<sup>36</sup> *Ibid.*



and settlement offers.<sup>37</sup> Sternberg spent a total of 36.2 hours on this matter. At his hourly rate of \$350.00 his bill for services amounts to \$12,670.00.<sup>38</sup>

Ryan Mellino was admitted to the California State Bar in 2022.<sup>39</sup> His professional experience includes work with the Legal Aid Foundation of Los Angeles, the ACLU, and the Los Angeles Homeless Services Authority, as well as CW.<sup>40</sup> Detailed records of Mellino's work show that he was only involved in this matter during May 2023 with regard to requests for information.<sup>41</sup> Mellino spent a total of 2.1 hours on this matter. At his hourly rate of \$250.00, his bill for services totals \$525.00.<sup>42</sup>

Kaitlyn Gentile is a paralegal at CW with over fourteen years of professional experience in litigation support. Gentile worked a total of 7.1 hours on this matter. Detailed time records of Gentile's work demonstrate that she was primarily engaged in preparing and finalizing the RFC during the month of August 2023.<sup>43</sup> At her hourly rate of \$200.00, her bill for services totals 1,420.00.<sup>44</sup>

Allan I. Schwartz is the President of AIS Risk Consultants, Inc., and is an actuary with over 40 years consulting actuarial experience.<sup>45</sup> He provided consulting actuarial services to CW on this matter, as he has in numerous Proposition 103 matters.<sup>46</sup> Detailed time records of Schwartz's work demonstrate that he spent larger blocks of time reviewing CSAA's initial filings, as well as its responses to CW's information requests in April and May 2023.<sup>47</sup> Schwartz

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<sup>37</sup> Exh. 1a, attached to Sternberg Decl.

<sup>38</sup> Sternberg Decl., ¶ 7; Exh. 1a, attached to Sternberg Decl.

<sup>39</sup> Sternberg Decl., ¶ 20.

<sup>40</sup> *Ibid.*

<sup>41</sup> Exh. 1a, attached to Sternberg Decl.

<sup>42</sup> Sternberg Decl., ¶ 7; Exh. 1a, attached to Sternberg Decl.

<sup>43</sup> Exh. 1a, attached to Sternberg Decl.

<sup>44</sup> Sternberg Decl., ¶ 7; Exh. 1a, attached to Sternberg Decl.

<sup>45</sup> Schwartz Decl., ¶ 1.

<sup>46</sup> Schwartz Dec., ¶ 2.

<sup>47</sup> Exh. 8, attached to Schwartz Decl.

worked 41.7 hours on this matter.<sup>48</sup> At his hourly rate of \$915.00,<sup>49</sup> his bill for services totals \$38,155.50.<sup>50</sup>

Katherine Tollar is an Actuarial Assistant at AIS Risk Consultants, Inc., with over 20 years of professional actuarial experience.<sup>51</sup> Detailed records of Tollar's work demonstrate that the majority of her time was spent on "trend and indication," work, which was primarily performed during May and June 2023.<sup>52</sup> Tollar worked a total of 7.6 hours on this matter at her hourly rate of \$415.00, for which she billed \$3,154.00.<sup>53</sup>

In total, CW has established that its hourly rates, and the hours billed for services rendered in this matter are reasonable.

## DISCUSSION

### I. Prior Approval Framework and Public Participation

In California, insurance rates for automobile, home, and other property-casualty policies must be approved by the Commissioner prior to their use.<sup>54</sup> Insurance Code section 1861.05, subdivision (a), prohibits the Commissioner from approving any rate that is "excessive, inadequate, unfairly discriminatory, or otherwise in violation of this chapter," or from allowing such rates to remain in effect. The primary consideration in the Commissioner's determination must be "whether the rate mathematically reflects the insurance company's investment income."<sup>55</sup>

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<sup>48</sup> Exh. 8, attached to Schwartz Decl.

<sup>49</sup> Schwartz Decl., ¶ 6.

<sup>50</sup> Exh. 8, attached to Schwartz Decl.

<sup>51</sup> Exh. 6, attached to Schwartz Decl.

<sup>52</sup> Exh. 8, attached to Schwartz Decl.

<sup>53</sup> Exh. 8, attached to Schwartz Decl.

<sup>54</sup> Ins. Code, § 1861.01, subd. (c).

<sup>55</sup> Ins. Code, § 1861.05, subd. (a).

In order to foster “consumer participation in the rate-setting process,”<sup>56</sup> section 1861.10 of the Insurance Code authorizes any person to initiate a proceeding to enforce any provision of Proposition 103.<sup>57</sup> Intervenor who represent the interests of consumers and make a substantial contribution to the adoption of any order, regulation, or decision by the Commissioner are to be compensated for reasonable advocacy and witness fees.<sup>58</sup> To that end, the Commissioner has promulgated regulations setting forth the substantive and procedural requirements for those seeking compensation under the code.<sup>59</sup> These regulations are binding on the AHB and have the force of statute.<sup>60</sup> Given the statute’s purpose to encourage public participation, the regulations should be liberally construed in favor of compensation.<sup>61</sup>

#### **A. The Procedural Prerequisites for Compensation are Met**

Before an intervenor may file a request for compensation, they must first obtain a finding from the Commissioner’s Public Advisor that they are eligible to seek compensation—i.e., that they represent the interests of the consumer.<sup>62</sup> Once granted, a Finding of Eligibility to Seek Compensation is valid in any proceeding in which the intervenor’s participation commences within two years of the finding of eligibility, provided the intervenor still meets all the requirements in the initial request.<sup>63</sup> There is no dispute that CW is eligible to seek compensation in this case.

In addition to establishing that it represents the interests of the consumer the intervenor must also submit a request for an award of compensation within 30 days after the

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<sup>56</sup> See *State Farm General Ins. Co. v. Lara* (2021) 71 Cal.App.5th 197, 215, citing *State Farm Mutual Automobile Ins. Co. v. Garamendi*, *supra*, 32 Cal.4th 1029.

<sup>57</sup> Ins. Code, § 1861.10, and *State Farm Insurance Co. v. Lara* (2021) 71 Cal.App.5th 197

<sup>58</sup> Ins. Code, § 1861.10, and Cal. Code Regs., tit. 10, § 2662.5.

<sup>59</sup> Cal. Code Regs., tit. 10, §§ 2661.3 – 2661.4.

<sup>60</sup> *Agriculture Labor Relations Board v. Superior Court* (1976) 16 Cal.3d 392.

<sup>61</sup> *State Farm Insurance Co. v. Lara*, *supra*, 71 Cal.App.5th 197.

<sup>62</sup> Cal. Code Regs., tit. 10, § 2662.3.

<sup>63</sup> Cal. Code Regs., tit. 10, § 2662.2

Commissioner's decision or action in the proceeding for which intervention was sought, or within 30 days after conclusion of the entire proceeding.<sup>64</sup> CW's RFC was filed on August 18, 2023, less than 30 days after the Commissioner approved the Stipulated Settlement on July 20, 2023. Accordingly, the RFC was timely filed.

**B. The Substantive Requirements for Compensation are Met**

Once the intervenor has established that it is eligible to seek compensation, and has made a timely request for compensation, as CW has done here, it must then establish that it has made a "substantial contribution" to the proceedings.<sup>65</sup> The only *statutory requirements* for compensation are set out subdivision (b) of Insurance Code section 1861.10.<sup>66</sup> But the statutory language does not encapsulate the whole of the intervenor's obligation. The regulations adopted by the Insurance Commissioner fill in the details not specified by Proposition 103.<sup>67</sup> The regulations state that a "substantial contribution"

"...means that the intervenor substantially contributed, as a whole, to a decision, order, regulation, or other action of the Commissioner by presenting relevant issues, evidence, or arguments which were separate and distinct from those emphasized by the Department of Insurance staff or any other party, such that the intervenor's participation resulted in more relevant, credible, and non-frivolous information being available for the Commissioner to make the Commissioner's decision than would have been available to the Commissioner had the intervenor not participated. A substantial contribution may be demonstrated without regard to whether a petition for hearing is granted or denied."<sup>68</sup>

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<sup>64</sup> Cal. Code Regs., tit. 10, § 2662.3, subd. (a).

<sup>65</sup> Ins. Code, §1861.10, subd. (b); Cal. Code Regs., tit. 10, §§ 2661.2, subd. (k), and 2662.3, subd. (b)(3).

<sup>66</sup> *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029, 1047-1048.

<sup>67</sup> *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029, 1050.

<sup>68</sup> Cal. Code Regs., tit. 10, § 2661.2(k).

What constitutes a substantial contribution requires a fact-intensive analysis by the tribunal in which the matter originated.<sup>69</sup> And, while the intervenor's substantial contribution may be shown with documents,<sup>70</sup> it is incumbent on the intervenor to provide specific citations to its services and expenditures.<sup>71</sup> There is no question in this case that CW participated in the rate proceedings.

As a direct result of CW's participation in this case, CSAA produced additional analysis and data concerning the Trend Selection for Bodily Injury Property Damage, Comprehensive and Collision;<sup>72</sup> CSAA also provided several years' worth of Annual Statements and Consolidated Annual Statements;<sup>73</sup> and in connection with CW's inquiries, CSAA discovered and corrected several data errors.<sup>74</sup> Accordingly, CW has established that its intervention in this case made a substantial contribution to the Commissioner's ultimate approval of the stipulated settlement by providing more relevant credible, and non-frivolous information than would have been available had the intervenor not participated. Additionally, through detailed time records, rate surveys, and prior findings by the Department, CW has established that it charged market rates, as that phrase is defined by regulation.<sup>75</sup>

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<sup>69</sup> *Economic Empowerment Foundation v. Quackenbush* (1997) 57 Cal.App.4th 677.

<sup>70</sup> *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029, 1040.

<sup>71</sup> *Economic Empowerment Foundation v. Quackenbush*, *supra*, 57 Cal.App.4th 677, 681; Cal.Code Regs., tit. 10, § 2662.5, subd. (a)(1).

<sup>72</sup> Exh. C, attached to RFC.

<sup>73</sup> Exh. D, attached to RFC.

<sup>74</sup> Exh. D, attached to RFC.

<sup>75</sup> Cal. Code Regs., tit. 10, § 2661.1, subd. (c).

## CONCLUSION

For the foregoing reasons, CSAA is entitled to expenses and advocacy fees *in the Matter of the Rate Application of CSAA Insurance Exchange*, Prior Approval File No. PA-2023-00004, in the amount of \$77,693.50.

## ORDER

1. Consumer Watchdog is hereby awarded \$77,693.50 in advocacy and expert witness fees in connection with CSAA's Rate Application (Prior Approval File No. *PA-2023-00004*).
2. CSAA shall pay the award no later than 30 days after the date of this Decision and shall notify the Department's Office of the Public Advisor<sup>76</sup> upon making payment.

Date: November 8, 2023

RICARDO LARA  
Insurance Commissioner

By:   
Alicia A. Clement  
Administrative Law Judge

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<sup>76</sup> Jon Phenix, Public Advisor, 1901 Harrison Street, 4th Floor, Oakland, CA 94612, or [jon.phenix@insurance.ca.gov](mailto:jon.phenix@insurance.ca.gov).

## PROOF OF SERVICE

Case Name/Number: In the Matter of the Request for Compensation of  
**CONSUMER WATCHDOG**  
File No. **RFC-2023-011**

I, Florinda Cristobal, declare that:

I am employed by the California Department of Insurance, Administrative Hearing Bureau, in the City of Oakland and County of Alameda. I am over the age of eighteen (18) years and not a party to this action. My business address is 1901 Harrison Street, 3<sup>rd</sup> Floor, Oakland, CA 94612.

I am readily familiar with the business practices of the California Department of Insurance for collecting and processing correspondence for mailing, electronic filing and electronic mail. On August 18, 2023, I served **DECISION AWARDING COMPENSATION** regarding **In the Matter of the Request for Compensation of Consumer Watchdog**.

  X   **(By U.S. Mail)** on those identified parties in said action, 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.

  X   **(By Intra-Agency Mail)** on those identified parties in said action, by placing this correspondence in a place designated for collection for delivery by Department of Insurance intra-agency mail.

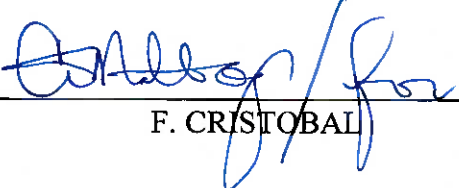
       **(By facsimile transmission)** on those identified parties in said action, by transmitting said document(s) from our office by facsimile machine Fax Number to facsimile machine number(s) shown below. Following the transmission, I received a "Transmission Report" from our fax machine indicating that the transmission had been transmitted without error.

  X   **(By Email)** on those identified parties in said action, in accordance with Code of Civil Procedure §1013, by emailing true copies thereof at the address set forth below.

### ***SEE ATTACHED PARTY SERVICE LIST***

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Oakland, California, on August 18, 2023

November 8, 2023  
(Date)

  
F. CRISTOBAL

**PARTY SERVICE LIST**

Name/Address

Method of Service

Harvey Rosenfield, SBN 123082  
Pamela Pressley, SBN 180362  
Daniel L. Sternberg, SBN 329799  
**Ryan Mellino, SBN 342497**  
**CONSUMER WATCHDOG**  
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via Email & U. S. mail

Lisbeth Landsman-Smith  
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Sara Ahn  
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**NON-PARTY**

Jon Phenix  
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(via Email)

# **EXHIBIT 8**



**RICARDO LARA**  
CALIFORNIA INSURANCE COMMISSIONER

June 17, 2024

Ben Powell, Attorney  
Consumer Watchdog  
6330 San Vicente Blvd., Ste. 250  
Los Angeles, CA 90048

Via email to [ben@consumerwatchdog.org](mailto:ben@consumerwatchdog.org)

Re: Consumer Watchdog Request for Finding of Eligibility to Seek Compensation

Dear Mr. Powell:

The Department is in receipt of Consumer Watchdog's Request for Finding of Eligibility to Seek Compensation (RESC) pursuant to Insurance Code section 1861.10 and section 2662.2 of Title 10 of the California Code of Regulations, which was submitted to the Public Advisor on June 3, 2024. The Request has been published on the Department's website. Consumer Watchdog's prior finding of eligibility is valid thru July 22, 2024.

Pursuant to section 2662.2(c), the Commissioner shall rule on any complete request within fifteen (15) days from the receipt of a complete request, which is June 18, 2024.

Proposition 103 authorizes public participation in the administrative process of setting covered insurance rates and requires all requests to be published on the Department of Insurance's internet website. (See Ins. Code § 1861.10.) The Department has received requests to comment on your RESC, copies of which will be published to the Department's website. The Commissioner may consider, in addition to the information contained within your RESC, the requests to comment in making his determination. Moreover, pursuant to section 2662.2(a)(2), additional information may be requested at any time.

Given the public interest in this RESC and the additional questions raised from public comments, the Commissioner requests that you waive the deadline contained within section 2662.2(c) to allow him the opportunity to consider the additional information. Public members who have submitted a request to comment will be providing their comments to the Department by June 28, 2024. These comments will be published to the Department's website. If you agree to waive the deadline, the Public Advisor will provide a schedule for supplemental submissions to allow you an opportunity to respond to submitted public comments. Nothing herein is a ruling by the Commissioner on the pending RESC and no eligibility determination has been made at this time.

Please notify Acting Public Advisor Ed Wu at [Edward.Wu@insurance.ca.gov](mailto:Edward.Wu@insurance.ca.gov) and Abigail Gomez at [Abigail.Gomez@insurance.ca.gov](mailto:Abigail.Gomez@insurance.ca.gov) no later than noon on June 18, 2024, if you agree to waive the 15-day deadline contained within section 2662.2(c). Thank you for your attention to this matter.

Best,

A handwritten signature in black ink that reads "Edward Wu".

Acting Public Advisor Edward Wu

# **EXHIBIT 9**



**VIA EMAIL**

June 18, 2024

Edward Wu, Acting Public Advisor  
Abigail Gomez  
California Department of Insurance  
300 South Spring Street, South Tower, 12th Floor  
Los Angeles, CA 90013  
Edward.Wu@insurance.ca.gov  
Abigail.Gomez@insurance.ca.gov

Re: Consumer Watchdog's 6/3/24 Request for Finding of Eligibility to Seek Compensation

Dear Mr. Wu and Ms. Gomez,

I write in response to your June 17 letter regarding Consumer Watchdog's Request for Finding of Eligibility to Seek Compensation in departmental proceedings submitted on June 3, 2024 to the Public Advisor, Jon Phenix, and Mr. Wu as Acting Public Advisor. As stated in your June 17 letter and as confirmed in our phone conversation yesterday, you have determined that our Request is "complete" under the 10-day timeline in 10 CCR § 2662.2(b), as it contains all of the information specified under 10 CCR § 2662.2(a); thus, the 15-day timeline to rule on our Request under subdivision (c) is June 18, 2024. Your June 17 letter states that "the Commissioner requests that [Consumer Watchdog] waive the [15-day] deadline contained within section 2662.2(c) to allow him the opportunity to consider the additional information" from public comments and any requests for additional information by the Public Advisor on our Request and any supplemental submissions.

Consumer Watchdog is willing to agree to a 24-day extension of the June 18 deadline, but requests that a determination be made on our Request no later than July 12, 2024, which is the date through which our current Finding of Eligibility by the Commissioner is valid in proceedings that have commenced within two years of July 12, 2022. We would note that every one of Consumer Watchdog's last 16 Requests for Findings of Eligibility over the last three decades, dating back to 1993 when the requirement was first adopted, have been granted, including the most recent one granted by Commissioner Lara in July 2022. There have been no significant changes to Consumer Watchdog's organizational structure and our consumer protection work has remained constant over that time, as documented in our Requests for Findings of Eligibility and decisions by the Commissioner awarding Consumer Watchdog compensation for its substantial contribution representing the interests of consumers in over 120 rate, rulemaking, and noncompliance proceedings before the Department in the last two decades, saving consumers billions.

Sincerely,

A handwritten signature in black ink that reads "Pamela Pressley". The signature is written in a cursive, flowing style.

Pamela M. Pressley

# **EXHIBIT 10**

**RH-341 – SUMMARY OF AND RESPONSE TO PUBLIC COMMENT**

**June 10, 1996, Regulation Text**

**Comments of William Ahern on behalf of Consumers Union**

**Summary:** Consumers Union supports the change to section 2662.2(a)(2)(D).

**Response:** Please see the response regarding this section set forth in the July 9, 1996, regulation text, which is hereby incorporated by reference.

**Summary:** Consumers Union understands the change to section 2662.5(b) makes it less likely a substantial contribution will not be found when two intervenors claim a substantial contribution on an issue both were authorized to address by the ruling on the petition to intervene or participate.

**Response:** That understanding is correct.

**Comments of Selwyn Whitehead on behalf of The Economic Empowerment Foundation**

**Summary:** The comments begin with background information about EEF.

**Response:** Because this is not a comment on the proposed regulation changes, a response is not required.

**Summary:** EEC believes that the regulations are unconstitutional, were not promulgated according to California law, conflict with existing statutes, and are an attempt to ban EEC from participating.

**Response:** Please see the response to similar comments in the summary and response to public comments previously submitted in this rulemaking file, which are incorporated herein.

**Summary:** EEC supports OAL's previous disapproval of this rulemaking file.

**Response:** This version of the regulations addresses the objections OAL raised in its prior disapproval. EEF's comments do not specifically discuss the revised regulation text.

**Summary:** This version of the regulations is unauthorized by and inconsistent with Proposition 103.

**Response:** The Department disagrees that these regulations are unauthorized by and inconsistent with Proposition 103, and the Department incorporates its response to similar comments made by EEF on prior versions of these regulations. EEF does not provide specifics, so the Department is unable to provide a specific response.

**Summary:** EEF prefers the version of the regulations adopted during the administration of the prior Commissioner.

**Response:** The Department incorporates its response to similar comments EEF made on earlier versions of the regulations.

**Summary:** This version of the regulations is an attempt to burden consumers who oppose the Commissioner.

**Response:** The Department disagrees. Because specific objections were not provided, the Department is unable to provide a more specific response.

**Summary:** The Department has not met its burden of proving the necessity to repeal the prior regulations and propose adoption of these regulations.

**Response:** The Department incorporates its response to similar comments made by EEF on prior versions of these regulations.

**Summary:** The rulemaking file does not contain substantial evidence of the need for the new regulations and the repeal of the prior regulations.

**Response:** The Department incorporates its response to similar comments already contained in this rulemaking file.

**Summary:** The Department's real justification for this regulation is to punish intervenors who attempt to thwart the Commissioner's purpose of serving the insurance industry.

**Response:** The Department disagrees. This regulation is designed to establish procedures to compensate intervenors and participants who make a substantial contribution to specified proceedings, as authorized by Insurance Code Section 1861.10.

**Summary:** EEF provides examples of circumstances where it believes the Commissioner has discriminated against EEF and wrongfully denied EEF intervenor compensation.



**Response:** The Department disagrees that the Commissioner has discriminated against and wrongfully denied intervenor compensation to EEF. Because these examples are not comments on this version of the regulations, a specific response is not required. To the extent EEF expresses its support for the prior Administration's regulations and opposition to earlier versions of these regulations, those comments have been responded to previously, and the Department hereby incorporates those responses.

**Summary:** The regulations will negatively impact housing costs.

**Response:** Prior approval requirements, and consumer intervention in rate proceedings, are designed to ensure that homeowners' insurance rates are not excessive. The regulations do not make intervenors unable to participate in rate proceedings. The regulations establish procedures for intervenor participation.

**Summary:** There are less burdensome alternatives, namely the existing regulations.

**Response:** To the extent the reference to the existing regulations means the regulations adopted during the prior Commissioner's administration, the Department has previously responded, and incorporates those comments herein.

**Summary:** The regulations will negatively impact business.

**Response:** Prior approval requirements and consumer intervention in rate proceedings are designed to ensure that commercial insurance rates are not excessive. The regulations do not make intervenors unable to participate in rate proceedings. The regulations establish procedures for intervenor participation.

**Summary:** The Department has not proven the cost impact of the regulations on intervenors.

**Response:** Because this comment does not specifically address this version of the regulation text, the Department is unable to provide a specific response. The Department is unaware of any provision in the June 10 text which would negatively impact an intervenor's ability to participate in rate proceedings.

**Summary:** These regulations are inappropriate because they do not result in cost savings to the Department.

**Response:** The Department incorporates its response to the same comment made by EEF on prior versions of these regulations.

**Summary:** EEF appears to support the revised definition of market rate.

**Response:** A response is not required.

**Summary:** EEF appears to support explicitly stating that travel costs and transcript charges are also examples of other expenses.

**Response:** A response is not required.

**Summary:** EEF notes that the definition of proceeding contains a typographical error when it references section 1886.10(a).

**Response:** The correct section is obviously 1861.10(a).

**Summary:** EEF appears to support the change to section 2661.1(i).

**Response:** A response is not required.

**Summary:** EEF objects to the last paragraph of section 2661.1(i) because it allows "insurers to pile on in support of each other" ..

**Response:** Because this portion of the regulation text is unchanged, a response to comments on it is not required. However, the Department notes that it cannot, for example, prohibit an insurer from submitting comments relevant to a particular rulemaking proceeding.

**Summary:** EEF objects to the last sentence of the prior version of section 2661.3(b).

**Response:** The change to this section was intended only to clarify that the required verification is actually a statement to be included in the verified petition to intervene. The Department has previously responded to EEF objection to the earlier version of the regulation which EEF quotes on page 17 of its comments. The Department that an intervenor whose petition to intervene is granted before the hearing schedule is set is entitled to participate in the development of the hearing schedule.

**Summary:** EEF objects to the introductory portion of section 2661.3(c).

**Response:** Because this is not a comment on the June 10 version of these regulations, a response is not required. The Department previously responded to this

comment when EEF submitted it earlier.

**Summary:** EEF objects to the eight day reply time set forth at the end of section 2661.3(f). The existing regulations give more time and ample guidance. This provision is unnecessary. The Commissioner lacks authority to subvert the intervention process. This provision is inconsistent with other laws.

**Response:** EEF comments that "in my expert opinion eight days are not enough time to respond to such important allegations." EEF does not indicate why eight days are insufficient, and the Department does not know why eight days would generally be insufficient. It is important that the petition to intervene be ruled on expeditiously so the intervenor knows whether and to what extent it will be permitted to intervene in the proceeding. The Department has previously responded to the remainder of the comments EEF makes on this section when EEF made the same comments on earlier versions of the regulations, and the Department incorporates that response herein.

**Summary:** EEF apparently supports the changes made to section 2662.2 but objects that the language at the conclusion of section 2662.2(a) was not deleted.

**Response:** To the extent EEF is commenting on an unchanged portion of the regulation, a response is not required. The Department also incorporates its response contained in the summaries and responses on the July 9, 1996, regulation text, which is hereby incorporated by reference.

**Summary:** EEF apparently supports the changes to section 2662.5.

**Response:** A response is not required.

**Summary:** EEF objects to the proposed repeal of section 2621.1. Specifically, EEF supports the last sentence of that section.

**Response:** Because Insurance Code section 1861.10(a) allows any person to intervene, this section is unnecessary. The statute contemplates full and diverse participation. The Department disagrees with the comment that the Commissioner believes insurance issues confronting California's urban residents are frivolous matters.

**Summary:** The comments end with general concluding remarks.

**Response:** Because these are not comments on specific portions of the revised

regulation text, a response is not required.

Summary: A copy of OAL's previous Summary of Disapproval is attached to EEF's comments. A proof of service of the comments is attached.

Response: Because this does not represent a comment on the revised regulation text, a response is not required.

**Comments of Douglas Lutgen on behalf of CSAA Inter-Insurance Bureau**

Summary: CSAA has no comments on this version of the regulations but asks to remain on the mailing list.

Response: A response is not required.

**Comments of Gina Calabrese on behalf of The Proposition 103 Enforcement Project**

Summary: The Project supports the change to section 2661.1(c).

Response: A response is not required.

Summary: The Project supports the change to section 2661.1(d).

Response: A response is not required.

Summary: The Project supports the change to section 2661.1(i).

Response: A response is not required.

Summary: The Project continues to object to the "verification" requirement contained in section 2661.3(b) and believes the section raises equal protection issues..

Response: The change to this section was intended only to clarify that the required verification is actually a statement to be included in the verified petition to intervene. The Project's objections to the substance of this regulation were previously responded to when similar comments were submitted regarding prior versions of these regulations. While reasonable scheduling accommodations will obviously be made, the Department will not always be in a position to delay one proceeding for a given period of time because an intervenor is unable to participate within the time frame contemplated for a Department proceeding. For example, an intervenor may wish to participate in a rate hearing before the California Public Utilities Commission and a rate hearing before the Department, both of which are

scheduled for approximately the same dates, and only have one person who can work on both cases. Or the same situation may exist as to two Department proceedings, both scheduled generally for the same time. The legislature has indicated its intent that prior approval hearings be conducted expeditiously (see, e.g., Insurance Code section 1861.055). Consequently, in the above example, the Department may not be in a position to delay its hearing until the CPUC hearing is concluded (or to schedule one Department hearing after the other has concluded), and the intervenor may have to choose whether to intervene in the CPUC or Department of Insurance proceeding. The regulations do not impose a similar requirement on insurers because the Commissioner has authority to order an insurer to attend proceedings before the Commissioner. The procedural regulations which were adopted following the Supreme Court's approval of the Department's rate review regulations are designed to eliminate the delays previously experienced, and which the Project referenced in its comments. A one-day delay, referenced in the Project's comments, is not what this regulation is designed to address. This section is not designed to address the settlement issue the Project discusses, which as the Project notes is covered elsewhere. The Department recognizes that intervention is a right. However, the Department must be able to conduct necessary business in a timely manner.

Summary: The Project supports the change to section 2662.2(a)(2)(D).

Response: Please see the response regarding this section in the July 9, 1996, regulation text, which is hereby incorporated by reference.

Summary: The Project supports the change to section 2662.5(b) but cautions about how it might be implemented.

Response: It is anticipated that the regulation will not be applied so rigidly as to be unworkable.

**Comments of Mark Savage on behalf of Korean Youth and Community Center, Oakland Chinese Community Council**

Summary: KYCC and OCCC support the amendments to section 2661.1(c).

Response: A response is not required.

Summary: KYCC and OCCC comment regarding billing guidelines and caps, which are not included in these regulations. They also comment about the purpose and history of private attorney general statutes.

Response: It is unclear how these comments relate to the June 10 (or any prior) version of these regulations. The comments seem to refer to the Commissioner as a defendant, which he is not in connection with this rulemaking proceeding. The comments indicate that case law defines reasonable attorneys fees as prevailing rates in the private sector, which is the definition adopted in these regulations. The comments refer to caps such as the Defendant's. It is unclear who the "Defendant" is, since there is no defendant in a rulemaking proceeding. Additionally, the only cap (if one could call it that) contained in the regulations is the prevailing rate for comparable services in the private sector -- which appears to be what the commenter supports. These comments appear to be written for another purpose and to be directed at something other than the RH-341 regulations. Therefore it is impossible to respond in connection with the RH-341 regulations. KYCC and OCCC refer to discussions, not part of this rulemaking file, about what the Department pays its outside counsel. It is uncertain how that relates to this rulemaking file, making a response to these comments impossible. There are references to specific exhibits to Plaintiff's Opening Brief. But again, it is uncertain who is the Plaintiff in this rulemaking file, or what Opening Brief or exhibits attached thereto are being referenced, again making a response impossible. It may be that these comments are directed at regulations which have yet to be noticed for public comment but which KYCC and OCCC anticipate will be noticed at some point in the future. If that is the case, these are not comments on this rulemaking file, and a response is not required. Because KYCC and OCCC do not articulate how, if at all, these comments relate to this rulemaking proceeding, the Department cannot set forth the reasons why the regulations were not changed in response to these comments.

Summary: KYCC and OCCC support the change to section 2661.1(i).

Response: A response is not required.

Summary: KYCC and OCCC support the change to section 2661.3(f) - (g).

Response: A response is not required.

Summary: KYCC and OCCC support the change to section 2662.1.

Response: A response is not required.

Summary: KYCC and OCCC oppose repeal of the last sentence of section 2621.1.

Response: Because Insurance Code section 1861.10(a) allows any person to

intervene, this section is unnecessary. As the comments note, Proposition 103 contemplates full and diverse participation.

**Summary:** KYCC and OCCC generally support the changes to section 2662.2.

**Response:** Please see the response regarding this section in the July 9, 1996, regulation text, which is hereby incorporated by reference.

**Summary:** KYCC and OCCC oppose repeal of section 2621.7(b) because it provides the only specific, objective standard for computing the amount of compensation to be paid.

**Response:** The Department disagrees that the proposed regulations do not set forth an objective standard for computing the amount of compensation to be paid. Section 2662.6(b) requires the Commissioner, in a written decision, to set forth the amount of compensation to be paid. Section 2661.1(b) defines compensation as payment for advocacy fees, witness fees, and other expenses of participation and intervention. Under section 2662.5, if an intervenor made a substantial contribution, compensation may be reduced only to a specified limited extent. The provisions of section 2621.7(b) are contained in the proposed regulations.

**Summary:** KYCC and OCCC object to repeal of sections 2620.11, 2621.6(b), and 2621.10.

**Response:** As footnote 8 on page 11 notes, the referenced sections are unnecessary.

**Summary:** KYCC and OCCC object to the repeal of interim funding.

**Response:** Please see the response to similar comments made regarding earlier version of these regulations. Those responses are hereby incorporated by reference.

### **July 9, 1996, Regulation Text**

**Background:** On July 9, 1996, the Commissioner invited public comment on only one change to section 2662.2 of the proposed regulations. That change was to re-insert a provision incorrectly omitted from the June 10, 1996, regulation text.

OAL's June 6, 1996, Decision disapproving these regulations commented on section 2662.2. The Summary of Disapproval states:

Subsection (a)(2) of regulation 2662.2 does not clearly indicate in an organized manner which materials must be in a request for a finding of eligibility to seek compensation and which material must be included as an exhibit. In addition the text refers to the same document as a "request" and a "petition." Finally, the subsection is quite lengthy. Clarity of display would be served by subdividing it.

The Discussion section of the Decision states:

(2) Subsection (a) (2) of the regulation 2662.2 does not satisfy the Clarity standard. Subsection (a) of the regulation, which specifies the material that a person or group must submit to demonstrate their eligibility to seek compensation under Insurance Code Section 2861.10 provides: [The Decision then cites the regulation, which is omitted here.]

Subsection (a) (2) of regulation 2662.2 does not clearly indicate in an organized manner which materials must be in the request for a finding of eligibility to seek compensation and which material must be included as an exhibit. In addition the text refers to the same document as a "request" and a "petition." Finally, the subsection is quite lengthy. Clarify of display would be served by subdividing it. For these reasons subsection (a) (2) of regulation 2662.2 does not satisfy the Clarity standard.

OAL did not object to the substance of the regulation, and did not object that the regulation failed to satisfy the necessity, authority, or consistency standards set forth in the Government Code.

The Department attempted to revise the regulation in accordance with OAL's objections, and circulated the revision for public comment. Unfortunately, the June 10, 1996, version of this regulation was incorrect in that the provisions now contained in section 2662.2(a)(2)(G) were omitted from the June 10 version, although they were contained in the earlier version submitted to and reviewed by the Office of Administrative Law. Therefore, the Department re-inserted this language in a manner designed to satisfy OAL's clarity objections, and recirculated the text for additional public comment on July 9, 1996.

Comments received on the July 9, 1996, version of the regulations all objected to the language of section 2662.2(a)(2)(G).

#### **Comments of William Ahern on behalf of Consumers Union**

Summary: Consumers Union reiterates the comments made on November 10, 1995.



Response: The Department incorporates its response to the previous comments.

**Comments of Selwyn Whitehead on behalf of The Economic Empowerment Foundation**

Summary: EEF objects to section 2661.1(j) of the regulations as an attempt to limit the issues a party can raise in a proceeding.

Response: The July 9, 1996, Notice of Availability of Changed Text did not invite comments on this section of the regulations. Therefore, a response is not required.

Summary: EEF believes that section 2662.2(a)(2)(g) is simply a way to conduct witch hunts to gain access to privileged information and dry up funding sources for intervenors.

Response: The Commissioner believes this information is necessary to determine that a group really does represent the interests of consumers. The section has been narrowly drawn, seeks general information, and does not seek any information about individuals who make modest contributions to consumer groups.

Summary: EEF attaches as Exhibit EEF-100 its June 26, 1996, comments previously submitted to the Department.

Response: The Department has responded to these comments elsewhere in this rulemaking file.

**Comments of The Proposition 103 Enforcement Project**

Summary: The Project begins with background information.

Response: A response is not required.

Summary: Section 2662.1(a)(2)(G) does not satisfy the consistency standard. It is contrary to the right to political association, the right to engage in political speech, and the right to privacy.

Response: The Department incorporates its response to similar comments elsewhere in this rulemaking file. The regulation does not seek information about individuals who make modest contributions to consumer organizations. It is designed to obtain general information about a group's major funding sources to allow for a determination that the group represents consumer interests, not other interests. It is unclear how requiring disclosure of

foundation, corporate, business, or government grants is unlawful, since that information is often disclosed for various other purposes. Information is sought about individual contributors only when they contribute at least five percent of the group's annual budget. The information sought about these persons is minimal -- only their name and contribution amount. The Department is not submitting a legal brief in response to the cases cited by the Project because OAL has previously approved the substance of this regulation.

Summary: Section 2662.2(a)(2)(G) does not serve a compelling governmental interest.

Response: The Department incorporates its responses already included in this rulemaking file.

Summary: Section 2662.2(a)(2)(G) is not sufficiently narrowly-tailored to solve only the problem at hand. The only concern should be funding by the regulated insurance industry.

Response: An intervenor funded by and for the insurance industry presents an obvious conflict of interest. But that is not the only potential issue. Section 1861.10(b) requires the Commissioner to award compensation to intervenors making a substantial contribution who *demonstrate* that they represent the interests of consumers. This information sought by this section, together with other information provided by the intervenor, allows the Commissioner to determine, as he is required to do, whether the intervenor actually does represent the interests of consumers.

Summary: Insurers would use this information in retaliatory ways.

Response: This is simply speculation at this point.

Summary: This section duplicates other regulations and therefore does not meet the nonduplication standard.

Response: This is the only section which ask for information about the intervenor's funding sources, and it is therefore not duplicative of other sections.

Summary: This section will not further consumer intervention in Department proceedings, and is therefore contrary to Proposition 103 and unauthorized.

Response: Insurance Code Section 1861.10(b) requires intervenors to *demonstrate*

that they represent the interests of consumers. The Commissioner is attempting to ensure that this is the case. There is no support for the comment that this regulation is simply designed to allow the Commissioner to retaliate against intervenors.

**Comments of Mark Savage on behalf of the Korean Youth and Community Center and the Oakland Chinese Community Council**

Summary: The comments begin with introductory material.

Response: A response is not required.

Summary: Information required by the regulations is listed.

Response: Because this is not a comment on the section on which comment was sought, a response is not required. This appears to be provided as preliminary information.

Summary: Information beyond articles of incorporation and a summary of efforts to represent and protect the interests of consumers is unnecessary.

Response: The Commissioner has addressed the need for this information elsewhere in this rulemaking file.

Summary: The rulemaking record does not demonstrate that this regulation is necessary.

Response: In its previous review of this rulemaking file, OAL did not find that this language failed to satisfy the necessity standard.

Summary: Organizations have already been found to represent the interests of consumers without review of their funding sources.

Response: It is true that current regulations do not require this information. However, the Commissioner believes this information is necessary to allow him to determine that an intervenor represents the interests of consumers.

Summary: This requirement will deter participation, as evidenced by the declaration of John Ho Song and Genethia Hayes.

Response: This comment is responded to in connection with the response to the individual declarations.

Summary: KYCC and OCCC cite Corporations Code Section 6321 to support the comment that only members have rights to know funding sources.

Response: Section 6321 requires that an annual report be sent to members. It does not provide that only members are entitled to this information.

Summary: Disclosure of funding sources violates constitutional protections.

Response: *NAACP v. Alabama* is cited. However, the comments provide no indication that there was any reason for the state to review membership lists. These regulations do not require submission of membership lists. Moreover, here the Commissioner is charged with determining that an intervenor represents the interests of consumers.

Summary: Immunity from disclosure does not depend on whether the organization is unpopular or the Commissioner has disclosed hostility toward the organization.

Response: The required disclosure is narrowly drawn and seeks only information which would allow the Commissioner to determine that the intervenor represents the interests of consumers.

Summary: This section violates the principals set forth in *Britt v. Superior Court*.

Response: This regulation does not seek information about individual members of intervenor groups. It only seeks information about major financial contributors to the group. It is narrowly tailored to seek only the minimum information necessary to allow the Commissioner to make the required determination.

Summary: KYCC and OCCC suggest that the regulation simply require an intervenor organization to show that it represents the interests of consumers, including a description of prior work. If the information is insufficient, the Department could deny the request, or seek additional information.

Response: The better practice is to attempt to specify in a regulation exactly what should be submitted. Otherwise, as was cited, an organization could be denied intervenor status simply because documents were not filed, not because the group did not represent the interests of consumers.

Summary: The Declaration of Genethia Hayes indicates that providing the required information would be burdensome and time-consuming.

**Response:** General information is all the regulation requires. It does not require an audited financial statement requiring the assistance of an outside auditing and accounting firm. This is the kind of information that is submitted with grant applications, and should be readily available.

**Summary:** The Declaration of Johng Ho Song indicates that complying with this regulation would be extremely burdensome.

**Response:** The Department incorporates its response to the comments made by Genethia Hayes.

**Summary:** The Declaration of Jose Arredondo indicates that complying with this regulation would require the expenditure of substantial resources.

**Response:** The Department incorporates its response to the comments made by Genethia Hayes.

# **EXHIBIT 11**

RH- 341 SUMMARIES OF AND RESPONSES TO PUBLIC COMMENTS

*COMMENTS ON SEPTEMBER 14, 1995, VERSION OF THE REGULATIONS*

**COMMENTS OF THE ECONOMIC EMPOWERMENT FOUNDATION**

Summary: The comments begin with background information about EEF and those it represents.

Response: Because this is not a comment on the specific regulations proposed, a response is not necessary.

Summary: The regulations are unconstitutional, were not promulgated in accordance with California law, conflict with existing law, and are an attempt to ban EEF from participating.

Response: For the reasons set forth in this rulemaking file, the Commissioner disagrees that these regulations are unconstitutional, conflict with existing law, were not promulgated according to California law, and ban EEF from participation.

Summary: EEF failed to receive notice of the regulations.

Response: The Department had no record of EEF's having requested placement on the Department's regulations mailing list. The Department considered these comments to be such a request, and EEF has been added to that mailing list.

Summary: The Commissioner has enlarged the scope of his powers regarding implementing Proposition 103 and these regulations place additional burdens on intervenors.

Response: Because no specifics were provided, a specific response likewise cannot be provided. The Commissioner disagrees that these regulations are unlawful and place additional burdens on intervenors.

Summary: The Department has not proven it was necessary to repeal the prior intervenor regulations.

Response: The Department is not required to do so. See, e.g., the Appellate Court's December 17, 1992, decision in *Safeco v. Gillespie*, which found that the Commissioner was free to rescind his predecessor's regulations and establish new and different regulations.

Summary: The real reason for these regulations is to punish intervenors for interfering with the Commissioner's purpose to serve the insurance industry.

Response: The Commissioner is not attempting to punish intervenors.

Summary: The Commissioner is biased against EEF.

Response: Because this is not a comment on these regulations, a response is not required.

Summary: EEF comments on various emergency versions of these regulations.

Response: A response is not required on general comments on prior versions of these regulations.

Summary: EEF supports interim funding.

Response: See the response to similar comments from UCAN set forth below.

Summary: The regulations create a higher burden of substantial contribution.

Response: The "substantial contribution" standard is set forth in the statute.

Summary: The regulations eliminate certain statutory issues from eligibility for compensation.

Response: It is unclear what statutory issues are no longer eligible for compensation. California Insurance Code section 1861.10 sets forth the compensation standard.

Summary: The Department should continue to provide documents free of charge to intervenors.

Response: See the response to similar comments raised by Consumers Union set forth below.

Summary: Entities who represent insurance companies may receive compensation.

Response: The statute provides that only consumer intervenors may receive compensation.

Summary: The regulations eliminate intervenor's constitutional and statutory protections.

Response: Because no specifics are provided, a specific response likewise cannot be provided. The Commissioner disagrees that these regulations violate intervenors' rights.

Summary: The Department can continually request information but need never make a decision on compensation.

Response: The regulations limits the information requests and set forth deadlines for the Commissioner's decisions.



Summary: These regulations will increase housing costs.

Response: Prior approval requirements are designed to ensure that homeowner's rates are not excessive.

Summary: The prior intervenor regulations are less burdensome.

Response: As set forth in EEF's comments, the prior intervenor regulations resulted in several lawsuits against the Commissioner. Therefore, the Commissioner disagrees that the prior regulations are less burdensome.

Summary: These regulations will make business insurance more expensive.

Response: Prior approval of insurance rates is designed to ensure that rates are not excessive.

Summary: The Commissioner has not determined the potential cost impact of these regulations.

Response: The Commissioner's determination about cost impacts is set forth elsewhere in this rulemaking file.

Summary: The regulations will have a negative impact on the ability of intervenors to participate.

Response: No specifics are provided here, so a specific response likewise cannot be provided. To the extent specifics are provided elsewhere, such as comments regarding interim funding, they are responded to elsewhere in this rulemaking file.

Summary: EEF objects to basing market rates on the location of the hearing.

Response: The location of the hearing is an appropriate benchmark. For example, hotel costs may be lower in Fresno than in San Francisco. The reasonableness of a hotel charge in Fresno should be based on what other hotels charge in Fresno, not in, for example, San Francisco. Similarly, the reasonableness of, for example, attorneys' fees for a Los Angeles hearing should be determined based upon comparable charges for other attorneys in Los Angeles, not in Eureka.

Summary: EEF disagrees with the "substantial contribution" definition, preferring the definition in the prior regulations.

Response: EEF does not indicate which statutes, court decisions, and other provisions of law this definition is contrary to, so the Commissioner cannot respond specifically. This definition does not limit what constitutes a substantial contribution. As indicated above, the Commissioner may, if he chooses to do so, amend existing regulations.

Summary: The Department's procedural regulations are null and void.

Response: The procedural regulations are not the subject of this rulemaking file. Therefore, no response is required.

Summary: Because the right to intervene is unconditional, the Commissioner cannot require that the intervenor not delay a proceeding.

Response: The Department agrees that the intervenor is entitled to participate in the development of the hearing schedule. However, an intervenor should be able to participate without delaying a proceeding.

Summary: The intervention of right section is not necessary, is inconsistent with and contrary to other law, is an attempt by the Commissioner to subvert the intervenor process. The prior regulation was better.

Response: The Commissioner has the right to amend the intervenor regulations, and is not attempting to subvert the intervenor process. The comment does not specify the conflicting provisions of law, so a specific response is not possible.

Summary: Intervention does not require the intervenor to seek compensation or indicate whether it will seek compensation. The intervenor will not know what resources it will need until after discovery.

Response: It is unclear how this comment relates to the section commented upon. The regulation cited provides that a petition for intervention shall indicate whether the intervenor intends to seek compensation and, if so, contain an itemized budget. The regulation recognizes that an intervenor need not seek compensation. The intervenor can anticipate what resources it might need before discovery. An amended budget may be submitted later. This section does not subvert the intervention process. The Commissioner has authority to amend existing regulations. The comment does not indicate which provisions of law this section is contrary to, so a specific response cannot be provided.

Summary: Three days are insufficient to reply to a response to a petition to intervene. This section is unnecessary, the existing regulation gives more time and ample guidance. The Commissioner cannot subvert the intervenor process. This section is contrary to law.

Response: See response to similar comments elsewhere in this rulemaking file.

Summary: The request for finding of eligibility regulation is unnecessary and lacks clarity, the existing regulation is better. The Commissioner cannot subvert the intervenor process, and this section conflicts with other law.

**Response:** Because no specifics were provided about why this section is unnecessary and lacks clarity, a specific response cannot be provided. The Commissioner has responded to the other comments elsewhere in this rulemaking file.

**Summary:** Section 2662.2(a)(2) seeks confidential information and is a transparent attempt to intimidate EEF. Whether an entity has 501(c) status is irrelevant. The Department cannot regulate communications by intervenors. The existing regulation is better. The Commissioner cannot subvert the intervenor process. This section conflicts with other law.

**Response:** This section does not attempt to harass EEF. The comment does not indicate which information sought is confidential, so a specific response cannot be provided. The regulation is not an attempt to regulate communications by intervenors. The regulation does not require that the group have 501(c) status. The Commissioner has responded to the other comments elsewhere in this rulemaking file.

**Summary:** The Commissioner unlawfully rejects compensation requests on technical grounds. This section is unnecessary, the prior regulation was better, the Commissioner is subverting the intervenor process. This section conflicts with other laws.

**Response:** No specifics were given, and the Commissioner disagrees that he unlawfully rejects compensation requests on technical grounds. The Commissioner has already responded to the other comments.

**Summary:** The Commissioner is getting too involved in the business operations of intervenors. This section is unlawful, unnecessary, an attempt to subvert the intervenor process, and contrary to law.

**Response:** Section 2662.3(a) was added at the request of intervenors. Often a group will hire an advocate to represent it in rate proceedings. It is the advocate who incurs fees and expenses on the group's behalf. However, because the group was the actual intervenor, compensation checks were being made payable to the group, creating additional work in having the check endorsed over or reissued to the intervenor. This is not an attempt to become involved in the business operations of the intervenor. However, if the check is to be payable to the advocate, rather than the intervenor, the Commissioner must have verification of that fact because the Commissioner does not know what the compensation arrangements are between the intervenor and the advocate. The Commissioner has already responded to the remaining comments.

**Summary:** Section 2662.3(e) violates search and seizure provisions. This section amounts to a standing warrant. The comment also includes EEF's standard objections to these regulations.

**Response:** The Commissioner must be permitted to verify the basis for a compensation award when necessary.

Summary: Section 2662.5 is an attempt to arbitrarily deny compensation based upon the righteousness of the intervenor's issues, is unnecessary, unlawful, contrary to other laws, and the prior regulation should be retained.

Response: The statute provides that intervenors who make a substantial contribution are entitled to reasonable compensation. This section implements that provision. The "righteousness" of an intervenor's issue has nothing to do with this section. The Commissioner is not attempting to treat certain intervenors unfairly. The Commissioner has already responded to the other comments.

Summary: Section 2662.6(d) is a blatant attempt to compensate in advance insurance companies who file for excessive rates. The comment also includes EEF's standard objections.

Response: This section was first suggested by James Wheaton, then of the Center for Public Interest Law, several years ago. It is not an attempt to compensate insurers who file for excessive rates, but to recognize that intervenor compensation resulting from an insurer's rate change application is ultimately paid by the insurer's policyholders. The Commissioner has already responded to the standard objections.

Summary: EEF cites to certain provisions of the prior intervenor regulations.

Response: While EEF may prefer the prior regulations, the Commissioner has authority to amend them.

Summary: The proposed regulations are simply intended to stifle the intervention process.

Response: The Commissioner is not intending to stifle the intervention process.

Summary: The comments include a letter to Virginia Jarrow, a letter to Selwyn Whitehead, what appear to be newsletter excerpts, and a letter Charles Quackenbush.

Response: Because these are not comments on the proposed regulations, a response is not required.

#### **COMMENTS OF THE PROPOSITION 103 ENFORCEMENT PROJECT**

Summary: The comment begins with information about the purpose of Proposition 103.

Response: Because this is not a comment on the specific proposed regulations, a response is not required.

Summary: In section 2661.1(c), the relevant geographic area should be where the advocate performs most of the work.

Response: Please see the response to similar comments elsewhere in this rulemaking file.

Summary: "Other expenses" should also list travel.

Response: As the Project notes, this list is not all-inclusive. Travel is obviously an expense for which compensation is available.

Summary: Section 2661.1(d) should provide that the Public Advisor may request reasonable supporting documentation.

Response: The Project alleges that the Public Advisor has requested unreasonable documentation in the past, but provides no specifics. It must be assumed that the Public Advisor will act reasonably. Additionally, what is "reasonable" is not always clear.

Summary: Any person representing insurer interests should not receive compensation.

Response: The regulations have been so amended.

Summary: The Project supports the "to the extent then known" language of section 2661.3(b), but is concerned with how the Commissioner will enforce this language.

Response: The Commissioner intends to comply with the regulations.

Summary: The Project opposes the last sentence of section 2661.3(b). It is often insurers who delay proceedings.

Response: See response to similar comments elsewhere in this rulemaking file. Insurers will not be permitted to delay proceedings.

Summary: Intervenors should not be required to verify that participation in one proceeding will not delay other proceedings.

Response: See response to similar comments elsewhere in this rulemaking file. Neither intervenors, the insurer, or the Department will be permitted to delay one proceeding so they can participate in another proceeding.

Summary: Section 2661.3(f) should require an insurer objecting to an intervenor's fees to disclose its own fees and expenses. The Commissioner should be mandated to reject comments by an insurer not submitting information about its fees.

Response: The insurer disclosure requirement is contained in section 2662.3(f), which is mandatory, and the Commissioner expects compliance. Therefore, mandating the Commissioner to reject comments from an insurer not complying with this section is unnecessary.

Summary: The Project objects to disclosing information about its funding sources in section 2662.2(a)(2).

Response: The section has been amended in response to these and similar comments. However, as the Project noted on pages 3 and 4 of its comments, the Commissioner believes that information about the group's funding sources is necessary to determine whether the group actually does represent the interest of consumers.

Summary: A 501(c)(3) organization, by definition, represents the interests of consumers.

Response: A 501(c)(3) nonprofit group need not represent the interests of consumers.

Summary: Section 2662.3(b)(2) should permit block billing and require time in no less than 15-minute increments.

Response: As set forth elsewhere in this rulemaking file, the Department imposes the same requirements on its outside counsel. In the Department's experience, 15-minute minimum billing increments is not the prevailing practice in today's competitive legal environment.

Summary: The Project objects to permitting the Public Advisor to inspect an intervenor's records when necessary to verify the basis for an award.

Response: Please see the response to similar comments elsewhere in this rulemaking file.

Summary: In section 2662.3(f), the Commissioner must provide an incentive for an insurer to disclose its budget.

Response: As set forth above, the Commissioner expects compliance with this section.

Summary: The Commissioner should be required to specify which hours were disallowed.

Response: Please see response to similar comment made by Consumers Union.

Summary: The Project prefers the prior version of section 2662.8.

Response: The Project claims that insurers have failed or refused to pay fee awards. This section provides that the Commissioner will secure payment of an award. The prior regulation provided that a failure to comply with a regulation was a violation of the regulation and the Code. That goes without saying. The prior regulation also provided that the Commissioner shall exercise all authority to enforce his or her orders. Again, that goes without saying. Insurers who violate the law will not benefit.

## **COMMENTS OF INSURANCE BROKERS AND AGENTS OF THE WEST**

**Summary:** The comments begin with general introductory remarks supporting the regulations.

**Response:** A response is not required.

**Summary:** IBA West believed the regulations defined insurance agents and brokers as intervenors representing the interests of consumers who could seek compensation.

**Response:** That was not the intent of the regulations, and this has been clarified in a later version of the regulations.

**Summary:** IBA West supports the definition of substantial contribution.

**Response:** A response is not required.

**Summary:** Section 2661.3(c) should not preclude submission of a revised budget where necessary.

**Response:** Section 2661.3(d) provides for submission of an amended budget.

## **COMMENTS OF STATE FARM**

**Summary:** The comments begin with introductory information.

**Response:** Responses to the summary of the comments are included below.

**Summary:** Section 2662.3(f) should be deleted because an insurer's right to object to excessive intervenor fees cannot be conditioned upon disclosure of its own fees.

**Response:** This section is similar to section 2620.7(d) of the Department's prior intervenor regulations and the information sought by this regulations assists in determining whether the intervenor's fees are reasonable.

**Summary:** Expenditures of an insurer are irrelevant in determining whether an intervenor's billings are reasonable because an insurer must address all issues raised in the rate proceeding.

**Response:** The Commissioner recognizes that the intervenor's role may be narrower than an insurer's role. Nevertheless, information about an insurer's fees in the same proceeding can assist in determining whether an intervenor's fees are reasonable.

**Summary:** The comparison between an insurer's budget and an intervenor's budget is inappropriate or misleading whether evaluating whether the amount of time and money billed by

any one intervenor is reasonable.

**Response:** The Commissioner disagrees that this information is inappropriate or misleading. The Commissioner is able to take into account the fact that the intervenor may have had a more limited role in the proceeding than the insurer.

**Summary:** The hourly rates paid by an insurer often cannot be compared to the market rates for many of those appearing on behalf of an intervenor. The rates paid by an insurer to its experts cannot be compared to an intervenor's experts because there is often a significant disparity in the experience of the experts on each side.

**Response:** The Commissioner disagrees. Even if the rates paid by an insurer to its attorneys cannot be compared to those for a non-attorney advocate, most intervenors are represented by attorneys. Additionally, it is not true that an insurer's experts are typically more qualified than an intervenor's experts. To the extent their experience is not the same, that fact can be considered when comparing the hourly rate, and total time, of the various experts.

**Summary:** Insurers who comment on intervenor's inflated fees are penalized by having to disclose their fees.

**Response:** This section merely provides the Commissioner with a benchmark with which to evaluate the objection to the market rate or reasonableness of the intervenor's fees.

**Summary:** If this section requires insurers to disclose the bills received from their outside counsel, it violates their attorney-client and work product privileges.

**Response:** The section does not require disclosure of attorney billings. It simply requires a statement of the insurer's fees, rates, and costs. The Commissioner disagrees that an intervenor necessarily waives its privileges as a condition of seeking compensation.

**Summary:** Section 2662.3(f) is vague and ambiguous because it requires information about the amounts a party expects to spend.

**Response:** This section does not require an insurer to develop and publish a litigation plan as a condition to challenging inflated intervenor costs. This section simply recognizes that an insurer's law firm's billings are often delayed while the firm is compiling and processing the billing data. The insurer must review the billing and process payment, which also takes some time. Consequently, the amount that an insurer has *expended* may lag several months behind. However, at the conclusion of the case, when the intervenor files a request for award, the insurer should be able to know (or closely estimate) the amount it will ultimately expend in the proceeding.

**Summary:** An insurer should not be dissuaded from presenting information that the fees or expenses sought by an intervenor are unreasonable.



**Response:** This section does not do so. It simply provides the Commissioner with a benchmark to judge whether the fees sought are reasonable.

**Summary:** Section 2661.1(c)(1) permits a lay advocate to receive hourly rates comparable to those of attorney or experts.

**Response:** This section provides that market rate for attorney advocacy fees means the prevailing rate for comparable services in the private sector in the county where the proceeding occurs at the time of the Commissioner's decision awarding compensation. Market rate for non-attorney advocacy fees means the prevailing rate for comparable services in the private sector in the county where the proceeding occurs at the time of the Commissioner's decision awarding compensation. Market rate for expert witness fees means the prevailing rate for comparable services in the private sector in the county where the proceeding occurs at the time of the Commissioner's decision awarding compensation. This section does not permit a lay advocate to receive an hourly rate comparable to the private sector attorney or expert witness rate, unless lay advocates are routinely paid the same hourly rate as attorneys or expert witnesses.

**Summary:** The training, skills, experience, and work of attorneys, experts, and lay advocates is fundamentally distinct, so market rates should be determined by evaluating those having similar education, training, and experience.

**Response:** The regulation does so. That it why is separately lists attorneys, non-attorneys, and experts.

**Summary:** The regulation should state that the Commissioner may use publicly-available market data to determine market rate.

**Response:** The regulation permits the Commissioner to use publicly-available market data.

**Summary:** The Department could and should publish information about the hourly rates awarded to intervenors, similar to the CPUC studies.

**Response:** A regulation is not necessary for the Commissioner to publish this information if he chooses to do so.

**Summary:** State Farm's proposed changes will dissuade intervenors seeking to recover unjustified windfall compensation and will establish clear and objective standards to evaluate compensation requests.

**Response:** For the reasons set forth above, the Department disagrees that these two changes are necessary. The regulations provide sufficient information to permit the Commissioner to decide compensation requests. Moreover, California Insurance Code Section 1861.10 authorizes payment of reasonable fees and expenses to consumers representatives who make a substantial

contribution. It does not permit unjustified windfall compensation.

**Summary:** Section 2661.3(b) should require the intervenor more specifically to describe the issues it will address in the hearing.

**Response:** This section requires the intervenor to state the specific issues to be raised and the positions to be taken on each issue to the extent then known. This is fairly detailed, while recognizing that additional issues may arise as the proceeding progresses. A petition to intervene which simply states that "the intervenor does not yet know what issues it intends to raise" should not be granted.

**Summary:** The same level of detailed information should be required for petitions to intervene and to petitions for hearing.

**Response:** The Commissioner disagrees that it is necessary to require the same information in these two different pleadings. A petition for hearing requires more detailed information because the Commissioner must determine, for example, whether to withhold approval of a rate application and assign an administrative law judge and other Department personnel, a hearing room, and hire a court reporter based upon the information contained in the petition for hearing. A petition for hearing which objects to an insurer's automobile rates will unlikely be granted in connection with an insurer's application to change its homeowner's rates. The same is not true of a petition to intervene in an ongoing proceeding.

**Summary:** If the Department is taking an active role in the proceeding, greater specificity is needed to ensure that the intervenor will not merely duplicate the work of the Department.

**Response:** The Department disagrees that the language proposed in this regulation is insufficient to ensure that the proposed intervention is not merely duplicative of the Department's activities. It requires information about the specific issues to be raised and the positions to be taken. Additionally, section 2654.1 requires the administrative law judge to avoid unnecessary cumulative evidence or the undue consumption of time. Finally, because the intervenor will not be compensated for work which is merely duplicative, the intervenor has an incentive not to duplicate the work of others.

**Summary:** Intervenors do not identify their issues until they file their prefiled testimony.

**Response:** This section requires intervenors to identify their specific issues before the petition to intervene is granted. The Department expects that this section will be enforced.

**Summary:** Requiring more specificity in the petition to intervene will reduce or eliminate the likelihood that a petition to intervene will be filed solely to address broad public policy issues more appropriately addressed elsewhere.

**Response:** Rate filings may involve broad public policy issues. If the specific issues and positions the intervenor identifies in the petition to intervene are relevant to the issues of the proceeding, the intervenor has the right to intervene. If they are not, the petition to intervene should be denied.

**Summary:** Five days to respond to a petition to intervene is wholly inadequate, especially since the prior regulations provided a longer response time.

**Response:** Insurers have commented that rate hearings take far too long. In fact, certain insurers are supporting legislation this legislative session which would set shorter deadlines for the rate hearing process than currently exist. The only way to expedite the rate hearing process is to attempt to streamline each step of the process, which these regulations attempt to do. Five days is sufficient to respond to a petition for hearing when, given the essentially absolute right of intervention set forth in California Insurance Code Section 1861.10, a response should be fairly short and straightforward.

**Summary:** The five-day period is too short if the intervenor mails the petition to intervene and the insurer does not receive it for several days.

**Response:** If an insurer is prejudiced by not receiving the petition to intervene until the five-day response period (or a significant portion of it) has passed, the insurer may request additional time to respond from the administrative law judge.

**Summary:** State Farm concludes with comments that generally support the regulations, but indicates that the regulations must dissuade intervention from those motivated more by pecuniary gain than the public interest. Entrepreneurs should not be able to reap unjustified compensation solely by intervening in rate hearings.

**Response:** Proposition 103 provides for broad public participation and compensation to consumer intervenors making a substantial contribution.

#### **COMMENTS OF THE UTILITY CONSUMERS' ACTION NETWORK**

**Summary:** UCAN supports the current definition of "substantial contribution".

**Response:** A response is not required.

**Summary:** The sample forms do not include a verification.

**Response:** The regulation has been amended in response to this comment to clarify that a person desiring to intervene shall use the specified forms, which shall be verified.

**Summary:** The requirement that an intervenor verify that it can participate without delaying

the proceedings conflicts with section 2653.2.

**Response:** The Department assumes the reference should be to section 2652.3, not 2653.2. Section 2652.3 provides that certain documents, including petitions to intervene, shall be verified. Section 2661.3 merely provides that an intervenor's petition shall confirm that the intervenor or advocate will be able to participate without delaying any proceeding. Because the petition must be verified, the fact that the participation will not delay a proceeding is verified. All documents which must be verified are specified in section 2652.3. However, to ensure that this section is clear, the Department has amended it to set forth a verification requirement.

**Summary:** A definition of "verify" should be included.

**Response:** Sample verification forms are set forth in sections 2623.6 - 2623.8.

**Summary:** The regulations should explain how to contact the Public Advisor.

**Response:** "Public Advisor" is defined in the regulations. Anyone not knowing the Public Advisor's direct number may call the Department's general number (or any Department staff member) and ask for the Public Advisor. The Department has (and continues) to publicize the Public Advisor, but it is not necessary that those efforts be set forth in the regulations.

**Summary:** The Department should prepare a booklet regarding the intervention process.

**Response:** The Department is preparing such a booklet. However, it is not necessary to specify this in a regulation.

**Summary:** The regulations should require that responses to petitions to intervene be served as well as filed.

**Response:** Section 2651.1(i) requires all filed pleadings to be served.

**Summary:** It is unclear who rules on the petition to participate.

**Response:** The purpose of this section is to provide a deadline for a ruling on the petition for participation, not to set forth who will rule on the petition.

**Summary:** The last sentence of section 2662.2(a) provide too much discretion to the Public Advisor in requesting additional information.

**Response:** This section simply allows the Public Advisor to request additional information regarding a request for finding of eligibility to seek compensation, if necessary, but limits the number of information requests. The parameters of the information which the Public Advisor may seek are set forth in the regulation -- the Public Advisor may require additional information

regarding the request for finding of eligibility.

**Summary:** Rather than rejecting the request, as 2662.2(b) now provides, the Public Advisor should permit the intervenor time to supply missing information.

**Response:** The intervenor may supply the missing information and resubmit the request. There is no prejudice whatsoever to the intervenor if the request is initially rejected. This section follows a procedure similar to that set forth in section 2648.2 regarding the Commissioner's review for completeness of an insurer's rate application.

**Summary:** The 90-day period in section 2662.6(a) is too long.

**Response:** The Commissioner will issue the decision as soon as it is possible to do so. Informal comments were received on a preliminary draft of these draft regulations that the intervenors wanted an outside time limit set forth in the regulations for the Commissioner to issue a decision. If such a time limit is to be set forth, it must be one which is realistic for the Commissioner to meet. It is presumed that the Commissioner will properly perform his duties (Evidence Code Section 664) and will not abuse this time frame. In fact, from these comments it appears that UCAN does support a time frame (even if it does not support the 90-day time frame).

**Summary:** UCAN opposes elimination of interim funding.

**Response:** Insurance Code Section 1861.10(b) requires payment to a consumer intervenor who has made a substantial contribution to the adoption of any order, regulation, or decision. It cannot be determined whether an intervenor made a substantial contribution on an interim basis, since no order, regulation, or decision has been adopted. The Commissioner believes that streamlining these proceedings, resulting in the quicker adoption of an order, regulation, or decision is better practice than an illusory interim funding mechanism.

**Summary:** Lack of interim funding will curtail participation by intervenors. For example, UCAN hoped to hire an expert in an earthquake proceeding, but was unable to do so as a result of uncertainty regarding interim funding.

**Response:** The Department is sympathetic to the problems faced by intervenors when experts are reluctant to work for what amounts to a contingency fee at the conclusion of the proceeding if the intervenor makes a substantial contribution. However, this problem is not resolved by establishing an interim funding mechanism because it generally cannot be determined if an intervenor made a substantial contribution until the proceeding concludes. The better way to ensure that intervenors are able to hire competent experts is to expedite these proceedings so final compensation decisions can be issued more quickly and the expert can actually be paid.

## **COMMENTS OF THE OAKLAND CHINESE COMMUNITY CENTER**

**Summary:** The Oakland Chinese Community Center joins in the comments filed by Korean Youth and Community Center.

**Response:** Those comments are summarized and responded to below.

## **COMMENTS OF KOREAN YOUTH AND COMMUNITY CENTER**

**Summary:** The comments begin with introductory material.

**Response:** A response is not required.

**Summary:** KYCC objects to the information which groups must provide to demonstrate that they represent the interests of consumers

**Response:** Some of the required information has been amended in response to public comments. The necessity for requiring the information specified in the regulations has been addressed in connection with other, similar comments.

**Summary:** The regulations violate organizations' rights of associational privacy.

**Response:** As set forth in this rulemaking file, the regulations have been drafted as narrowly as possible to seek necessary information only, and not to violate constitutional rights.

**Summary:** Submission of the organization's articles of incorporation and a verified summary of its efforts to represent and protect the interests of consumers should be sufficient. The Commissioner lacks authority to request the extensive documentation required.

**Response:** The Commissioner believes that he must ensure that the only groups receiving compensation are those who actually do represent the interests of consumers. He also believes that, in order to do so, he must look at what the group has actually done, who is running the group, and what its funding sources are.

**Summary:** The full disclosure of information sought about the consumer group violates constitutional protections.

**Response:** KYCC objects to disclosing newsletter circulation and membership lists. The regulation does not require disclosure of newsletter circulation, and it has been revised to clarify that membership lists are not required. Additionally, the regulations do not require disclosure of all funding sources. Rather, the regulations require disclosure of major funding sources.

**Summary:** In section 2661.1(i), "not otherwise adequately represented" and "representation

of which is necessary for a fair determination of the proceeding" should be deleted.

**Response:** As indicated in other comments on these regulations, section 1861.10 was intended to provide a method for consumers, not insurers who were already adequately represented, to participate in Proposition 103 matters and receive compensation for doing so because their participation is necessary for a fair determination of the proceeding.

**Summary:** In section 2661.1(j), the language, "which were separate and distinct from those emphasized by the Department of Insurance staff or any other party" should be deleted.

**Response:** As the Department has previously indicated, a San Francisco Superior Court judge has ruled that a party can not simply join in the positions and arguments of the Department and still make a substantial contribution.

**Summary:** KYCC suggests language which should be added to section 2662.6(b).

**Response:** The language "shall award all reasonable advocacy and witness fees and expenses essentially repeats Proposition 103 and is therefore unnecessary. Additionally, to the extent the courts have set standards which the Commissioner must follow in issuing compensation decisions, those decisions will, of course, be followed.

**Summary:** KYCC proposes two additional sections regarding consumer experts.

**Response:** While those sections were not incorporated into this rulemaking file, they remain under consideration by the Department.

#### **COMMENTS OF FARMERS INSURANCE COMPANY**

**Summary:** Farmers generally supports the regulations.

**Response:** A response is not necessary.

**Summary:** Farmers opposes providing information about its fees and expenses if it questions the reasonableness of an intervenor's request for award.

**Response:** See response to similar comments made by State Farm set forth above.

#### **COMMENTS OF CONSUMERS UNION**

**Summary:** The comment begins with introductory and background information.

**Response:** As these are not comments on the regulations, no specific response is required.

**Summary:** Consumers Union objects that some provisions of the prior intervenor regulations have been deleted from these regulations. For example, Consumers Union believes the requirement that the Commissioner "consider the stated purpose of maintaining full public participation and diversity of all California insurance consumers" should be retained to encourage consumer participation.

**Response:** Insurance Code Section 1861.10 provides that *any* person may participate in rate issues and that, a consumer intervenor who makes a substantial contribution *shall* be compensated. Additionally, section 1661.2 of the regulations, entitled "Intervention of Right" provides that any person shall be permitted to intervene.

**Summary:** Intervenors found eligible to seek compensation should be able to receive free hearing transcripts and copies of Departmental and other documents.

**Response:** The Department will cooperate and work with the intervenors to assist them in intervening in Proposition 103 proceedings. However, in order to provide the intervenors with free transcripts, the Department must purchase an additional copy from the court reporter, and may not always receive a budget appropriation to do so. Consequently, the Department does not believe it can include such a requirement in its regulations.

**Summary:** The regulations should be amended to explicitly authorize an intervenor to amend the issues it intends to raise in the proceeding.

**Response:** A petition to intervene or participate shall contain the specific issues to be raised to the extent then known to allow for a determination whether the issues to be raised by the intervenor are relevant to the issues of the proceeding, and thus whether the petition will be granted. This section is not intended to prevent an intervenor from addressing issues as they arise in, for example, a rate proceeding. Once a rate hearing has begun, the administrative law judge shall, among other things, control the course of the proceedings. See section 2654.1.

**Summary:** Consumers Union objects to the requirement that an intervenor verify that the intervenor will be able to attend and participate in a proceeding without delaying the proceeding or any other proceeding.

**Response:** The requirement is not that an intervenor's participation will not delay the proceeding. The regulations require that the intervenor be able to attend and participate without delaying the proceeding. The Commissioner recognizes that a proceeding may take longer to conclude if additional parties are involved. However, there may be times when someone must choose which of several proceedings to participate in. The Department operates under certain scheduling constraints (e.g., Insurance Code section 1861.055), and cannot always arrange hearings in the order that the intervenor (or anyone else) may most prefer. An intervenor (or anyone else) should not be able to force a long delay of a hearing just to enable the intervenor to participate in the hearing. While reasonable scheduling accommodations at times must be made,



it is not always possible for someone to be involved in every proceeding they would like to be involved in. Neither an intervenor nor an insurer's counsel should be able to force a significant delay in one proceeding so they can participate in another proceeding, or for other reasons. If a hearing is set to begin March 1, an intervenor should not necessarily be able to force a continuance until April 1 because the intervenor has a one-month vacation scheduled to begin March 1. (A request to begin a hearing on March 2 instead of March 1 is, of course, a different situation.) Again, this section is not intended to prevent reasonable scheduling accommodations, but to address what has been significant requests for continuances in one proceeding so an intervenor can first participate in another proceeding.

**Summary:** Consumers Union also objects to the requirement that an intervenor verify that the intervenor will be able to attend and participate in a proceeding other than a rate hearing without delaying the proceeding or any other proceeding.

**Response:** The Department incorporates its response set forth immediately above.

**Summary:** Consumers Union objects to providing "other organizational documents".

**Response:** This section has been amended to clarify that if the group is not organized as a corporation, it shall provide other organizational documents. This section is intended to recognize that not all intervenor groups will be organized as corporations. The documents are not specified because of the vast array of possible organizational documents. For example, an informal neighborhood association may have what amounts to a "mission statement" which would demonstrate that it represents the interests of consumers.

**Summary:** The regulation should clarify that personal addresses of Board members need not be provided.

**Response:** The regulation has been so amended.

**Summary:** Consumers Union objects to the requirement that it list its funding sources for the prior 24 months.

**Response:** Consumers Union is correct that the Department does not seek the names of all subscribers to Consumers Reports, or the names of everyone who paid the minimum membership dues. The Department has amended this section to provide that the petition list the group's funding sources by general category. For example, if the group received 75% of its annual budget for each of the last two years from the minimum annual membership dues, it would simply list that fact. The Commissioner believes this information is necessary to determine whether a group actually does represent consumers, or whether the group instead has a conflict of interest.

**Summary:** Consumers Union objects to providing all publications issued during the previous 12 months.

**Response:** This section has been amended to require a representative sample of publications.

**Summary:** Allowing the Public Advisor to request additional information could lead to abuses of the eligibility determination process.

**Response:** The Commissioner believes that, in order to maintain the integrity of the intervenor process, he must be able to seek additional information when it is necessary to do so.

**Summary:** The requirement for submission of legible time records, created as soon as possible after the work was performed which show the date and exact time spent, is burdensome and vexatious. It is unclear whether handwritten notes are required. The definition of "exact time" is too precise.

**Response:** The regulations do not specify whether the time records must be handwritten, typed, or computerized, since different intervenors will have different billing systems and preferences. Time records created as soon as possible after the work was performed will be more accurate than records created long after the work was performed. The Commissioner must have accurate records in order to properly issue compensation decisions. Consumers Union asserts that most law firms and computer billing programs use quarter-hour billing increments, though no backup documentation was included. The Department's experience is to the contrary. The Department believes that five and six minute increments are becoming the law firm standard. In fact, that is what the Department requires of the outside law firms working for the Department on Proposition 103 matters.

**Summary:** In 2662.3(b), a description of the intervenor's substantial contribution should be a different subsection.

**Response:** That change has been made.

**Summary:** Defining each specific task requires too much detail.

**Response:** The Department does not seek to make recordkeeping a career in itself. However, the Department is seeking to make the regulations clear and understandable to non-attorney intervenors who may not otherwise maintain the required information. For example, the Department does not believe that "telephone call to Department attorney regarding response to discovery request" or "draft motion to strike testimony of Witness X", or "prepare for and attend hearing on motion to compel discovery from applicant" is unduly burdensome. The Department is simply attempting to provide clear guidance to those seeking compensation for their substantial contribution to a proceeding.

**Summary:** Consumers Union objects to permitting the Public Advisor to audit or inspect the intervenor's books and records when necessary to verify the basis for an award because this could lead to abuses.

Response: It would be irresponsible for the Commissioner not to review an intervenor's books and records if necessary to verify the basis for an award. Consumers Union suggests that if the information submitted by the intervenor is insufficient, the Commissioner should reduce the award. However, when verifying the basis for the award would allow payment of the amount requested (or most of that amount), the better practice, given a statute which provides that intervenors shall be compensated, is to review supporting information rather than simply reducing or denying payment.

Summary: Interim funding should be reinstated.

Response: Please see the response to UCAN's comment regarding interim funding. Additionally, a lengthy proceeding can be divided into phases with an opportunity for intervenors to seek funding for their substantial contribution at the conclusion of each phase.

Summary: The regulations should specify that the Commissioner state his basis for granting or denying a compensation request.

Response: California state administrative agency decisions typically contain a determination of the issues. Section 2662.6 requires the Commissioner, in a written decision, to determine if a substantial contribution was made (that is, it requires the Commissioner to issue a written decision containing a determination of issues). Due process requires no less

Summary: The regulation should state that the Commissioner shall award full compensation for the intervenor's substantial contribution.

Response: California Insurance Code Section 1861.10 requires a consumer intervenor making a substantial contribution to receive reasonable advocacy and witness fees and expenses. It does not authorize "full compensation" of fees and expenses, if any, which are not reasonable.

Summary: Section 2662.6(b) should be written to recognize that more than one consumer group might present similar issues or positions on an issue, but their rational or supporting evidence might be different. Consumers Union believes that the proposed regulation takes a narrow view of duplication.

Response: The Commissioner disagrees that the proposed language prohibits compensation to two intervenors who take similar positions on an issue but for different reasons. The regulation simply provides that the intervenor must present relevant issues, evidence, or arguments which were different than those of others. The regulation is designed to alert intervenors that they must do more than simply recite "me, too" in order to receive compensation.

*COMMENTS RECEIVED AT NOVEMBER 13, 1995, HEARING*

**COMMENTS OF UTILITY CONSUMERS ACTION NETWORK**

The comments summarize the written comments and thus have been responded to above.

**COMMENTS OF THE ECONOMIC EMPOWERMENT FOUNDATION**

The comments are essentially the same as EEF's written comments and thus have been summarized and responded to above.

**COMMENTS OF THE PROPOSITION 103 ENFORCEMENT PROJECT**

The comments are essentially the same as the Project's written comments and thus have been summarized and responded to above.

**COMMENTS OF THE KOREAN YOUTH AND COMMUNITY CENTER**

Summary: KYCC objects to the information required to allow a determination that it represents the interests of consumers.

Response: The regulations were amended in response to these and similar comments. A response to these comments is contained elsewhere in this rulemaking file.

**COMMENTS OF CONSUMERS UNION**

These comments summarize Consumers Union's written comments and thus have been summarized and responded to above.

**COMMENTS OF INSURANCE BROKERS AND AGENTS OF THE WEST**

These comments are essentially the same as IBA West's written comments and thus have been summarized and responded to above.

**COMMENTS OF ELIZABETH CHARRON**

Summary: Following introductory comments, Ms. Charron commented that the regulations should not be written in legalese.

Response: To the extent possible, the regulations are not written in legalese.

Summary: Many comments are not specific to these regulations.

Response: A response is not required.

Summary: Certain comments were responded to at the hearing or are responded to elsewhere in this rulemaking file.

Response: An additional response is not required.

Summary: Because the regulations are technical and detailed, they discourage consumers from participating.

Response: The regulations are as streamlined as possible while recognizing that Proposition 103 proceedings are often technical and complicated.

#### *COMMENTS ON JANUARY 5, 1996, VERSION OF THE REGULATIONS*

#### **COMMENTS OF CONSUMERS UNION**

Summary: Consumers Union supports the amendment to section 2661.1(i)(2).

Response: A response is not required.

Summary: The phrase "other organizational documents" in section 2662.2(a)(2) should be defined.

Response: Because groups representing the interests of consumers could be organized in any number of formal or informal ways, it is impossible to define "other organizational documents" in an all-inclusive or comprehensive manner. A group could have a resolution or mission statement organizing the group and setting forth its purpose, it could have minutes of an organizational meeting, a neighborhood association could be created in connection with development of a subdivision. The Department believes that, in the context of a request for articles of incorporation, by-laws, a request for "other organizational documents" is as clear as the regulation can be drafted since it is impossible to specify the unknown.

Summary: Consumers Union supports the addition of "business" address.

Response: A response is not required.

Summary: Consumers Union objects to the language requiring information about the group's funding sources for the prior 24 months because that information lacks probative value in determining whether the group serves consumer interests. Consumers Union suggests this language be deleted.

Response: The Commissioner disagrees that funding sources lack probative value in determining whether the group serves consumer interests. The fact that a group receives minimal

funding from, for example, the insurance industry does not mean the group does not serve consumer interests. However, a group receiving significant contributions from special interests may require closer scrutiny to determine that it actually does represent consumers. As the comments to these regulations have stated, Proposition 103 was designed to allow consumers to protect their own interests. It was not designed to allow special interests, disguised as consumer groups, to intervene and receive compensation in Proposition 103 proceedings.

**Summary:** Requiring a "representative sample" of publications is vague and this language should be clarified.

**Response:** The Department disagrees that this language is vague. Because groups representing the interests of consumers are very different from one another in how they operate, it is impossible to identify precisely what would constitute a representative sample of publications. If the only publication a group issues is a monthly newsletter to its members summarizing the recent and upcoming important activities of the group and highlighting issues members may be concerned about, presumably one issue of that newsletter would be a representative sample of all recent newsletters. If a group issued one-page consumer guides (What You Should Know About Life Insurance, What You Should Know About Homeowners Insurance, What You Should Know About Automobile Insurance, etc.), presumably one of the guides would be a representative sample. The Department often will not know what publications the group puts out, and therefore would not be in a position to specify precisely in these regulations what publications constitute a representative sample.

#### **COMMENTS OF KOREAN YOUTH AND COMMUNITY CENTER AND OAKLAND CHINESE COMMUNITY COUNCIL**

**Summary:** The comment begins with introductory material expressing disappointment with the regulations.

**Response:** These are not specific comments on the regulations, so a response is not required. However, the regulations are not intended to create barriers to consumer participation.

**Summary:** The regulations require much unnecessary, burdensome information from consumer groups.

**Response:** "Other organizational documents" are necessary for groups not organized as corporations to assist the Commissioner in determining the groups' purposes. Information about membership numbers assists the Commissioner in determining if the group represents consumers. Funding sources assist the Commissioner in determining if the group represents consumer interests or special interests. Representative newsletters and publications assists the Commissioner in determining the group's purposes and whether it represents consumer interests. Names of Board members also assists the Commissioner in determining whether the group represents consumer or special interests.

**Summary:** Like individuals, groups should only be required to show that they represent the interest of consumers, including describing the group's previous work. The burden should be on the intervenor to submit a sufficient showing.

**Response:** The Department believes the requirements should be clearly set forth in the regulations to allow intervenors to determine exactly what is required of them. The intervenor should not be forced to guess what will be required, only to submit it and have the Public Advisor seek follow-up information or deny the request without prejudice.

### **COMMENTS OF THE PROPOSITION 103 ENFORCEMENT PROJECT**

**Summary:** The Project supports the change to section 2661.1(i)(2), but suggests that the language of the prior regulation was better.

**Response:** The Department disagrees that the language in the proposed regulation is "weaker" than the prior regulation. Proposition 103 authorizes compensation to consumer intervenors. However, nothing in Proposition 103 can be construed to prevent any person from seeking to intervene in any rate hearing or, for example, submitting public comments in a rulemaking or investigatory hearing.

**Summary:** The Project continues to oppose section 2662.2(a)(2).

**Response:** The Project cites to certain cases which it believes support its position. A copy of *Griset v. FPPC*, which summarizes the other cases cited, is attached hereto. The courts have consistently found that disclosure of contributors is not always prohibited. The regulation is narrowly tailored, only requiring disclosure of the names of individuals contributing a significant amount (five percent) of the group's annual budget. The regulation does not violate fundamental privacy rights as the courts have interpreted those rights.

**Summary:** If an intervenor is a 501(c)(3) organization, that should be sufficient.

**Response:** A tax-exempt organization, organized for charitable, educational, and related purposes does not necessarily represent the interests of consumers. By itself, that is insufficient, though, as the Commissioner's regulations note, it does assist the Commissioner in determining if the group does represent the interests of consumers.

**Summary:** The regulation as proposed will cut off funding to consumer groups.

**Response:** Organized groups representing the interests of consumers are already subject to certain disclosure requirements. See, e.g., California Government Code Section 12580, et seq. There is no evidence that foundations or government grants will not be provided if they must be disclosed. In fact, those kinds of grants are often routinely disclosed. For example, the newsletter enclosed with EEF's comments indicates that EEF and Safeco Insurance Companies

are sponsoring an insurance consumer education seminar. Prior EEF letterhead identified EEF as a project of the Tides Foundation, a nonprofit public charity. Alleging that the proposed regulation will cut off funding to consumer groups is mere speculation.

###



# **EXHIBIT 12**

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10

*Attorneys for Respondent Consumer Watchdog*  
11

12  
13 IN THE SUPERIOR COURT OF CALIFORNIA  
14 COUNTY OF SAN DIEGO

15 STATE FARM GENERAL INSURANCE  
COMPANY,

16  
17 Petitioner and Plaintiff,

v.

18 RICARDO LARA, in his official capacity  
19 as the Insurance Commissioner of the State  
of California; and DOES 1-50,

20 Respondent and Defendant,

21 CONSUMER WATCHDOG,

22 Respondent and Defendant.  
23  
24  
25  
26  
27  
28

Case No. 37-2016-00041750-CU-MC-CTL

**DECLARATION OF RICHARD M.  
PEARL IN SUPPORT OF CONSUMER  
WATCHDOG'S MOTION FOR  
ATTORNEYS' FEES AND EXPENSES**

Date Action Filed: November 28, 2016

Date: August 26, 2022

Time: 11:00 a.m.

Dept.: C-69

Judge: Hon. Katherine A. Bacal



1 until the summer of 1971, when I went to work in California’s Central Valley for California Rural  
2 Legal Assistance, Inc. (CRLA), a statewide legal services program. From 1977 to 1982, I was  
3 CRLA’s Director of Litigation, supervising more than fifty attorneys. In 1982, I went into private  
4 practice, first in a small law firm, then as a sole practitioner. Martindale Hubbell rates my law firm  
5 “AV.” I also have been selected as a Northern California “Super Lawyer” in Appellate Law for  
6 2005, 2006, 2007, 2008, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021,  
7 and 2022. A true and correct copy of my Resume is attached as **Exhibit A**.

8           4.       Since 1982, the focus of my legal work has been in general civil litigation and  
9 appellate practice, with an emphasis on cases and appeals involving court-awarded attorneys’ fees. I  
10 have lectured and written extensively on court-awarded attorneys’ fees. I have been a member of  
11 the California State Bar’s Attorneys’ Fees Task Force and have testified before the State Bar Board  
12 of Governors and the California Legislature on attorneys’ fee issues. I am the author of *California*  
13 *Attorney Fee Awards* (3d Ed., Cal. CEB 2010) (“Cal. Fee Awards”) and its cumulative annual  
14 Supplements between 2011 and March 2022. I also was the author of *California Attorney Fee*  
15 *Awards*, 2d Ed. (Cal. Cont. Ed. of Bar 1994), and its 1995 through 2008 annual Supplements.  
16 Several courts have referred to this treatise as “[t]he leading California attorney fee treatise.” *Calvo*  
17 *Fisher & Jacob LLP v. Lujan*, 234 Cal.App.4th 608, 621 (2015); *see also, e.g., Int’l Billing Servs.,*  
18 *Inc. v. Emigh*, 84 Cal.App.4th 1175, 1193 (2000) (“the leading treatise”); *Stratton v. Beck*, 30  
19 Cal.App.5th 901, 911 (2019) (“a leading treatise”); *Orozco v. WPV San Jose, LLC*, 36 Cal.App.5th  
20 375, 409 (2019) (“a leading treatise on California attorney’s fees”). It also has been cited by the  
21 California Supreme Court and Court of Appeal on many occasions, including the Court of Appeal  
22 in this case. (Sl. Op. at 36). *See also Graham v. DaimlerChrysler Corp.*, 34 Cal.4th 553, 576, 584  
23 (2004); *Lolley v. Campbell*, 28 Cal.4th 367, 373 (2002); *In re Conservatorship of Whitley*, 50  
24 Cal.4th 1206, 1214–15, 1217 (2010); *Sonoma Land Trust v. Thompson*, 63 Cal.App.5th 978, 986  
25 (2021); *Yost v. Forestiere*, 51 Cal.App.5th 509, 530 n. 8 (2020); *Highland Springs Conference &*  
26 *Training Ctr. v. City of Banning*, 42 Cal.App.5th 416, 428 n. 11 (2019); *Sweetwater Union High*  
27 *Sch. Dist. v. Julian Union Elementary Sch. Dist.*, 36 Cal.App.5th 970, 988 (2019); *Hardie v.*  
28 *Nationstar Mortg. LLC*, 32 Cal. App. 5th 714, 720 (2019); *Syers Props III, Inc. v. Rankin*, 226

1 Cal.App.4th 691, 698, 700 (2014). California Superior Courts also cite the treatise with approval.  
2 *See, e.g., Davis v. St. Jude Hosp.*, No. 30201200602596CUOECX, 2018 WL 7286170, at \*4  
3 (Orange Cty. Super. Ct. Aug. 31, 2018); *Hartshorne v. Metlife, Inc.*, No. BC576608, 2017 WL  
4 1836635, at \*10 (Los Angeles Super. Ct. May 02, 2017). Federal courts also have cited it. *See In re*  
5 *Hurtado*, Case No. 09-16160-A-13, 2015 WL 6941127 (E.D. Cal. Nov. 6, 2015); *TruGreen*  
6 *Companies LLC v. Mower Brothers, Inc.*, 953 F. Supp. 2d 1223, 1236 nn.50, 51 (D. Utah 2013). I  
7 also authored the 1984 through 1993 annual Supplements to the predecessor treatise, *CEB's*  
8 *California Attorney's Fees Award Practice*. In addition, I authored a federal manual on attorneys'  
9 fees entitled "Attorneys' Fees: A Legal Services Practice Manual," published by the Legal Services  
10 Corporation. I also co-authored the chapter on "Attorney Fees" in Volume 2 of CEB's *Wrongful*  
11 *Employment Termination Practice*, 2d Ed. (1997).

12           5.       More than 95% of my practice is devoted to issues involving court-awarded  
13 attorneys' fees. I have appeared as counsel in over 200 attorneys' fee applications in state and  
14 federal courts, primarily representing other attorneys. I also have briefed and argued more than 40  
15 appeals, at least 30 of which have involved attorneys' fees issues. I have won five cases in the  
16 California Supreme Court involving court-awarded attorneys' fees: (1) *Maria P. v. Riles*, 43 Cal. 3d  
17 1281 (1987), which upheld a C.C.P. section 1021.5 fee award based on a preliminary injunction  
18 obtained against the State Superintendent of Education, despite the fact that the case ultimately was  
19 dismissed under C.C.P. section 583; (2) *Delaney v. Baker*, 20 Cal. 4th 23 (1999), which held that  
20 heightened remedies, including attorneys' fees, are available in suits against nursing homes under  
21 California's Elder Abuse Act; (3) *Ketchum v. Moses*, 24 Cal. 4th 1122 (2001), which reaffirmed  
22 that contingent risk multipliers are an essential consideration under California attorney fee law  
23 (note that in *Ketchum*, I was primary appellate counsel in the Court of Appeal and "second chair" in  
24 the California Supreme Court); (4) *Flannery v. Prentice*, 26 Cal. 4th 572 (2001), which held that  
25 under California law, in the absence of an agreement to the contrary, statutory attorneys' fees  
26 belong to the attorney whose services they are based upon; and (5) *Graham v. DaimlerChrysler*  
27 *Corp.*, 34 Cal. 4th 553 (2004), which held, *inter alia*, that the "catalyst" theory of fee recovery  
28 remained viable under California law and that lodestar multipliers could be applied to fee motion

1 work. In that case, I represented trial counsel in both the Court of Appeal (twice) and California  
2 Supreme Court, as well as on remand in the trial court. I also represented and argued on behalf of  
3 *amicus curiae* in *Conservatorship of McQueen*, 59 Cal. 4th 602 (2014), which held that attorneys’  
4 fees incurred for appellate work were not “enforcement fees” subject to California’s Enforcement of  
5 Judgments law; I presented the argument relied upon by the Court. Along with Richard Rothschild  
6 of the Western Center on Law and Poverty, I also prepared and filed an *amicus curiae* brief in  
7 *Vasquez v. State of California*, 45 Cal. 4th 243 (2009). An expanded list of reported decisions in  
8 cases I have handled is set out in **Exhibit A** at pages 4-8.

9           6. I have been retained by various governmental entities, including the California  
10 Attorney General’s office and the California Department of Fair Housing and Employment, to  
11 consult with them and serve as their expert regarding their affirmative attorney fee claims. *See, e.g.,*  
12 *In re Tobacco Cases I*, 216 Cal. App. 4th 570, 584 (2013); *Dep. of Fair Employ. and Hous. v. Law*  
13 *Sch. Admission Council, Inc.*, 2018 WL 5791869 (N.D. Cal. No. 12-cv-08130, filed Nov. 5, 2018).

14           7. I am frequently called upon to opine about the reasonableness of attorneys’ fees, and  
15 numerous federal and state courts have relied on my testimony on those issues. For example:

16           a. Most recently, in *Wit v. United Behavioral Health* (N.D. Cal. Jan. 5, 2022)  
17 \_\_\_F.Supp.3d \_\_\_, 2022 WL 45057, at \*7, the court’s fee Order states that “the Court places  
18 significant weight on Pearl’s opinion that the rates charged by all of the timekeepers listed above  
19 are reasonable and ‘in line with the standard hourly noncontingent rates charged by Bay Area law  
20 firms that regularly engage in civil litigation of comparable complexity.’... Pearl has extensive  
21 experience in the area of attorney billing rates in this district and has been widely relied upon by  
22 both federal and state courts in Northern California (including the undersigned) in determining  
23 reasonable billing rates.” (Citations omitted).

24           b. In *Human Rights Defense Center v. County of Napa*, 2021 U.S. Dist. LEXIS  
25 59778 \*; 2021 WL 1176640 (N.D. Cal. No. 20-cv-01296-JCS, Doc. 50, filed March 28, 2021), the  
26 Court expressly stated that it had “place[d] significant weight on the opinion of Mr. Pearl that the  
27 rates charged by all of the timekeepers listed above are reasonable and in line with the rates charged  
28 by law firms that engage in federal civil litigation in the San Francisco Bay Area. Mr. Pearl has

1 extensive experience in the area of attorney billing rates in this district and has been widely relied  
2 upon by both federal and state courts in Northern California [] in determining reasonable billing  
3 rates.” 2021 U.S.Dist.LEXIS 59778, at \*32.

4 c. Subsequently, in *Andrews v. Equinox Holdings, Inc.*, N.D. Cal. No. 20-cv-  
5 00485-SK, Oder on Motion for Attorney Fees and Costs filed November 9, 2021 (Doc. 110), the  
6 court quoted the above language from the *Human Rights Defense Center* case and concluded the  
7 same: “This Court similarly finds Pearl’s opinions well supported and persuasive.” Order at p. 4:13-  
8 19.

9 d. Similarly, in *Sonoma Land Trust v. Thompson, supra*, 63 Cal.App.5th 978,  
10 986 (2021), the Court of Appeal expressly held that my expert declaration provided evidentiary  
11 support for the trial court’s fee determination.

12 e. Lastly, my declaration was cited favorably by the Second District of the  
13 Court of Appeal in *Wood v. Los Angeles County Waterworks Dist. No. 40 (Antelope Valley*  
14 *Groundwater Cases)*, 2021 Cal.App. Unpub. LEXIS 5506 (2nd Dist., Div. 2021).

15 8. In addition to the *Sonoma Land Trust* and *Antelope Valley Groundwater* cases, the  
16 following California appellate and reported trial court cases also have referenced my testimony  
17 favorably:

- 18 • *Kerkeles v. City of San Jose*, 243 Cal.App.4th 88 (2015);
- 19 • *Laffitte v. Robert Half Int’l Inc.*, 231 Cal.App.4th 860 (2014), *aff’d* (2016) 1  
20 Cal.5th 480;
- 21 • *Habitat and Watershed Caretakers v. City of Santa Cruz*, 2015 Cal. App. Unpub.  
22 LEXIS 7156 (2015);
- 23 • *In re Tobacco Cases I*, 216 Cal.App.4th 570 (2013);
- 24 • *Heritage Pacific Financial, LLC v. Monroy*, 215 Cal.App.4th 972 (2013);
- 25 • *Wilkinson v. South City Ford*, 2010 Cal. App. Unpub. LEXIS 8680 (2010);
- 26 • *Children’s Hospital & Medical Center v. Bonta*, 97 Cal.App.4th 740 (2002);
- 27 • *Church of Scientology v. Wollersheim*, 42 Cal.App.4th 628 (1996).

- 1 • *Kaku v. City of Santa Clara*, No. 17CV319862, 2019 WL 331053, at \*3 (Santa
- 2 Clara Cty. Super. Ct. Jan. 22, 2019), *aff'd* 59 Cal. App. 5th 385, 431 (2020);
- 3 • *Davis v. St. Jude Hosp.*, No. 30201200602596CUOECX, 2018 WL 7286170, at
- 4 \*4 (Orange Cty. Super. Ct. Aug. 31, 2018);
- 5 • *Hartshorne v. Metlife, Inc.*, No. BC576608, 2017 WL 1836635, at §\*10 (Los
- 6 Angeles Super. Ct. May 2, 2017).

7 Many other trial courts also have relied on my testimony in unreported fee awards.

8 9. In addition to the *Wit*, *Andrews*, and *Human Rights Defense Center* cases, the

9 following reported federal decisions also have referenced my testimony favorably:

- 10 • *Antoninetti v. Chipotle Mexican Grill, Inc.*, No. 08-55867 (9th Cir. 2012), Order
- 11 filed Dec. 26, 2012, at 6;
- 12 • *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010) (the
- 13 expert declaration referred to is mine);
- 14 • *Independent Living Center of S. Cal. v. Kent*, 2020 U.S. Dist. LEXIS 13019 (C.D.
- 15 Cal. 2020);
- 16 • *Ridgeway v. Wal-Mart Stores, Inc.*, 269 F. Supp. 3d 975 (N.D. Cal. 2017), *aff'd*
- 17 269 F.3d 1066 (9th Cir. 2020);
- 18 • *Beaver v. Tarsadia Hotels*, 2017 U.S. Dist. LEXIS 160214 (S.D. Cal. 2017);
- 19 • *Notter v. City of Pleasant Hill*, 2017 U.S. Dist. LEXIS 197404, 2017 WL 5972698
- 20 (N.D. Cal. 2017);
- 21 • *Villalpondo v. Exel Direct, Inc.*, 2016 WL 1598663 (N.D. Cal. 2016);
- 22 • *State Compensation Insurance Fund v. Khan et al.*, Case No. SACV 12-01072-
- 23 CJC(JCGx) (C.D. Cal.), Order Granting in Part and Denying in Part the Zaks
- 24 Defendants' Motion for Attorneys' Fees, filed July 6, 2016 (Dkt. No. 408);
- 25 • *In re Cathode Ray Tube Antitrust Litig.*, Master File No. 3:07-cv-5944 JST,
- 26 MDL No. 1917 (N.D. Cal. 2016) 2016 U.S. Dist. LEXIS 24951 (Report And
- 27 Recommendation Of Special Master Re Motions (1) To Approve Indirect
- 28 Purchaser Plaintiffs' Settlements With the Phillips, Panasonic, Hitachi, Toshiba,



1 Samsung SDI, Technicolor, And Technologies Displays Americas Defendants,  
2 and (2) For Award Of Attorneys' Fees, Reimbursement Of Litigation Expenses,  
3 And Incentive Awards To Plaintiffs' Representative), Dkt. 4351, dated January  
4 28, 2016, *adopted in relevant part*, 2016 U.S. Dist. LEXIS 88665;

- 5 • *Gutierrez v. Wells Fargo Bank*, 2015 U.S. Dist. LEXIS 67298 (N.D. Cal. 2015);
- 6 • *Holman v. Experian Information Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698  
7 (N.D. Cal. 2014);
- 8 • *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, MDL No. 1827  
9 (N.D. Cal.), Report and Recommendation of Special Master Re Motions for  
10 Attorneys' Fees And Other Amounts By Indirect-Purchaser Plaintiffs' Plaintiffs  
11 And State Attorneys General, Dkt. 7127, filed Nov. 9, 2012, adopted in relevant  
12 part, 2013 U.S. Dist. LEXIS 49885 (N.D. Cal. 2013) ("*TFT-LCD (Flat Panel)*  
13 *Report & Recommendation*");
- 14 • *Walsh v. Kindred Healthcare*, 2013 U.S. Dist. LEXIS 176319 (N.D. Cal. 2013);
- 15 • *A.D. v. California Highway Patrol*, 2009 U.S. Dist. LEXIS 110743, at \*4 (N.D.  
16 Cal. 2009), *rev'd on other grounds*, 712 F.3d 446 (9th Cir. 2013), *reaffirmed and*  
17 *additional fees awarded on remand*, 2013 U.S. Dist. LEXIS 169275 (N.D. Cal.  
18 2013);
- 19 • *Hajro v. United States Citizenship & Immigration Service*, 900 F.Supp.2d 1034,  
20 1054 (N.D. Cal 2012);
- 21 • *Rosenfeld v. United States Dep't of Justice*, 904 F. Supp. 2d 988, 1002 (N.D. Cal.  
22 2012);
- 23 • *Stonebrae, L.P. v. Toll Bros., Inc.*, 2011 U.S. Dist. LEXIS 39832, at \*9 (N.D.  
24 Cal. 2011) (thorough discussion), *aff'd* 2013 U.S. App. LEXIS 6369 (9th Cir.  
25 2013);
- 26 • *Armstrong v. Brown*, 2011 U.S. Dist. LEXIS 87428 (N.D. Cal. 2011);
- 27 • *Lira v. Cate*, 2010 WL 727979 (N.D. Cal. 2010);

- 1 • *Californians for Disability Rights, Inc. v. California Dep't of Transportation*,  
2 2010 U.S. Dist. LEXIS 141030 (N.D. Cal. 2010);
- 3 • *Nat'l Federation of the Blind v. Target Corp.*, 2009 U.S. Dist. LEXIS 67139  
4 (N.D. Cal. 2009);
- 5 • *Prison Legal News v. Schwarzenegger*, 561 F.Supp.2d 1095 (N.D. Cal. 2008) (an  
6 earlier motion);
- 7 • *Bancroft v. Trizechahn Corp.*, No. CV 02-2373 SVW (FMOx), Order Granting  
8 Plaintiffs Reasonable Attorneys' Fees and Costs In the Amount of \$168,886.76,  
9 Dkt. 278 (C.D. Cal. Aug. 14, 2006);
- 10 • *Willoughby v. DT Credit Corp.*, No. CV 05-05907 MMM (CWx), Order  
11 Awarding Attorneys' Fees After Remand, Dkt. 65 (C.D. Cal. July 17, 2006);
- 12 • *Oberfelder v. City of Petaluma*, 2002 U.S. Dist. LEXIS 8635 (N.D. Cal. 2002),  
13 *aff'd* 2003 U.S. App. LEXIS 11371 (9th Cir. 2003).

14 **Summary of Opinion and Overview of Declaration**

15 10. My review of Consumer Watchdog Counsel's declarations shows that their lodestar  
16 is based on each attorney's requested 2022 hourly rate. See paragraph 11, *infra*. I have examined  
17 each attorney's requested lodestar rate, along with each attorney's experience and background and  
18 work product here. Based on that review, in my opinion the rates requested by Consumer Watchdog  
19 Counsel are well within, if not at the low end of, the range of hourly rates charged by comparably  
20 qualified attorneys in the Los Angeles Area performing similar work and with those that other San  
21 Diego and Los Angeles area courts have found reasonable for attorneys with comparable litigation  
22 experience performing similar services.<sup>2</sup>

23  
24  
25 <sup>2</sup> I have not been asked to express an opinion regarding the reasonableness of the number of hours,  
26 the tasks performed, or the lodestar multiplier that are a component of Consumer Watchdog's fee  
27 request because Consumer Watchdog Counsel do not believe expert opinion on those issues is  
28 necessary. I agree, and the absence of any testimony from me on the reasonableness of the number  
of hours spent, the tasks performed, or the requested lodestar multiplier does not in any way reflect  
a negative view of their reasonableness.



1 testimony by declaration on hundreds of occasions: each of those efforts require me to be aware of  
2 the hourly rates being charged in the relevant community.

3 14. Here, I have reviewed Consumer Watchdog Counsel’s qualifications, backgrounds,  
4 experience, work product, and the results they have achieved. Based on the information I have  
5 gathered, some of which is set forth below, it is my opinion that the rates requested by Consumer  
6 Watchdog Counsel are well within, if not at the low end of, the range of the non-contingent market  
7 rates charged by Los Angeles area attorneys of reasonably comparable experience, skill, and  
8 reputation for reasonably comparable services. Several factors support my opinion:

9 15. *First*, it is my understanding that Consumer Watchdog Counsel’s requested hourly  
10 rates have been found reasonable and awarded in numerous cases. This is a highly probative fact.  
11 See *Margolin v. Regional Planning Comm’n*, 134 Cal.App.3d 999, 1005 (1982).

12 16. *Second*, my opinion also is based on the numerous findings of reasonable hourly  
13 rates made by San Diego Area and Los Angeles Area courts, which also are highly probative. See  
14 *Children’s Hosp. & Med. Ctr. v Bontá*, 97 Cal.App.4th at 783. Those findings are summarized in  
15 **Exhibits B (San Diego Area) and C (Los Angeles Area)** attached hereto. For example:

- 16 • In *Campbell v. Barnes*, Orange County Superior Court No. 30-2020-01141117-CU-  
17 WM-CXC, Order Granting Petitioners’ Motion for an Award of Attorneys’ Fees,  
18 filed January 20, 2022, a case challenging inadequacies in the County jail’s response  
19 to the Covid epidemic, the court found the following hourly rates reasonable:

<b>LAW SCHOOL GRADUATION YEAR</b>	<b>RATES</b>
<b>Munger, Tolles &amp; Olson LLP</b>	
2003	\$1,210
2013	\$850
2015	\$750
2016	\$700
2017	\$650
2018	\$550
<b>Non-Attorneys</b>	
Automated Litig. Analyst	
Litigation Analyst	\$250
Paralegals	\$250
<b>ACLU</b>	
1988, 2000, and 2003	\$1,210

2007	\$950
2009	\$900
2015	\$750
2016	\$700
2017	\$650
<b>Non-Attorney</b>	
Senior Investigator	\$250
<b>Schonbrun, Seplow, Harris, Hoffman, And Zeldes LLP</b>	
1976	\$1,000
2016	\$450
2016	\$600
2019	\$440
1975	\$1,025
1976	\$930
1979	\$995
2015	\$570

- In *Independent Living Center of S. Cal. v. Kent*, 2020 U.S. Dist. LEXIS 13019 (C.D. Cal. 2020), an action challenging the State’s right to alter reimbursement rates for Medi-Cal providers, the court found the following 2019 hourly rates reasonable (plus a 1.5 lodestar multiplier):

<b>LAW SCHOOL GRADUATION YEAR</b>	<b>RATES</b>
1975	\$1,025
1976	\$965
1979	\$1,025
2007	\$815
2011	\$800
2015	\$640
2016	\$600
2019	\$440
1975	\$1,025
1976	\$930
1979	\$995
2015	\$570

- In *The Kennedy Commission v. City of Huntington Beach*, Los Angeles County Superior Court No. 30-2015-00801675, Ruling on Submitted Matter filed July 8, 2021, a writ of mandate action challenging a land use amendment adopted by the City of Huntington Beach, the court found the following 2020 hourly rates reasonable (prior to application of a 1.4 lodestar multiplier):

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**2020 Rates:**

<b>Years of Experience</b>	<b>Rates</b>
38	\$910
40	\$900
26	\$815
23	\$750
16	\$710
14	\$680
10	\$565
7	\$500
6	\$475
5	\$450
2	\$365

- In an earlier ruling in the same case, the court found the following hourly rates reasonable for the Plaintiffs’ private *pro bono* law firm (prior to application of a 1.4 multiplier)<sup>5</sup>:

**2016 Rates:**

<b>Bar Admission Year</b>	<b>Rates</b>
2001	\$900
2014	\$450

**2015 Rates:**

<b>Bar Admission Year</b>	<b>Rates</b>
2001	\$875
2014	\$400

- In *Rea v. Blue Shield*, Los Angeles County Superior Court No. BC468900, Fee Order filed November 13, 2020, a class action challenging Blue Shield’s practices

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<sup>5</sup> The initial *Kennedy Commission* fee award was remanded in conjunction with the reversal of the merits. 2017 Cal.App.Unpub.LEXIS 7488 (2017).

1 regarding mental health claims, the court found that \$900 per hour was reasonable  
2 for Plaintiffs' three lead attorneys, with 35, 37, and 44 years of experience. It also  
3 applied a 1.5 multiplier.

4 Consumer Watchdog Counsel's hourly rates here are well within, if not at the low end of, the range  
5 of rates found reasonable in these cases and the others set out in **Exhibits B and C**.

#### 6 **Hourly Rates Charged by Other Law Firms**

7  
8 17. *Third*, Consumer Watchdog Counsel's rates also are well within the range of the  
9 standard hourly non-contingent rates charged by numerous Los Angeles Area law firms that  
10 regularly engage in civil litigation of comparable complexity. A chart showing the hourly rates  
11 charged by numerous Los Angeles area law firms, as stated in court filings, depositions, surveys, or  
12 other reliable sources, is attached hereto as **Exhibit D**. The rates requested here are well in line with  
13 those rates. For example, in 2021, Munger, Tolles & Olson billed a 31-year attorney at \$1,725 per  
14 hour and a 12-year attorney at \$995 per hour. In 2019, Pearson Simon & Warshaw, a Plaintiffs'  
15 class action firm, billed attorneys with 23-38 years of experience at \$1,150 per hour; rates have  
16 generally increased at least 10-12% since 2019. Again, Consumer Watchdog's Counsel's rates are  
17 well within this range.

#### 18 **Hourly Rate Surveys and Articles**

19 18. Counsel's requested rates also are supported by several surveys and articles  
20 describing legal rates, including the following:

- 21 • The 2020 Mid-Year Real Rate Report compiled by Wolters Kluwer surveyed the  
22 hourly rates charged in the second quarter of 2020 by hundreds of Los Angeles area  
23 attorneys, relevant excerpts of which are attached hereto as **Exhibit E**. The real  
24 market rates of Los Angeles area attorneys who practice "litigation" are surveyed at  
25 page 28, which describes the Second Quarter 2020 rates charged by 387 Los Angeles  
26 partners and 478 associates who practiced "Litigation." For that category, the Third  
27 Quartile rate was **\$940** per hour for "Partners" and **\$740** for "Associates". Likewise,  
28 page 34 of the Report describes the rates charged by 365 Los Angeles partners with

1 “21 or more years of experience” and 199 attorneys with “Fewer than 21 years”. For  
2 those categories, the Third Quartile Los Angeles rates were **\$1,047** per hour for  
3 attorneys with 21 or more years of experience and **\$912** for attorneys with fewer  
4 than 21 years. Moreover, in my experience, since the Second Quarter of 2020, most  
5 Los Angeles Area firms have raised their rates by at least 3-6%.<sup>6</sup> Given the  
6 exceptional experience, expertise, and skills possessed by Consumer Watchdog  
7 Counsel, it is my opinion that rates exceeding the Third Quartile figures are readily  
8 justifiable and consistent with the Los Angeles legal marketplace.

- 9 • Consumer Watchdog Counsel’s rates also are consistent with the “Adjusted Laffey  
10 Matrix” (laffeymatrix.com), which is based on a survey of hourly rates charged in  
11 the Baltimore-Washington, D.C. area. This survey is frequently used across the  
12 country, with adjustments for differences in cost of living, to evaluate the  
13 reasonableness of hourly rates. For March 2022, the Adjusted Laffey Matrix lists a  
14 current rate of **\$919** per hour attorneys who have been out of law school for 20+  
15 years, **\$764** per hour for attorneys who have been out of law school for 11-19 years,  
16 **\$676** for attorneys who have been out of law school for 8-10 years, **\$468** per hour  
17 for attorneys who have been out of law school for 4-7 years, and **\$381** per hour for  
18 attorneys who have been out of law school for 1-3 years. Measured under that  
19 survey, counsel’s rates here, as adjusted for the Los Angeles Area market, would be  
20 2.08% higher than these figures. See  
21 <https://www.uscourts.gov/careers/compensation/judiciary-salary-plan-pay-rates> (as  
22

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23 <sup>6</sup> Listed billing rates, court awards, and published articles show that over the past four years, Los  
24 Angeles area rates have risen an average of 4-6% per year. For example, in *Planned Parenthood*  
25 *Federation of America, Inc. v. Center for Medical Progress*, 2020 U.S. Dist. LEXIS 241035, at \*13  
26 (N.D. Cal. Dec. 22, 2020), the district court applied a 25% rate increase for the period from 2016 to  
27 2020. Similar rate increases in the legal marketplace have been observed by commentators. *See,*  
28 *e.g., Aggressive Billing Rate Increases Appear Likely, but Can Clients Stomach It?* Maloney, *The*  
*American Lawyer* (Jan. 24, 2022) (rates rose “nearly 4%” in 2021; Simons, *Big Law Should Raise*  
*Partner Billing Rates 10+ Percent Now*, *The Recorder* (Nov. 15, 2018) at 3 (“In a normal year,  
partner rates would go up around 5 or 6 percent”).



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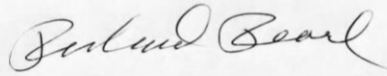
of Jan. 2022, 2.08% differential between Washington D.C. Area and Los Angeles Area rates).

- The 2018 Peer Monitor Public Rates survey, attached hereto as **Exhibit F**, shows that Consumer Watchdog Counsel’s rates here are well within, if not below, the range of hourly rates billed by other top-flight Los Angeles area law firms. For example, 18 Los Angeles area attorneys were listed as billing from \$1,125 to \$1,475 per hour. And again, rates have increased at least 12-16% since 2018.

19. The preceding hourly rates data supports my opinion that Consumer Watchdog Counsel’s rates are well within, if not below, the range of non-contingent rates charged by comparably qualified Los Angeles Area attorneys for reasonably similar work.

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

Executed on this 8th day of April, 2022, at Berkeley, California.

  
\_\_\_\_\_  
Richard M. Pearl, Esq.

# **EXHIBIT A**

# RESUME OF RICHARD M. PEARL

## **RICHARD M. PEARL**

### **LAW OFFICES OF RICHARD M. PEARL**

1816 Fifth Street  
Berkeley, CA 94710  
(510) 649-0810  
(510) 548-3143 (facsimile)  
rpearl@interx.net (e-mail)

## **EDUCATION**

University of California, Berkeley, B.A., Economics (June 1966)  
Berkeley School of Law (formerly Boalt Hall), Berkeley, J.D. (June 1969)

## **BAR MEMBERSHIP**

Member, State Bar of California (admitted February 1970)  
Member, State Bar of Georgia (admitted June 1970) (inactive)  
Admitted to practice before all California State Courts; the United States Supreme Court; the United States Court of Appeals for the District of Columbia and Ninth Circuits; the United States District Courts for the Northern, Central, Eastern, and Southern Districts of California, for the District of Arizona, and for the Northern District of Georgia; and the Georgia Civil and Superior Courts and Court of Appeals.

## **EMPLOYMENT**

LAW OFFICES OF RICHARD M. PEARL (April 1987 to Present): Civil litigation practice (AV rating), with emphasis on court-awarded attorney's fees, class actions, and appellate practice. Selected Northern California "Super Lawyer" in Appellate Law for 2005, 2006, 2007, 2008, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, and 2021.

QUALIFIED APPELLATE MEDIATOR, APPELLATE MEDIATION PROGRAM, California Court of Appeal, First Appellate District (October 2000 to 2013) (program terminated).

ADJUNCT PROFESSOR, HASTINGS COLLEGE OF THE LAW (January 1988 to 2014): Taught *Public Interest Law Practice*, a 2-unit course that focused on the history, strategies, and issues involved in the practice of public interest law.

PEARL, McNEILL & GILLESPIE, Partner (May 1982 to March 1987): General civil litigation practice, as described above.

CALIFORNIA RURAL LEGAL ASSISTANCE, INC. (July 1971 to September 1983) (part-time May 1982 to September 1983):

Director of Litigation (July 1977 to July 1982)

Responsibilities: Oversaw and supervised litigation of more than 50 attorneys in CRLA's 15 field offices; administered and supervised staff of 4-6 Regional Counsel; promulgated litigation policies and procedures for program; participated in complex civil litigation.

Regional Counsel (July 1982 to September 1983 part-time)

Responsibilities: Served as co-counsel to CRLA field attorneys on complex projects; provided technical assistance and training to CRLA field offices; oversaw CRLA attorney's fee cases; served as counsel on major litigation.

Directing Attorney, Cooperative Legal Services Center (February 1974 to July 1977) (Staff Attorney February 1974 to October 1975)

Responsibilities: Served as co-counsel on major litigation with legal services attorneys in small legal services offices throughout California; supervised and administered staff of four senior legal services attorneys and support staff.

Directing Attorney, CRLA McFarland Office (July 1971 to February 1974) (Staff Attorney July 1971 to February 1972)

Responsibilities: Provided legal representation to low income persons and groups in Kern, King, and Tulare Counties; supervised all litigation and administered staff of ten.

HASTINGS COLLEGE OF THE LAW, Instructor, Legal Writing and Research Program (August 1974 to June 1978)

Responsibilities: Instructed 20 to 25 first year students in legal writing and research.

CALIFORNIA AGRICULTURAL LABOR RELATIONS BOARD, Staff Attorney, General Counsel's Office (November 1975 to January 1976, while on leave from CRLA)

Responsibilities: Prosecuted unfair labor practice charges before Administrative Law Judges and the A.L.R.B. and represented the A.L.R.B. in state court proceedings.

ATLANTA LEGAL AID SOCIETY, Staff Attorney (October 1969 to June 1971)

Responsibilities: Represented low-income persons and groups as part of 36-lawyer legal services program located in Atlanta, Georgia.

## **PUBLICATIONS**

Pearl, *California Attorney Fee Awards, Third Edition* (Cal. Cont. Ed. Bar 2010) and February 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, and March 2021 Supplements

Pearl, *California Attorney Fee Awards, Second Edition* (Cal. Cont. Ed. Bar 1994), and 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2008 Supplements

*Graham v. DaimlerChrysler Corp.* and *Tipton-Whittingham v. City of Los Angeles*, Civil Litigation Reporter (Cal. Cont. Ed. Bar Feb. 2005)

*Current Issues in Attorneys' Fee Litigation*, California Labor and Employment Law Quarterly (September 2002 and November 2002)

*Flannery v. Prentice: Shifting Attitudes Toward Fee Agreements and Fee-Shifting Statutes*, Civil Litigation Reporter (Cal. Cont. Ed. Bar Nov. 2001)

*A Practical Introduction to Attorney's Fees*, Environmental Law News (Summer 1995)

Wrongful Employment Termination Practice, Second Edition (Cal. Cont. Ed. Bar 1997) (co-authored chapter on "Attorney Fees")

California Attorney's Fees Award Practice (Cal. Cont. Ed. Bar 1982) (edited), and 1984 through 1993 Supplements

Program materials on attorney fees, prepared as panelist for CEB program on Attorneys' Fees: Practical and Ethical Considerations in Determining, Billing, and Collecting (October 1992)

Program materials on Attorney's Fees in Administrative Proceedings: California Continuing Education of the Bar, prepared as panelist for CEB program on Effective Representation Before California Administrative Agencies (October 1986)

Program materials on Attorney's Fees in Administrative Proceedings: California Continuing Education of the Bar, prepared as panelist for CEB program on Attorneys' Fees: Practical and Ethical Considerations (March 1984)

*Settlers Beware/The Dangers of Negotiating Statutory Fee Cases* (September 1985) Los Angeles Lawyer

Program Materials on Remedies Training (Class Actions), sponsored by Legal Services Section, California State Bar, San Francisco (May 1983)

Attorneys' Fees: A Legal Services Practice Manual (Legal Services Corporation 1981)

## **PUBLIC SERVICE**

Member, Attorneys' Fee Task Force, California State Bar

Member, Board of Directors, California Rural Legal Assistance Foundation

## **REPRESENTATIVE CASES**

*ACLU of N. Cal. v. DEA*

(N.D. Cal. 2012) 2012 U.S. Dist. LEXIS 190389

*Alcoser v. Thomas*

(2011) 2011 Cal. App. Unpub. LEXIS 1180

*Arias v. Raimondo*

(2018) 2018 U.S. App. LEXIS 7484

*Boren v. California Department of Employment*

(1976) 59 Cal. App. 3d 250

*Cabrera v. Martin*

(9th Cir. 1992) 973 F.2d 735

*Camacho v. Bridgeport Financial, Inc.*

(9<sup>th</sup> Cir. 2008) 523 F.3d 973

*Campos v. E.D.D.*

(1982) 132 Cal. App. 3d 961

*Center for Biological Diversity v. County of San Bernardino*

(2010) 185 Cal. App. 4th 866

*Children & Families Commission of Fresno v. Brown*

(2014) 228 Cal. App. 4<sup>th</sup> 45

*Committee to Defend Reproductive Rights v. A Free Pregnancy Center*

(1991) 229 Cal. App. 3d 633

*David C. v. Leavitt*

(D. Utah 1995) 900 F. Supp. 1547

*Delaney v. Baker*

(1999) 10 Cal. 4th 23

## **REPRESENTATIVE CASES (cont.)**

*Dixon v. City of Oakland*

(2014) 2014 U.S.Dist.LEXIS 169688

*Employment Development Dept. v. Superior Court (Boren)*

(1981) 30 Cal.3d 256

*Environmental Protection Info. Ctr. v Department of Forestry & Fire Protection*

(2010) 190 Cal.App.4th 217

*Environmental Protection Information Center, Inc. v. Pacific Lumber Co.*

(N.D. Cal. 2002) 229 F. Supp.2d 993, *aff'd* (9<sup>th</sup> Cir. 2004) 103 Fed. Appx. 627

*Flannery v Prentice*

(2001) 26 Cal. 4th 572

*Graham v. DaimlerChrysler Corp.*

(2004) 34 Cal. 4<sup>th</sup> 553

*Guerrero v. Cal. Dept. of Corrections etc.*

(2016) 2016 U.S.Dist.LEXIS 78796, *aff'd in relevant part*, (9<sup>th</sup> Cir. 2017) 701 Fed.Appx. 613

*Heron Bay Home Owners Assn. v. City of San Leandro*

(2018) 19 Cal.App.5<sup>th</sup> 376

*Horsford v. Board of Trustees of Univ. of Calif.*

(2005) 132 Cal.App.4th 359

*Ketchum v. Moses*

(2001) 24 Cal.4th 1122

*Kievlan v. Dahlberg Electronics*

(1978) 78 Cal.App.3d 951, *cert. denied* (1979)  
440 U.S. 951

*Lealao v. Beneficial California, Inc.*

(2000) 82 Cal.App.4th 19

*Lewis v. California Unemployment Insurance Appeals Board*

(1976) 56 Cal.App.3d 729

## REPRESENTATIVE CASES (cont.)

*Local 3-98 etc. v. Donovan*

(N.D. Cal. 1984) 580 F.Supp. 714,  
*aff'd* (9th Cir. 1986) 792 F.2d 762

*Mangold v. California Public Utilities Commission*

(9th Cir. 1995) 67 F.3d 1470

*Maria P. v. Riles*

(1987) 43 Cal.3d 1281

*Martinez v. Dunlop*

(N.D. Cal. 1976) 411 F.Supp. 5,  
*aff'd* (9th Cir. 1977) 573 F.2d 555

*McQueen, Conservatorship of*

(2014) 59 Cal.4<sup>th</sup> 602 (argued for *amici curiae*)

*McSomebodies v. Burlingame Elementary School Dist.*

(9th Cir. 1990) 897 F.2d 974

*McSomebodies v. San Mateo City School Dist.*

(9th Cir. 1990) 897 F.2d 975

*Molina v. Lexmark International*

(2013) 2013 Cal.App. Unpub. LEXIS 6684

*Moore v. Bank of America*

(9<sup>th</sup> Cir. 2007) 2007 U.S. App. LEXIS 19597

*Moore v. Bank of America*

(S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 904

*Mora v. Chem-Tronics, Inc.*

(S.D. Cal. 1999) 1999 U.S. Dist. LEXIS 10752,  
5 Wage & Hour Cas. 2d (BNA) 1122

*Nadaf-Rahrov v. Nieman Marcus Group*

(2014) 2014 Cal.App. Unpub. LEXIS 6975

*Orr v. Brame*

(9<sup>th</sup> Cir. 2018) 727 Fed.Appx. 265, 2018 U.S.App.LEXIS 6094



## REPRESENTATIVE CASES (cont.)

*Orr v. Brame*

(9<sup>th</sup> Cir. 2019) 793 Fed.Appx. 485

*Pena v. Superior Court of Kern County*

(1975) 50 Cal.App.3d 694

*Ponce v. Tulare County Housing Authority*

(E.D. Cal 1975) 389 F.Supp. 635

*Ramirez v. Runyon*

(N.D. Cal. 1999) 1999 U.S. Dist. LEXIS 20544

*Ridgeway v. Wal-Mart Stores, Inc.*, 269 F. Supp. 3d 975 (N.D. Cal. 2017), *aff'd on merits (fees not appealed)* 269 F.3d 1066 (9<sup>th</sup> Cir. 2020)

*Robles v. Employment Dev. Dept.*

(2019) 38 Cal.App.5<sup>th</sup> 191

*Rubio v. Superior Court*

(1979) 24 Cal.3d 93 (amicus)

*Ruelas v. Harper*

(2015) 2015 Cal.App. Unpub.LEXIS 7922

*Sokolow v. County of San Mateo*

(1989) 213 Cal. App. 3d. 231

*S.P. Growers v. Rodriguez*

(1976) 17 Cal.3d 719 (amicus)

*Swan v. Tesconi*

(2015) 2015 Cal.App. Unpub. LEXIS 3891

*Tongol v. Usery*

(9<sup>th</sup> Cir. 1979) 601 F.2d 1091,  
*on remand* (N.D. Cal. 1983) 575 F.Supp. 409,  
*revs'd* (9<sup>th</sup> Cir. 1985) 762 F.2d 727

*Tripp v. Swoap*

(1976) 17 Cal.3d 671 (amicus)

**REPRESENTATIVE CASES (cont.)**

*United States (Davis) v. City and County of San Francisco*  
(N.D. Cal. 1990) 748 F.Supp. 1416, *aff'd in part*  
*and revs'd in part sub nom Davis v. City and County*  
*of San Francisco* (9<sup>th</sup> Cir. 1992) 976 F.2d 1536,  
*modified on rehearing* (9<sup>th</sup> Cir. 1993) 984 F.2d 345

*United States v. City of San Diego*  
(S.D.Cal. 1998) 18 F.Supp.2d 1090

*Vasquez v. State of California*  
(2008) 45 Cal.4th 243 (*amicus*)

*Velez v. Wynne*  
(9<sup>th</sup> Cir. 2007) 2007 U.S. App. LEXIS 2194

**AUGUST 2021**

# **EXHIBIT B**

## EXHIBIT B

### Rates Found Reasonable by San Diego Area Courts

The following hourly rates have been found reasonable by various San Diego area courts for reasonably similar services in the San Diego area:

- (1) In *Herring v. Maddow*, 2021 U.S. Dist. LEXIS 23163 (S.D. Cal. 2021), an anti-SLAPP fee award, the court found the following 2020 hourly rates reasonable: \$1,050-1,150 per hour for attorneys with 30+ years of experience; \$720 per hour for a senior associate with 10+ years of experience; and \$470 per hour for associates with 3 years legal experience.
- (2) In *In re Easysaver Rewards Litigation*, 2020 U.S. Dist. LEXIS 77483 (S.D. Cal. 2020), a coupon class action settlement, the court found reasonable 2019 rates of \$850 and \$825 reasonable for partners at San Diego's Cohelan, Khoury and Singer; \$675 per hour for a Cohelan Khoury associate; and \$795 for partners at San Diego's Patterson Law Group.
- (3) In *Corona v. Remington Lodging & Hospitality, LLC*, 2019 U.S. Dist. LEXIS 68116 (S.D. Cal. 2019), a wage and hour class action, the court found that counsel's usual billing rates -- \$750 for 33-year attorney and \$550 for a 14-year attorney -- were reasonable.
- (4) In *San Diego Comic Convention v. Dan Farr Productions, No. 14cv1865-AJB-JMA*, 2019 U.S. Dist. LEXIS 64418 (S.D. Cal. Apr. 15, 2019) *attorney fees aff'd* by 807 F. App'x 674 (9th Cir. Apr. 20, 2020), a trademark infringement case, the court found reasonable the hourly rates of \$760 for partners with 28-29 years of experience, \$685 for a partner with 14 years of

experience, \$585 for attorney with 16 years of experience, and \$545 for an associate with 5 years of experience;,

- (5) In *Youngevity Int'l, Corp. v. Smith*, No. 16-CV-00704-BTMJLB, 2018 U.S. Dist. LEXIS 77659, 2018 WL 2113238, at \*5 (S.D. Cal. May 7, 2018), the court found that "Courts in this district have held a range of rates from \$450-750 per hour reasonable for a senior partner in a variety of litigation contexts and specialties."
- (6) In *Weinstein v. Mortgage Contracting Services, LLC*, 2018 U.S. Dist. LEXIS 182718 (S.D. Cal. 2018), a wage and hour class action, the court found that \$750 was a reasonable rate for a 41-year attorney, \$625 per hour for 2005 Bar Admittees, and \$450 per hour for a 10-year attorney.
- (7) In *Lewis v. County of San Diego*, 2017 U.S. Dist. LEXIS 203457 (S.D. Cal. 2017), an unlawful search action against county social workers, the court awarded a 25-year attorney with 19 years of civil rights practice \$600 per hour, a 4-year attorney \$250 per hour, and \$100 per hour for paralegal work.
- (8) In *Beaver v. Tarsadia Hotels*, 2017 U.S. Dist. LEXIS 160214 (S.D. Cal. 2017), a consumer class action, the court approved, as part of the lodestar cross-check for a common fund award, hourly rates that included \$875 for a 40-year attorney, \$725 for a 25-year attorney, \$650 for a 16-year attorney, and \$400 for a seven year attorney.
- (9) In *Dilts v. Penske Logistic, LLC*, 2017 WL 2620664 (S.D. Cal. 2017), a wage and hour class action based in part on the UCL, the court awarded San Diego's Cohelen Khoury & Singer rates

of \$750 per hour for a 33-year attorney, \$550 for a 22-year attorney, and \$170-200 for paralegal work.

- (10) In *Makaef v. Trump University, LLC*, 2015 U.S. Dist. LEXIS 46749 (S.D. Cal. 2015), a fee award for a successful anti-SLAPP motion under California law and the subsequent appeals therefrom, the court found the following hourly rates reasonable for San Diego's Robins Geller Rudman & Dowd: \$825 for a 20-year attorney, \$660 for a 15-year attorney, and \$360 for an 8-year associate. For San Diego's Zeldes Haeggquist & Eck, it found \$600 and \$690 per hour reasonable for 20-year attorneys.
- (11) In *Hohnbaum v. Brinker Restaurants, Inc.*, San Diego County Superior Court No. GIC834348, Order and Judgment Granting Plaintiffs' Motion for Final Approval and Class Action Settlement and Motion for Award of Attorneys' Fees, Costs, Class Representative Service Payments, Claims Administration Exhibits, filed December 15, 2014, plaintiffs' requested hourly rates included rates of \$850 per hour for San Diego attorneys with as little as 24 years' experience and paralegal rates of up to \$195 per hour.
- (12) In *Beltran v. D III Transportation Corp.*, San Diego Superior Court No. 77-2012-00099241-CU-OE-CTL, Order Granting (1) Final Approval of Class Settlement and Entering Judgment; and (2) Award of Attorneys' Fees and Costs etc., filed June 20, 2014, the court found \$750 per hour reasonable for a 30-year San Diego attorney

- (13) In *Chaikin v. Lululemon USA Inc.*, 2014 WL 1245461 (S.D. Cal. 2014), a consumer class action, the court found the following hourly rates reasonable: 2000 Bar admittee - \$650; 2002 Bar admittee - \$500; 2007 Bar admittee - \$500; and 2011 Bar admittee - \$350.
- (14) In *Reed v. 1-800 Contacts, Inc.*, 2014 WL 29011 (S.D. Cal. 2014), a consumer class action alleging violations of Penal Code §630 *et seq.*, the court found that \$650 was a reasonable hourly rate for attorneys with 24 and 27 years of experience. It also found that a 2.9 lodestar multiplier was reasonable.
- (15) In *Johansson-Dohrmann v. CBR Sys.*, 2013 WL 3864341 (S.D. Cal. 2013), a representative action alleging invasion of privacy, the court found that lead class counsel's rate of \$695 per hour was reasonable for a 20-year attorney. It also found that a 2.07 multiplier was reasonable.
- (16) In *Hartless v. Clorox*, 273 F.R.D. 630, 644 (S.D. Cal. 2011), the Court found, *inter alia*, that class counsel's requested rates were consistent with the hourly rates found reasonable in numerous other class actions and with rates charged by other firms in the San Diego area, including rates of \$795 per hour for a 25-year attorney and \$675 per hour for an experienced partner. 273 F.R.D. at 644.
- (17) In *Shames v. Hertz Corp.*, 2012-2 Trade Case. (CCH) ¶78,120 (S.D. Cal. 2012), the Court, relying on *Hartless*, found that plaintiffs' San Diego Counsel there were comparable in skill and experience to the attorneys whose rates were found reasonable in *Hartless* at \*59-61.

(18) In *Briarwood Capital LLC v. HCC Investors LLC*, San Diego Superior Court No. GIC877446, on March 30, 2011, the court found that the 2009 hourly rates charged by the San Diego office of Bernstein Litowitz Berger & Grossman LLP -- \$725 for partners, \$490-550 for associates -- were reasonable. Similarly, in the same case, the court found that the 2009 rates charged by the Century City office of O'Melveny & Myers LLP, including rates of \$860-950 for a 36-37 year attorney and \$700-710 for 16-18 year attorneys also were reasonable for San Diego litigation.



# **EXHIBIT C**

**Pearl Declaration - Exhibit C**

**Rates Approved by Los Angeles Area Courts**

- In *Campbell v. Barnes*, Orange County Superior Court No. 30-2020-01141117-CU-WM-CXC, Order Granting Petitioners’ Motion for an Award of Attorneys’ Fees, filed January 20, 2022, a case challenging inadequacies in the County jail’s response to the Covid epidemic, the court found the following hourly rates reasonable:

<b>LAW SCHOOL GRADUATION YEAR</b>	<b>RATES</b>
<b>Munger, Tolles &amp; Olson LLP</b>	
2003	\$1,210
2013	\$850
2015	\$750
2016	\$700
2017	\$650
2018	\$550
<b>Non-Attorneys</b>	
Automated Litig. Analyst	
Litigation Analyst	\$250
Paralegals	\$250
<b>ACLU</b>	
1988, 2000, and 2003	\$1,210
2007	\$950
2009	\$900
2015	\$750
2016	\$700
2017	\$650
<b>Non-Attorney</b>	
Senior Investigator	\$250
<b>Schonbrun, Seplow, Harris, Hoffman, And Zeldes LLP</b>	
1976	\$1,000
2016	\$450
2016	\$600
2019	\$440
1975	\$1,025
1976	\$930
1979	\$995
2015	\$570

- In *Alvarez, et al. v. XPO Logistics Cartage, LLC et al.*, United States District Court, Central District of California, No. 2:18-cv-03736-RGK-E, Order re: Motions for Attorneys’ Fees, Costs, and Incentive Awards, filed February 8, 2022, a wage and hour class action, the court found the following 2021 hourly rates reasonable as part of its lodestar cross-check:

<b>YEARS OF EXPERIENCE</b>	<b>RATES</b>
<b>Sayas Law Firm</b>	
35	\$900
17 (Sr. Associate)	\$695
Paralegals	\$225-\$350
<b>Bush Gottlieb</b>	
1980	\$975
1989	\$900
1994	\$850
2012	\$575
2014	\$525
2016	\$475
2018	\$425
2020	\$375
Law Clerks	\$225
Paralegals	\$225

- In *The Kennedy Commission v. City of Huntington Beach*, Los Angeles County Superior Court No. 30-2015-00801675, Ruling on Submitted Matter filed July 8, 2021, a writ of mandate action challenging a land use amendment adopted by the City of Huntington Beach, the court found the following hourly rates reasonable (prior to application of a 1.4 lodestar multiplier):

<b>2020 Rates:</b>	<b>Years of</b>	<b>Rates</b>
	38	\$910
	40	\$900
	26	\$815
	23	\$750

	16	\$710
	14	\$680
	10	\$565
	7	\$500
	6	\$475
	5	\$450
	2	\$365

In an earlier ruling in the same case, the court found the following hourly rates reasonable for the Plaintiffs' private *pro bono* law firm (prior to application of a 1.4 multiplier) <sup>1</sup>:

<b>2016 Rates:</b>	<b>Bar Admission</b>	<b>Rates</b>
	2001	\$900
	2014	\$450
<b>2015 Rates:</b>	<b>Bar Admission</b>	<b>Rates</b>
	2001	\$875
	2014	\$400

- In *Rea v. Blue Shield*, Los Angeles County Superior Court No. BC468900, Fee Order filed November 13, 2020, a class action challenging Blue Shield's practices regarding mental health claims, in which the court found that \$900 per hour was reasonable for plaintiffs' three lead attorneys, with 35, 37, and 44 years of experience. It also applied a 1.5 multiplier.
- In *Caldera v. State of California*, San Bernardino County Superior Court No. DS1000177, Ruling on Plaintiff's Motion for Attorney's

---

<sup>1</sup> The initial *Kennedy Commission* fee award was remanded in conjunction with the reversal of the merits. 2017 Cal.App.Unpub.Lexis 7488 (2017).

Fees filed October 23, 2020, an individual Fair Employment and Housing Act case, the court found that \$825 per hour was a reasonable hourly rate in the Los Angeles legal marketplace for 26-year attorney's appellate work (before applying a 1.65 lodestar multiplier).

- In *Independent Living Center of S. Cal. v. Kent*, 2020 U.S. Dist. LEXIS 13019 (C.D. Cal. 2020), an action seeking to enjoin the challenging the State's right to alter reimbursement rates for Medi-Cal providers, the court found the following hourly rates reasonable (before applying a 1.5 lodestar multiplier):

<b>2019 Rates:</b>	<b>Law School Graduation Year</b>	<b>Rates</b>
	1975	\$1,025
	1976	\$965
	1979	\$1,025
	2007	\$815
	2011	\$800
	2015	\$640
	2016	\$600
	2019	\$440
<b>2018 Rates:</b>	<b>Law School Graduation Year</b>	<b>Rates</b>
	1975	\$1,025
	1976	\$930
	1979	\$995
	2015	\$570

- In *Lavinsky v. City of Los Angeles*, Los Angeles County Superior Court No. BC542245, Fee Award filed October 9, 2019, a class action challenge to a municipal tax, the court found the following hourly rates reasonable (before applying a 3.8 lodestar multiplier for contingent risk, etc.):

<b>YEARS OF EXPERIENCE</b>	<b>RATE</b>
25	\$850
29	\$800
17	\$695
9	\$475
5-7	\$450
1	\$295
Paralegal	\$125

- In *Hadsell v. City of Baldwin Park*, Los Angeles County Superior Court No. BC 548 602, Notice of Ruling on Plaintiff's Motion for Attorneys' Fees filed June 25, 2019, the court found the following hourly rates reasonable (before applying a 1.5 multiplier):

<b>CAL BAR ADMISSION DATE</b>	<b>RATE</b>
1987	\$1,100
1990	\$1,100
2008	\$800
2008	\$650
2012	\$550
2016	\$500

- In *Pinter-Brown v. UCLA*, Los Angeles Superior Court No. BC624838, Fee Order filed August 3, 2018, the court found the following 2018 hourly rates reasonable:

<b>CAL BAR ADMISSION DATE</b>	<b>RATE</b>
1990	\$1,100
2008	\$675
2012	\$500
2016	\$400
2015	\$350
2016	\$325
2017	\$300

- In *Wishtoyo Foundation et al v. United Water Conservation Dist.*, 2019 U.S.Dist.LEXIS 39927 (C.D. Cal. 2019), an environmental action under the federal Endangered Species Act, the court found the following hourly rates reasonable:

	<b>Bar Admittance or Law School Graduation</b>	<b>2018 Rates</b>
	1986	\$840
		\$780
		\$735
		\$720
		\$670
		\$600
		\$425
		\$680
	Paralegals	\$200-250

- In *Monster, LLC, et al., v. Beats Electronics, LLC et al.*, Los Angeles Superior Court Case No. BC595235 (2017), Order Granting Defendant and Cross-Complainant Beats Electronics, LLC's Motion for Attorneys' Fees and Costs, filed June 27, 2018, a commercial dispute, the court found the following hourly rates reasonable for Beats' attorneys' work on the successful jury trial that

determined the amount of reasonable attorneys' fees Monster would be required to pay as damages:

<b>Boies, Schiller &amp; Flexner</b>	<b>Bar Admittance or Law School Graduation</b>	<b>2016/2017 Rates</b>
<b>Partners:</b>	1986	\$960/\$1,049
	2006	\$920/\$972
	2000	\$880
	2001	\$880
	2002	\$830
	1999	\$830
	2004	\$740 (2015); \$760 (2016)
	2006	\$680
	2007	\$650/\$714
	2009	\$600/\$800
<b>Associates:</b>	2004	\$680
	2009	\$610
	2013	\$460/\$533
	2013	\$490
	2010	\$630
	2011	\$480/\$602
2014-2015	\$420	
<b>Non-Attorneys Timekeepers:</b>		\$190-284

<b>Gibson Dunn &amp; Crutcher</b>	<b>Bar Admittance or Law School Graduation</b>	<b>2017 Rates</b>
	1987	\$852 (through Aug. 2017) \$956 (from Sept. 2017)
	2008	\$592 (through Aug. 2017) \$696 (from Sept. 2017)
	2013	\$404 (through Aug. 2017) \$600 (from Sept. 2017)
	2015	\$520
	2016	\$472
	1997	\$960
	2006	\$736
	1987	\$944
<b>Non-Attorneys Timekeepers:</b>		\$216-\$335

- In *Nozzi v. Housing Authority*, 2018 U.S.Dist.LEXIS 26049 (C.D.



Cal. 2018), tenant class action, the court approved the following hourly rates as reasonable:

<b>Kaye McLane Bednarski &amp; Litt</b>	<b>Bar Admittance or Law School Graduation</b>	<b>2017 Rates</b>
	1969	\$1,150
	1992	\$750
	1993	\$765
	2008	\$730
	Sr. Paralegal	\$335
	Jr. Paralegal	\$150
	Law Clerk	\$200

- In *Monster, LLC, et al., v. Beats Electronics, LLC et al.*, Los Angeles Superior Court Case No. BC595235 (2017), the same commercial dispute listed above, the court found the following 2017 rates to be reasonable for Beats’s co-defendants who had obtained relief by summary judgment (see Order Granting Motions for Attorneys’ Fees, filed October 12, 2017, p. 2):

	<b>Bar Admittance or Law School Graduation</b>	<b>2016 Rates (unless otherwise noted)</b>
<b>Partners:</b>	1966	\$1,000 (2015); 1,245 (2016)
	1977	\$1,110 (2015)
	1981	\$910
	1985	\$995
	1992	\$875-885
	1995	\$910
	2002	\$750
<b>Of Counsel:</b>	1976	\$705
<b>Associates:</b>	2009	\$615 (2015); \$660 (2016)
<b>Non-Attorneys Timekeepers:</b>		\$380-90

- In *The Kennedy Commission v. City of Huntington Beach*, Los Angeles County Superior Court No. 30-2015-00801675, Order Granting Petitioners' Motion for Attorneys' Fees Pursuant to California Code of Civil Procedure § 1021.5, filed July 13, 2016, a writ of mandate action challenging a

land use amendment adopted by the City of Huntington Beach, the court found the following hourly rates reasonable for the Plaintiffs' private *pro bono* law firm (prior to application of a 1.4 multiplier)<sup>2</sup>:

<b>2016 Rates:</b>	<b>Bar Admission</b>	<b>Rates</b>
	2001	\$900
	2014	\$450
<b>2015 Rates:</b>	<b>Bar Admission</b>	<b>Rates</b>
	2001	\$875
	2014	\$400

- In *Willits et al v. City of Los Angeles*, No. CV 10-5782 CCBM (RZx) (C.D. Cal.), Order Granting Motion for Attorneys' Fees and Costs, filed August 25, 2016 (Dkt. No. 418), a class action lawsuit against the City of Los Angeles by persons with mobility disabilities under the Americans with Disabilities Act and the Rehabilitation Act of 1973 challenging the inaccessibility of the City's sidewalks, the court found the following 2015 hourly rates reasonable:

<b>Law School</b>	<b>Rates</b>
1976	\$1,115.60
1977 (associate)	700
1981	795
1987	680-775
1993	750
1999	644-695

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<sup>2</sup> The *Kennedy Commission* fee award was remanded in conjunction with the reversal of the merits. 2017 Cal.App.Unpub.Lexis 7488 (2017).

2001	625
2003	550
2006	525 —
2007	450
2008	473
2009	450
2010	350-400
2011	300-385
2012	300
2013	300-325
Paralegals and Law	110-250
Case Assistants	220-230
Docket Clerk	230

- In *State Compensation Insurance Fund v. Khan et al*, Case No. SACV 12-01072-CJC(JCGx) (C.D. Cal.), Order Granting in Part and Denying in Part the Zaks Defendants' Motion for Attorneys' Fees, filed July 6, 2016 (Dkt. No. 408), a multi-defendant RICO action, the court found the following hourly rates reasonable:

<b>Years of Experience</b>	<b>Rates</b>
22	\$890
20	\$840
5	\$670
4	\$560
Paralegals	\$325-340
Case Assistants	\$220-230

Docket Clerk	\$230
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- In *ScriptsAmerica, Inc. Ironridge Global LLC et al*, Case No. CV 14-03962-SJO (AGRx) (C.D. Cal.), Order Granting Defendant Ironridge Global LLC, John Kirkland, Brendan O'Neill's Motion for Attorney's Fees, filed January 12, 2016 (Dkt. No. 50), a contract dispute, the court found the following 2015 hourly rates reasonable:

<b>Years of Experience</b>	<b>Rates</b>
37	\$950
11	\$700
4	\$450
Paralegals	\$200-350

- In *Perfect 10, Inc. v. Giganews, Inc.*, 2015 U.S. Dist. LEXIS 54063 (C.D. Cal. 2015), filed March 24, 2015, *affirmed* 847 F.3d 657 (9<sup>th</sup> Cir. 2017), a copyright infringement action, the court found the following 2015 hourly rates reasonable:

<b>Years of Experience</b>	<b>2015 Rate</b>
29	\$825-930
18	\$750
17	\$705-750
12	\$610-640
11	\$660-690

10	670
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9	660-690
8	470-525
7	640
5	375-560
4	350-410
3	505
2	450
1	360-370
Paralegals	240-345
Discovery Support	245-290

- In *Rodriguez v. County of Los Angeles*, 96 F.Supp.3d 990 (C.D. Cal. 2014), Order Granting Plaintiffs' Motion for Attorneys' Fees, filed December 29, 2014, *affirmed* 891 F.3d 779 (9<sup>th</sup> Cir. May 30, 2018), a civil rights action on behalf of five county jail prisoners, the district court found the following hourly rates reasonable, plus a 2.0 lodestar multiplier for merits work performed on the plaintiffs' California cause of action; the entire award was affirmed on appeal:

<b>Years of Experience</b>	<b>Rate</b>
45	\$975
28	700-775
26	775
10	600
6	500
Senior Paralegal	295
Other Paralegals	175-235
Law Clerk	250

- In *Doe v. United Healthcare Insurance Co., et al.*, No. SACV13-0864 DOC(JPRx) (C.D. Cal.), Order Granting Attorney's Fees and Costs, filed October 15, 2014, a multi-Plaintiff consumer action, the court found the following hourly rates reasonable:

**Whatley Kallas**

Years of Experience	Rate
36	\$950
27	900
32	800
33	750
21	700
10	600
4	400
2	375
Paralegal	225

**Consumer Watchdog**

Years of Experience	Rate
35	\$925
19	650
4	425

- In *Pierce v. County of Orange*, 905 F. Supp. 2d 1017 (C.D. Cal. 2012), a civil rights class action brought by pre-trial detainees, the court approved a lodestar based on the following 2011 rates:

Years of Experience	Rate
42	\$850

32	825
23	625
18	625
Law Clerks	250
Paralegals	250

# **EXHIBIT D**



**Pearl Decl. - Exhibit D**  
**Rates Charged by Los Angeles Area Law Firms**

<b>Ahdoot &amp; Wolfson</b>		
<b>2019 Rates</b>	<b>Years of Experience</b>	<b>Rate</b>
	25	\$850
	29	\$800
	17	\$695
	9	\$475
	5-7	\$450
	1	\$295
	Paralegal	\$125

<b>Arnold &amp; Porter Kaye Scholar LLP</b>		
<b>2021 Rates</b>	<b>Level</b>	<b>Rates</b>
	Partners	\$750-\$1,150
	Senior Counsel	\$910-\$1,280
	Associates	\$545-\$910
	Paralegals	\$390-\$405
<b>2015 Rates:</b>	<b>Level</b>	<b>Rates</b>
	Partners	Up to \$1,085
	Associates	Up to \$710

<b>2014 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	49	\$995
	45	\$720
	39	\$655
<b>2013 Rates:</b>	<b>Level</b>	<b>Rates</b>
	Average Partner	\$815
	Highest Partner	\$950
	Lowest Partner	\$670
	Average Associate	\$500
	Highest Associate	\$610
	Lowest Associate	\$345

<b>The Arns Law Firm LLP</b>		
<b>2020 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	1975	\$950
	2010	\$575
	2013	\$525

<b>Bush Gottlieb</b>		
<b>2021 Rates:</b>	<b>Law School Graduation Date</b>	<b>Rates</b>
	1980	\$975

	1989	\$900
	1994	\$850
	2012	\$575
	2014	\$525
	2016	\$475
	2018	\$425
	2020	\$375
	Law Clerks	\$225
	Paralegals	\$225
<b>2019 Rates:</b>	<b>Class Year</b>	<b>Rates</b>
Lawyers:	1980	\$900
	1989	\$900
	1974	\$850
	2002	\$725
	2006	\$625
	2013	\$450
	2014	\$425
	2015	\$400
	2016	\$375
Law Clerks/Support Staff:		\$200

<b>Cooley LLP</b>		
<b>2021 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	27 (Partner)	\$1,415
	27 (Special Counsel)	\$1,210
<b>2020 Rates</b>	<b>Years of Experience</b>	<b>Rates</b>
	26 (Partner)	\$1,275
	26 (Special Counsel)	\$1,140
	12 (Associate)	\$1,120
<b>2017 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	22	\$905
<b>2014 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	31	\$1,095
	17	\$770
	9	\$685
<b>2013 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	30	\$1,035
	16	\$710
	8	\$645
<b>Crowell &amp; Moring</b>		
<b>2020 Rate:</b>	<b>Years of Experience</b>	<b>Rate</b>
	27	\$1,090

<b>Law Offices of James DeSimone</b>		
<b>2020 Rate:</b>	<b>Years of Experience</b>	<b>Rate</b>
	33	\$1,000
<b>Dordick Law</b>		
<b>2019 Rates:</b>	<b>Bar Admission Year</b>	<b>Rates</b>
	1987	\$1,100

<b>Duane Morris LLP</b>		
<b>2018 Rates:</b>	<b>Bar Admission Year</b>	<b>Rates</b>
	1973	\$1,005
	2008	\$605
	2011	\$450
	2017	\$355
	Sr. Paralegal	\$395
<b>2016 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	43	\$880
	41	\$880
	26	\$720
	25	\$695
<b>Galipo, Law Offices of</b>		
<b>2019 Rates:</b>	<b>Bar Admission Year</b>	<b>Rates</b>
	1989	\$1,000

<b>Gibson Dunn &amp; Crutcher LLP</b>		
<b>2021 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	33	\$1,355
	29	\$1,185
	5	\$905
	Other Staff	\$280
<b>2020 Rates:</b>	<b>Level</b>	<b>Rates</b>
	Senior Partners	\$1,395 – 1,525
	Senior Associate	\$960
	Mid-level Associate	\$740
	Paralegals	\$480
<b>2017 Rates:</b>	<b>Bar Admittance or Law School Graduation</b>	<b>Rates</b>
	1987	\$956
	1987	\$944
	1997	\$960
	2006	\$736
	2008	*\$592/\$696
	2013	\$\$600
	2015	\$520
	2016	\$472
Non-Attorney		\$216-\$335
<b>2016 Rates</b>	<b>Bar Admittance</b>	<b>Rates</b>
	1987	\$852
	2010	\$540
	2013	\$404
<b>2015 Rates</b>	<b>Years of Experience</b>	<b>Rates</b>
	37	\$1,125

	23	\$955
	3	\$575

<b>Hadsell, Stormer, Richardson &amp; Renick</b>		
<b>2019 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	46	\$1,150
	17	\$750
	10	\$575
	7	\$500
	6	\$475
<b>2015 Rates:</b>	<b>Years of Experience/Level</b>	<b>Rates</b>
	42	\$1,050
	20	\$750
	26	\$700
	16	\$650
	13	\$600
	5	\$425
	4	\$375
	Law Clerks	\$225
	Paralegals	\$175-250
<b>2012 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	38	\$825

	33	\$775
	22-23	\$625
	17	\$600
	12	\$525
	10	\$425
	4	\$275
	3	\$250

<b>Hagens Berman Sobol Shapiro LLP</b>		
<b>2017 Rates:</b>	<b>Levels</b>	<b>Rates</b>
	Senior Attorney	\$950
	Other Partners	\$578-\$760
	Associates	\$295-\$630

<b>Hooper, Lundy &amp; Bookman</b>		
<b>2019 Rates:</b>	<b>Law School Graduation Year</b>	<b>Rates</b>
	1975	\$1,025
	1976	\$965
	1979	\$1,025
	2007	\$815



	2011	\$800
	2015	\$640
	2016	\$600
	2019	\$440
<b>2018 Rates:</b>	<b>Law School Graduation Year</b>	<b>Rates</b>
	1975	\$1,025
	1976	\$930
	1979	\$995
	2015	\$570

<b>Jones Day</b>		
<b>2020 Rates:</b>	<b>Years of Experience e</b>	<b>Rates</b>
	1 <sup>st</sup>	\$413.25
<b>2018 Rates:</b>		
	30+	\$1,025
<b>2016 Rates:</b>	<b>Bar Admission Year</b>	<b>Rates</b>
	2001	\$900
	2004	\$850 (partner)
	2004	\$657.70 (assoc.)
	2014	\$450
<b>2015 Rates:</b>	<b>Bar Admission Year</b>	<b>Rates</b>

	2001	\$875
	2014	\$400

<b>Kaye, McLane, Bednarski &amp; Litt</b>		
<b>2019 Rates:</b>	<b>Graduation Year</b>	<b>Rates</b>
	1969	\$1,200
	1993	\$800
	2008	\$600-\$700
	2006	\$700
	Paralegals	\$125-360
	Law Clerks	\$225
<b>2017 Rates:</b>	<b>Graduation Year</b>	<b>Rates</b>
	1969	\$1,150
	1992	\$750
	1993	\$765
	2008	\$730
	Sr. Paralegal	\$335
	Jr. Paralegal	\$150
	Law Clerk	\$200
<b>2014 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	45	\$975
	28	\$700-775

	26	\$775
	10	\$600
	6	\$500
	Senior Paralegal	\$295
	Other Paralegal	\$175-235
	Law Clerk	\$250

<b>Kirkland &amp; Ellis</b>		
<b>2021 Rates:</b>	<b>Title</b>	<b>Rates</b>
	Partners	\$1,085-\$1,895
	Associates	\$625-\$1,195
	Paraprofessionals	\$255-\$475
<b>2020 Rates:</b>	<b>Title</b>	<b>Rates</b>
	Partners	\$1,075-\$1,845
	Associates	\$610-\$1,165
	Paraprofessionals	\$245-\$460
<b>2017 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	20	\$1,165
	9	\$995
	8	\$965
	5	\$845
	4	\$845

	3	\$810
	2	\$555

<b>Latham &amp; Watkins</b>		
<b>2016 Rates:</b>	Average Partner	\$1,185.83
	Highest Partner	\$1,595
	Lowest Partner	\$915
	Average Associate	\$754.62
	Highest Associate	\$1,205
	Lowest Associate	\$395

<b>Michelman &amp; Robinson LLP</b>		
<b>2018 Rates:</b>	<b>Bar Admission Date</b>	<b>Rates</b>
	Partners	\$995
	Senior Associate	\$580
	Associate	\$480

<b>Milbank, Tweed, Handley &amp; McCloy LLP</b>		
<b>2016 Rates:</b>	<b>Bar Admission Date</b>	<b>Rates</b>
	1983	\$1,025
	1984	\$1,350
	1992	\$1,350
	2002 (Associate)	\$915

<b>Morrison Foerster LLP</b>		
<b>2021 Rates:</b>	<b>Law School Graduation Year</b>	<b>Rate</b>
	2002	\$1,200
	2011	\$1,075
	2014	\$925
	2018	\$745
	Paralegal	\$295
<b>2020 Rates:</b>	<b>Law School Graduation Year</b>	<b>Rate</b>
	2002	\$1,125
	2011	\$975
	2014	\$810
	2018	\$640
	Paralegal	\$275
<b>2018 Rates:</b>	<b>Years of Practice</b>	<b>Rates</b>
	40	\$1,050
	22	\$950
	11	\$875
	3	\$550
	Paralegal	\$325
<b>2017 Rates:</b>	<b>Bar Admission Date</b>	<b>Rates</b>

	2007	\$608
	2012	\$575
<b>2016 Rates:</b>	<b>Bar Admission Date</b>	<b>Rates</b>
	1975	\$1,025
	1999	\$975
	1993	\$975
<b>2013 Rates:</b>	<b>Level</b>	<b>Rates</b>
	Average Partner	\$865
	Highest Partner	\$1,195
	Lowest Partner	\$595
	Average Associate	\$525
	Highest Associate	\$725
	Lowest Associate	\$230

<b>Munger, Tolles &amp; Olson</b>		
<b>2021 Rates</b>	<b>Law School Grad. Year</b>	<b>Rate</b>
	1991	\$1,725
	2003	\$1,210
	2009	\$995
	2013	\$1,040
	2015	\$995
	2016	\$825

	2017	\$880
	2018	\$805
	Paralegal	\$420-475
	Automated Litig. Analyst	\$540-570
<b>2020 Rates:</b>		
	1991	\$1,610
	2001	\$950
	2009	\$920
	2016	\$725
	Paralegal (42 years' experience)	\$345
<b>2016 Rates (unless otherwise noted):</b>	<b>Bar Admittance or Law School Graduation</b>	<b>Rates</b>
Partners:	1966	\$1,000 (2015); 1,245 (2016)
	1977	\$1,110 (2015)
	1981	\$910
	1985	\$995
	1992	\$875-885
	1995	\$910
	2002	\$750
Of Counsel:	1976	\$705



Associates:	2009	\$615 (2015); \$660 (2016)
Non-Attorneys Timekeepers:		\$380-90

<b>O'Melveny &amp; Myers</b>		
<b>2019 Rates:</b>	<b>Level</b>	<b>Rate</b>
	Senior Partner	\$1,250
	Partner (1998 Bar Admittee)	\$1,050
	3rd Year Associate	\$640
	2nd Year Associate	\$565
<b>2016 Rates:</b>	<b>Bar Admission Date</b>	<b>Rates</b>
	1985	\$1,175
	2004	\$895
	2005	\$780
	2007	\$775
	2010	\$725
	2011	\$700
	2012	\$655
	2013	\$585
	2014	\$515
2015	\$435	
<b>2013 Rates:</b>	<b>Level</b>	<b>Rates</b>

	Average Partner	\$715
	Highest Partner	\$950
	Lowest Partner	\$615

<b>Orrick Herrington &amp; Sutcliffe</b>		
<b>2014 Rates:</b>	<b>Level</b>	<b>Rates</b>
	Average Partner	\$845
	Highest Partner	\$1,095
	Lowest Partner	\$715
	Average Associate	\$560
	Highest Associate	\$710
	Lowest Associate	\$375

<b>Paul Hastings LLP</b>		
<b>2020 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	25	\$1,425
	7	\$885
	5	\$775
	3	\$645
	Research assistant	\$335
<b>2016 Rates:</b>	<b>Bar Admission Date</b>	<b>Rates</b>
	1973	\$1,175
	1997	\$895
	1990	\$750
<b>2014 Rates:</b>	<b>Level</b>	<b>Rates</b>
	Average Partner	\$815
	Highest Partner	\$900
	Lowest Partner	\$750
	Average Associate	\$540
	Highest Associate	\$755
	Lowest Associate	\$350

<b>Pearson Simon &amp; Warshaw LLP</b>		
<b>2019 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	23-38	\$1,150

	10	\$900
	Of Counsel	\$825
	6	\$500
	4	\$450
	Paralegals	\$225
<b>2018 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	22-37	\$1,050
	9	\$650
	Of Counsel	\$725
	5	\$450
	3	\$400
<b>2017 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	35-36	\$1,035
	8	\$520
	4	\$400
	2	\$350

<b>Proskauer Rose LLP</b>		
<b>2016 Rates:</b>	<b>Bar Admission Date</b>	<b>Rates</b>
	1974	\$1,475
	1983	\$1,025
	1979	\$950

	2007	\$850
	2013	\$495
	2015	\$440-445

<b>Quinn Emanuel Urquhart &amp; Sullivan</b>		
<b>2018 Rates:</b>	<b>Law School Graduation Yr.</b>	<b>Rates</b>
	1980	\$1,135
	2016	\$630
<b>2013 Rates:</b>	<b>Level</b>	<b>Rates</b>
	Average Partner	\$915
	Highest Partner	\$1,075
	Lowest Partner	\$810
	Average Associate	\$410
	Highest Associate	\$675
	Lowest Associate	\$320

<b>Reed Smith LLP</b>		
<b>2020 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	22	\$930
	16	\$780
	14	\$840
	Paralegals	\$250

<b>2014 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	37	\$830
	18	\$695
	15	\$585
	6	\$485
	5	\$435
<b>2013 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	Partners	
	36	\$830
	30	\$805
	17	\$610-615
	14	\$570
	Associates	
	8	\$450-535
	6	\$495

<b>Ropes &amp; Gray</b>		
<b>2016 Rates:</b>	<b>Level</b>	<b>Rates</b>
	Partner	\$880-1,450
	Counsel	\$605-1,425
	Associate	\$460-1050
	Paralegals	\$160-415

<b>Schonbrun, DeSimone, Seplow, Harris &amp; Hoffman</b>		
<b>2021 Rates:</b>	<b>Law School Grad. Yr.</b>	<b>Rates</b>
	1975	\$1,025
	1976	\$1,000
	1976	\$930
	2016	\$600
	2016	\$450
	2019	\$440
<b>2019 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	43	\$1,050
<b>2014 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	29	\$750
	24	\$700
<b>2012 Rates:</b>	<b>Years of Experience</b>	<b>Rates</b>
	27	\$695
	22	\$630

<b>Shegarian Law</b>		
<b>2018 Rates:</b>	<b>Years of Experience</b>	<b>Rate</b>
	29	\$1,100
	10	\$675
	6	\$500

<b>Skadden, Arps, Slate, Meagher &amp; Flom</b>		
<b>2013 Rates:</b>	<b>Level</b>	<b>Rates</b>
	Average Partner	\$1,035
	Highest Partner	\$1,150
	Lowest Partner	\$845
	Average Associate	\$620
	Highest Associate	\$845
	Lowest Associate	\$340

<b>Law Office of Carol Sobel</b>		
<b>2020 Rate:</b>	<b>Years of Experience</b>	<b>Rate</b>
	42	\$1,050
<b>2019 Rate:</b>	<b>Years of Experience</b>	<b>Rate</b>
	41	\$1,000
<b>2015 Rates:</b>	<b>Years of Experience</b>	<b>Rate</b>
	37	\$875

<b>Wilson Sonsini Goodrich &amp; Rosati PC</b>		
<b>2017 Rates:</b>	<b>Bar Admission Date</b>	<b>Rates</b>
	2000	\$950



**Winston & Strawn**

<b>2019 Rates:</b>	<b>Level</b>	<b>Rates</b>
	Partners:	
		\$1,515
		\$1,245
		\$1,105
		\$1,025
	Associates:	
		\$825
		\$660
		\$615

<b>2018 Rates:</b>	<b>Level</b>	<b>Rates</b>
	Partners:	
		\$1,445
		\$1,185
		\$1,050
		\$820
	Associates:	
		\$765
		\$585
	Paralegals:	\$170-340
	Litigation Support Mgr.	\$275

	Review Attorneys	\$85
<b>2017 Rates:</b>	<b>Level</b>	<b>Rates</b>
	Partners:	
		\$1,365
		\$1,120
		\$990
	Associates:	
		\$760
		\$690
		\$645
		\$520
		\$495
		Paralegals: \$165-295
<b>2016 Rates:</b>	<b>Level</b>	<b>Rates</b>
	Partners:	
		\$1,290
		\$1,095
		\$965
		\$960
		\$885
	Associates:	
		\$715

		\$615
		\$575
		\$470
	Paralegals:	\$170-280
	Litigation Support Mgr.:	\$250

# **EXHIBIT E**



*2020 Real  
Rate Report*<sup>®</sup>  
Mid-Year Update

The Industry's  
Leading Analysis  
of Law Firm Rates,  
Trends, and Practices

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## A Letter to Our Readers

Welcome to the Wolters Kluwer's ELM Solutions Real Rate Report®, the industry's leading data-driven benchmark report for lawyer rates.

Welcome to the Wolters Kluwer's ELM Solutions 2020 Mid-Year Real Rate Report®, the industry's leading data-driven benchmark report for lawyer rates. Our Real Rate Report has been a useful data analytics resource to the legal industry since its inception in 2010 and continues to evolve even in the current environment.

The Real Rate Report is powered by Wolters Kluwer's ELM Solutions LegalVIEW® data warehouse, the world's largest source of legal performance benchmark data, which has grown to include over \$140 billion in anonymized legal data.

As with past Real Rate Reports, all of the data analyzed are from corporations' and law firms' e-billing and time management solutions. We have included lawyer and paralegal rate data filtered by specific practice and sub-practice areas, metropolitan areas, and types of matters to give legal departments and law firms greater ability to pinpoint areas of opportunity.

So far, 2020 has been an unprecedented year with the global pandemic causing disruption to health, economies, and society. Many industry sectors have been impacted by COVID-19, and the legal industry is no exception. Our business intelligence experts have observed downward but uneven trends in law firm billing activity and intend to continue to track the legal industry response. We strive to make the Real Rate Report a valuable and actionable reference tool for legal departments and law firms.

In our current environment, the need for a reliable and comparative data source for rates has never been more important. As always, we welcome your comments and suggestions on what information would make this publication more valuable to you. We thank you for making Wolters Kluwer's ELM Solutions your trusted partner for legal industry domain expertise, data, and analytics and look forward to continuing to provide market-leading, expert solutions that deliver the best business outcomes for collaboration among legal departments and law firms.

Sincerely,



**Jonah Paransky**

Executive Vice President and General Manager  
Wolters Kluwer's ELM Solutions



# Report Use Considerations

## 2020 Mid-Year Real Rate Report

- Examines law firm rates over time
- Itemizes rates by location, experience, firm size, areas of expertise, industry, and timekeeper role (i.e., partner, associate, and paralegal)
- Identifies variables that drive rates up or down

All the analyses included in the report derive from the actual rates charged by law firm professionals as recorded on invoices submitted and approved for payment.

Examining real, approved rate information, along with the ranges of those rates and their changes over time, highlights the role these variables play in driving aggregate legal cost and income. The analyses can energize questions for both corporate clients and law firm principals.

Clients might ask whether they are paying the right amount for different types of legal services, while law firm principals might ask whether they are charging the right amount for legal services and whether to modify their pricing approach.

### Some key factors<sup>1</sup> that drive rates<sup>2</sup>:

- **Geographic location** - Lawyers in urban and major metropolitan areas tend to charge more when compared with lawyers in rural areas or small towns.
- **Degree of difficulty** - The cost of representation will be higher if the case is particularly complex or time-consuming; for example, if there are a large number of documents to review, many witnesses to depose, and numerous procedural steps, the case is likely to cost more (regardless of other factors like the lawyer's level of experience).
- **Experience and reputation** - A more experienced, higher-profile lawyer is often going to charge more, but absorbing this higher cost at the outset may make more sense than hiring a less expensive lawyer who will likely take time and billable hours to come up to speed on unfamiliar legal and procedural issues.
- **Overhead** - The costs associated with the firm's support network (paralegals, clerks, and assistants), document preparation, consultants, research, and other expenses.

Additional analysis was performed to examine the impact of rates on law firm invoices relative to an e-billing providers' business model. It should be noted that there are several industry-standard business models that e-billing providers use to charge law firms and other legal service providers to submit invoices and perform other transactions through their systems. The three main model types are:

- Client pay, where the corporate client pays a subscription for the matter and spend solution.
- Law firm pay, where the law firm pays a subscription or usage fee based on the invoices submitted.
- Hybrid, which is a combination of a client pay and law firm pay.

<sup>1</sup> Source: 2018 RRR. Factor order validated in multiple analyses since 2010

<sup>2</sup> David Goguen, J.D., University of San Francisco School of Law (2017) Guide to Legal Services Billing Retrieved from <https://www.lawyers.com/legal-info/research/guide-to-legal-services-billing-rates.html>

## Report Use Considerations

The data shows that the law firm pay model has become normative in the industry – 85%+ of Wolters Kluwer’s ELM Solutions clients’ law firms participate in a law firm pay or hybrid model. In addition, 99% of the Am Law 200 law firms participate in at least one law firm pay model paying 1% or more on the invoices submitted, and 97% of the Am Law 200 pay 2%.

The analysis performed then examined law firm rates from firms who participated in one of those law firm pay/hybrid models versus those who are in a client pay model. The analysis showed no statistical difference in rates, suggesting that the business model that the firm participates in does not impact the rates the firm charges to their corporate client.

### Effects of COVID-19

Additional analyses were performed to assess any trends and potential effects of COVID-19 on rates and other measures. Across all industries, we see a decline of 7% in the number of new matters being opened. Legal spend is down 5%. Activity varies by industry with spend decreasing only 1% in the technology sector but up to 30% for consumer services.

In some instances, we see more than expected increases in attorney rates. Among the possible reasons for this are:

- Potential opportunistic billing created by the pandemic. Dislocations in the supply chain in some segments of the market which allow firms to charge more for services.
- Law firms may have reduced staff to cut expenses. The data in the mid-year report shows a slight increase in the number of billing partners and a decrease in billing paralegals. Be on guard for opportunistic pricing and weigh your outside counsel relationships accordingly.

Overall, the data in the 2020 Mid-Year Real Rate Report provides corporate counsel with an understanding of the rates they can expect to pay for a given matter type, division, industry, or practice area and offers in-depth analyses on key drivers of rates to help make informed selection decisions. For law firms, it provides a relative benchmark to ensure that pricing for legal services remains competitive.

Wolters Kluwer’s ELM Solutions research shows: you can evaluate these rates with confidence they are not affected by e-billing pricing models; you should stay sensitized to potential Covid influences on rates and activity in some markets and guard against overpaying.

# Section I: High-Level Data Cuts

## Cities

By Matter Type

Q2 2020 -- Real Rates for Partners and Associates

Trend Analysis (Mean)

City	Matter Type	Role	n	First Quartile	Median	Third Quartile	Q2 2020	Q2 2019	Q2 2018
New York	Litigation	Partner	49	\$317	\$400	\$483	\$413	\$419	\$386
		Associate	35	\$190	\$251	\$321	\$264	\$268	\$264
		Senior Counsel	57	\$383	\$441	\$525	\$446	\$426	\$413
		Of Counsel	31	\$236	\$262	\$301	\$276	\$263	\$269
New York	Corporate	Partner	57	\$319	\$353	\$385	\$368	\$344	\$338
		Associate	57	\$135	\$225	\$251	\$202	\$236	\$182
		Senior Counsel	28	\$297	\$353	\$483	\$375	\$347	\$350
New York	Real Estate	Partner	11	\$281	\$300	\$378	\$350	\$292	\$312
		Associate	12	\$145	\$208	\$404	\$265	\$225	\$248
		Senior Counsel	14	\$304	\$345	\$365	\$368	\$349	\$359
New York	Banking	Partner	82	\$373	\$443	\$514	\$456	\$454	\$409
		Associate	80	\$275	\$308	\$340	\$306	\$294	\$270
		Senior Counsel	109	\$385	\$430	\$532	\$458	\$445	\$443
		Of Counsel	100	\$225	\$277	\$320	\$283	\$279	\$259
New York	Insurance	Partner	15	\$150	\$150	\$150	\$170	\$170	\$206
		Associate	21	\$250	\$360	\$563	\$429	\$391	\$356
		Senior Counsel	19	\$247	\$280	\$313	\$284	\$273	\$261
New York	Tax	Partner	27	\$300	\$400	\$495	\$432	\$490	\$482
		Associate	22	\$236	\$292	\$337	\$281	\$289	\$289
New York	Securities	Partner	11	\$235	\$250	\$250	\$272	\$286	\$268
		Associate	14	\$215	\$250	\$362	\$297	\$251	\$269
New York	Technology	Partner	387	\$425	\$660	\$940	\$694	\$673	\$650
		Associate	478	\$350	\$535	\$740	\$548	\$524	\$501
		Senior Counsel	583	\$564	\$795	\$1,085	\$837	\$803	\$771
		Of Counsel	834	\$432	\$605	\$794	\$629	\$608	\$595
New York	Energy	Partner	17	\$301	\$349	\$391	\$351	\$348	\$340
		Associate	21	\$180	\$210	\$260	\$218	\$218	\$212
		Senior Counsel	14	\$223	\$245	\$250	\$237	\$204	\$221
New York	Healthcare	Partner	18	\$361	\$415	\$478	\$423	\$422	\$429
		Associate	16	\$290	\$365	\$425	\$360	\$344	\$351
New York	Construction	Partner	20	\$285	\$321	\$357	\$327	\$337	\$349
		Associate	12	\$195	\$213	\$225	\$215	\$235	\$229

# Section I: High-Level Data Cuts

## Cities

By Years of Experience

Q2 2020 -- Real Rates for Partners

Trend Analysis (Mean)

City	Years of Experience	n	First Quartile	Median	Third Quartile	Q2 2020	Q2 2019	Q2 2018
		31	\$300	\$329	\$400	\$346	\$337	\$343
		70	\$266	\$350	\$448	\$354	\$360	\$356
		14	\$390	\$455	\$495	\$460	\$438	\$414
		17	\$338	\$425	\$487	\$421	\$358	\$383
		39	\$424	\$502	\$730	\$561	\$525	\$482
		19	\$275	\$300	\$425	\$363	\$359	\$345
		73	\$502	\$675	\$828	\$691	\$673	\$652
		78	\$533	\$795	\$973	\$787	\$664	\$667
		32	\$297	\$384	\$420	\$367	\$366	\$338
		56	\$378	\$465	\$551	\$459	\$450	\$423
		22	\$296	\$342	\$357	\$330	\$322	\$303
		18	\$295	\$370	\$440	\$384	\$348	\$369
		11	\$300	\$325	\$460	\$384	\$333	\$360
		51	\$328	\$396	\$440	\$386	\$369	\$353
		68	\$411	\$500	\$600	\$511	\$500	\$449
		18	\$250	\$475	\$675	\$485	\$491	\$452
		12	\$230	\$250	\$275	\$273	\$266	\$278
		199	\$450	\$655	\$912	\$683	\$685	\$641
		365	\$528	\$731	\$1,047	\$797	\$743	\$723
		12	\$338	\$380	\$410	\$371	\$394	\$360
		11	\$286	\$290	\$365	\$317	\$303	\$311
		17	\$325	\$400	\$425	\$373	\$368	\$371
		44	\$375	\$508	\$615	\$479	\$471	\$390
		107	\$350	\$546	\$726	\$541	\$530	\$482
		20	\$260	\$343	\$439	\$410	\$372	\$366
		36	\$378	\$458	\$611	\$516	\$407	\$402
		60	\$416	\$520	\$599	\$506	\$465	\$430
		120	\$399	\$605	\$743	\$590	\$582	\$493
		22	\$360	\$409	\$457	\$398	\$361	\$353
		43	\$418	\$457	\$514	\$456	\$433	\$438
		34	\$301	\$348	\$442	\$367	\$341	\$327
		48	\$290	\$360	\$463	\$376	\$362	\$336
		514	\$630	\$1,010	\$1,273	\$965	\$939	\$889
		1126	\$598	\$949	\$1,330	\$977	\$964	\$929

# Section I: High-Level Data Cuts

## Cities

By Years of Experience

Q2 2020 -- Real Rates for Associates

Trend Analysis (Mean)

City	Years of Experience	n	First Quartile	Median	Third Quartile	Q2 2020	Q2 2019	Q2 2018
ALABAMA	0-5	25	\$272	\$300	\$325	\$295	\$290	\$247
	6-10	29	\$269	\$295	\$311	\$295	\$277	\$271
	11-15	17	\$250	\$288	\$330	\$285	\$282	\$286
ALASKA	0-5	47	\$397	\$476	\$581	\$483	\$479	\$455
	6-10	138	\$395	\$565	\$699	\$557	\$510	\$462
	11-15	207	\$350	\$536	\$811	\$585	\$573	\$549
ARIZONA	0-5	20	\$265	\$325	\$350	\$336	\$339	\$279
	6-10	39	\$240	\$381	\$491	\$383	\$373	\$306
	11-15	16	\$256	\$294	\$315	\$299	\$284	\$285
ARIZONA	0-5	16	\$295	\$364	\$403	\$354	\$361	\$435
	6-10	26	\$312	\$355	\$418	\$368	\$363	\$321
	11-15	29	\$295	\$378	\$508	\$379	\$384	\$331
ARIZONA	0-5	18	\$225	\$266	\$297	\$268	\$259	\$257
	6-10	20	\$226	\$253	\$305	\$261	\$244	\$236
	11-15	22	\$238	\$325	\$369	\$304	\$276	\$234
ARIZONA	0-5	153	\$385	\$513	\$647	\$536	\$501	\$517
	6-10	286	\$404	\$589	\$826	\$613	\$586	\$549
	11-15	564	\$410	\$693	\$945	\$697	\$702	\$678
ARIZONA	0-5	16	\$281	\$305	\$348	\$326	\$304	\$276
	6-10	60	\$300	\$325	\$395	\$342	\$329	\$339
	11-15	158	\$305	\$355	\$430	\$378	\$363	\$338
ARIZONA	0-5	170	\$310	\$450	\$514	\$449	\$429	\$397
	6-10	11	\$213	\$275	\$315	\$275	\$236	\$278
	11-15	21	\$251	\$335	\$393	\$320	\$297	
ARIZONA	0-5	36	\$275	\$355	\$425	\$345	\$327	\$317
	6-10	40	\$265	\$356	\$474	\$372	\$349	\$335
	11-15	14	\$251	\$285	\$309	\$277	\$264	\$299
ARIZONA	0-5	45	\$293	\$336	\$388	\$336	\$310	\$321
	6-10	51	\$332	\$415	\$458	\$389	\$359	\$366
	11-15	15	\$350	\$417	\$450	\$393	\$381	\$330
ARIZONA	0-5	15	\$200	\$224	\$245	\$222	\$203	\$185
	6-10	11	\$231	\$290	\$378	\$314	\$324	\$313
	11-15	33	\$288	\$365	\$545	\$412	\$419	\$453

# **EXHIBIT F**

# PEER MONITOR

INSIGHT. ADVANTAGE. COMPETITIVE INTELLIGENCE.

## PUBLIC RATES

In a time when the legal market continues to face fluctuating demand and challenges containing expenses, it's critical that your firm stays on top of the latest billing trends and maintains fair, competitive rates while maximizing revenue.

### Take Action to Inform Your Firm

**Public Rates** is a dynamic, web-based billing rate service that gives you anytime access to accurate, court reported, hourly rate data, with details drilling down to the named timekeeper.

It empowers you to quickly and easily slice and analyze rates across user-selected combinations of various attributes, sort targeted record results, view quartile and median rates for searched data, and more.

### Then Take Your Rate Analysis One Step Further

As efficient as it is intuitive, **Public Rates** offers deeper billing evaluation with query comparison that allows for firm-to-firm, case-to-case, or even person-to-person rate examination.

What's more, you can quickly and easily find critical insights with features such as click sorting, query naming, and auto-saved search history.

### Use Public Rates to:

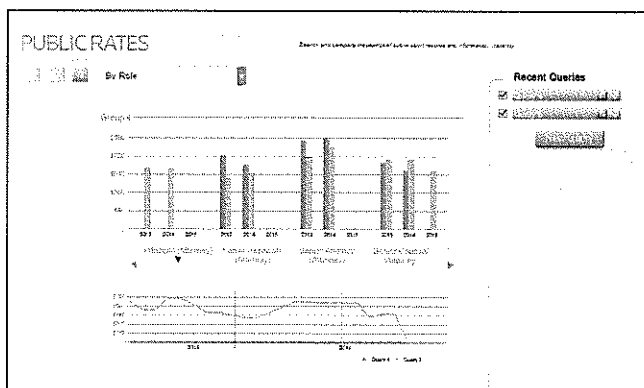
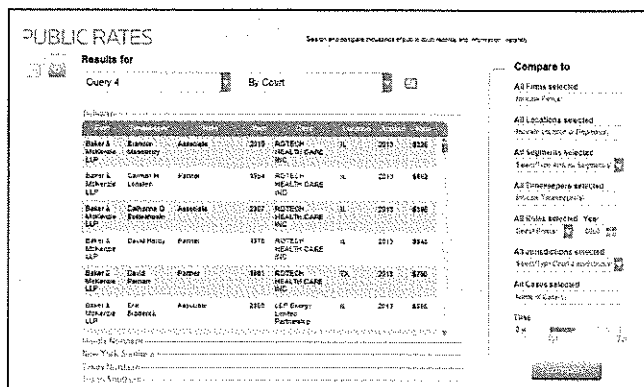
- Determine optimal rates and profit opportunities
- Justify rates submitted to courts on fee applications
- Track lawyer performance
- Get pricing transparency in the marketplace

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CONTACT US TODAY:

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### Get Critical, Actionable Data

Search reported hourly rates by:

- Timekeeper
- Year of admission
- Firm
- Segment
- Location
- Jurisdiction
- Role
- Year of filing
- Case
- Historical records as far back as 7 years

<b>California Rates (January–May 2018)</b>
--

Title	Professional	Firm	Graduated	Admitted	State	Rate	Hours	Total
Partner	David M. Nemecek	Kirkland & Ellis LLP	2003	2003	CA	\$1,395	2.4	\$3,348.00
Partner	Leslie A. Plaskon	Paul Hastings LLP	1988	1988	CA	\$1,275	260	\$331,500.00
Partner	Thomas B. Walper	Munger Tolles & Olson LLC	1980	1980	CA	\$1,225	166.7	\$204,207.50
Partner	Jeffrey B Greenberg	Latham & Watkins LLP	1996	1996	CA	\$1,175	3.3	\$3,877.50
Partner	Mark E. McKane	Kirkland & Ellis LLP	1997	1997	CA	\$1,175	79.1	\$92,942.50
Partner	Paul D Tanaka	Kirkland & Ellis LLP	2003	2003	CA	\$1,145	1.1	\$1,259.50
Partner	Annie Kim	Proskauer Rose LLP	2004	2004	CA	\$1,125	22.1	\$24,862.50
Partner	Jonathan Benloulou	Proskauer Rose LLP	2006	2006	CA	\$1,125	2.9	\$3,262.50
Partner	Robert J Frances	Latham & Watkins LLP	2001	2001	CA	\$1,125	1.7	\$1,912.50
Partner	Dean A. Ziehl	Pachulski Stang Ziehl Young Jones &	1978	1978	CA	\$1,050	73.3	\$76,965.00
Partner	James I. Stang	Pachulski Stang Ziehl Young Jones &	1980	1980	CA	\$1,050	111.4	\$116,970.00
Partner	Alan J. Kornfeld	Pachulski Stang Ziehl Young Jones &	1987	1987	CA	\$1,025	78.9	\$80,872.50
Partner	Stephen D. Rose	Munger Tolles & Olson LLC	1991	1991	CA	\$1,025	63.9	\$65,497.50
Partner	Unger Sean	Paul Hastings LLP	2004	2004	CA	\$1,025	103.2	\$105,780.00
Partner	Stefanie I Gitler	Kirkland & Ellis LLP	2009	2009	CA	\$995	225.1	\$223,974.50
Partner	Tate Eric A.	Morrison & Foerster LLP	1995	1995	CA	\$990	0.3	\$297.00
Partner	Michael Esser	Kirkland & Ellis LLP	2009	2009	CA	\$965	542.6	\$523,609.00
Associate	Campbell Gavin	Kirkland & Ellis LLP	2012	2012	CA	\$950	227.7	\$216,315.00
Partner	David M. Bertenthal	Pachulski Stang Ziehl Young Jones &	1993	1989	CA	\$950	107.7	\$102,315.00
Associate	Olsen Katrina	Kirkland & Ellis LLP	2014	2014	CA	\$950	4.6	\$4,370.00
Partner	Janie F. Schulman	Morrison & Foerster LLP	1987	1987	CA	\$925	0.2	\$185.00
Associate	Jacob Johnston	Kirkland & Ellis LLP	2013	2013	CA	\$905	5	\$4,525.00
Partner	Kenneth H. Brown	Pachulski Stang Ziehl Young Jones &	1981	1977	CA	\$895	5.9	\$5,280.50
Partner	Kevin S. Allred	Munger Tolles & Olson LLC	1986	1986	CA	\$875	209.7	\$183,487.50
Partner	Knudsen Erik G.	Morrison & Foerster LLP	2007	2007	CA	\$875	269.4	\$235,725.00
Counsel	Adam Lin	Orrick, Herrington & Sutcliffe LLP	2004	2004	CA	\$850	3	\$2,550.00
Associate	Austin Klar	Kirkland & Ellis LLP	2013	2013	CA	\$845	173	\$146,185.00
Associate	Michael Saretsky	Kirkland & Ellis LLP	2015	2015	CA	\$835	237.2	\$198,062.00
Of Counsel	Harry D. Hochman	Pachulski Stang Ziehl Young Jones &	1987	1987	CA	\$825	69.1	\$57,007.50
Of Counsel	Lloyd W. Aubry	Morrison & Foerster LLP	1975	1975	CA	\$825	1.6	\$1,320.00
Partner	Seth Goldman	Munger Tolles & Olson LLC	2002	2002	CA	\$825	260.5	\$214,912.50
Of Counsel	Victoria A. Newmark	Pachulski Stang Ziehl Young Jones &	1996	1996	CA	\$825	1.6	\$1,320.00
Of Counsel	Yana S. Johnson	Morrison & Foerster LLP	1999	1999	CA	\$825	3.2	\$2,640.00
Associate	Austin Klar	Kirkland & Ellis LLP	2013	2013	CA	\$810	23.3	\$18,873.00
Associate	Cynthia Castillo	Kirkland & Ellis LLP	2015	2015	CA	\$810	178.8	\$144,828.00
Associate	Kevin Chang	Kirkland & Ellis LLP	2014	2014	CA	\$810	8.4	\$6,804.00
Of Counsel	Nardali Ali U.	Morrison & Foerster LLP	2008	2008	CA	\$795	4.4	\$3,498.00
Associate	Ramin Montazeri	Latham & Watkins LLP	2016	2016	CA	\$795	10.9	\$8,665.50
Associate	Lee Muhyung	Proskauer Rose LLP	2015	2015	CA	\$780	37.5	\$29,250.00
Of Counsel	Jeffrey L. Kandel	Pachulski Stang Ziehl Young Jones &	1984	1984	CA	\$750	10.7	\$8,025.00
Of Counsel	Bradley R. Schneider	Munger Tolles & Olson LLC	2004	2004	CA	\$735	88.9	\$65,341.50
Associate	Curtis Kelly M	Proskauer Rose LLP	2016	2016	CA	\$730	39.6	\$28,908.00
Associate	Cynthia Castillo	Kirkland & Ellis LLP	2015	2015	CA	\$725	30.3	\$21,967.50
Associate	Joanna A Gorska	Latham & Watkins LLP	2014	2014	CA	\$725	2.4	\$1,740.00
Counsel	Elissa A. Wagner	Pachulski Stang Ziehl Young Jones &	2001	2001	CA	\$695	5	\$3,475.00
Associate	Benjamin Butterfield	Morrison & Foerster LLP	2014	2014	CA	\$660	883.2	\$582,912.00
Partner	David M. Eaton	Kilpatrick Townsend & Stockton LLP	1996	1996	CA	\$660	5.3	\$3,498.00
Associate	Ankur Sharma	Kirkland & Ellis LLP	2016	2016	CA	\$645	16.4	\$10,578.00
Associate	Maxwell Coll	Kirkland & Ellis LLP	2016	2016	CA	\$630	15	\$9,450.00
Associate	Brashears Travis C	Proskauer Rose LLP	2016	2016	CA	\$595	8.3	\$4,938.50
Associate	Sadeghi Sam	Paul Hastings LLP	2016	2016	CA	\$585	22.9	\$13,396.50
Associate	Jenny Pierce	Kirkland & Ellis LLP	2016	2016	CA	\$555	1.2	\$666.00
Associate	Meg A Webb	Kirkland & Ellis LLP	2017	2017	CA	\$555	1.4	\$777.00



Associate	Peter E. Boos	Munger Tolles & Olson LLC	2014	2014	CA	\$550	88.05	\$48,427.50
Associate	Floyd Amani Solange	Morrison & Foerster LLP	2014	2014	CA	\$540	3.9	\$2,106.00
Associate	Glock Jana	Morrison & Foerster LLP	2015	2015	CA	\$540	22.2	\$11,988.00
Associate	Kerry C. Jones	Morrison & Foerster LLP	2014	2014	CA	\$540	11.5	\$6,210.00
Associate	Roumiantseva Dina	Morrison & Foerster LLP	2014	2014	CA	\$540	5	\$2,700.00
Associate	Scheinok Brittany	Morrison & Foerster LLP	2015	2015	CA	\$485	27.2	\$13,192.00
Associate	Coleman Matthew	Ropes & Gray LLP	2014	2014	CA	\$450	2.5	\$1,125.00
Associate	Tobyn Yael Aaron	Morrison & Foerster LLP	2016	2016	CA	\$435	26.4	\$11,484.00

<b>California Rates (June–December 2018)</b>
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Title	Professional	Firm	Graduated	Admitted	State	Rate	Hours	Total
Partner	Kenneth Klee	Klee, Tuchin, Bogdanoff & Stern, LLP	1975	1974	CA	\$1,475	46.4	\$68,440.00
Partner	Eric Reimer	Milbank Tweed Hadley & McCloy LLP	1987	1987	CA	\$1,465	7.9	\$11,573.50
Partner	Gregory A. Bray	Milbank Tweed Hadley & McCloy LLP	1984	1984	CA	\$1,465	234.1	\$342,956.50
Partner	Madden P.C. Rick C	Kirkland & Ellis LLP	1995	1995	CA	\$1,445	31.2	\$45,084.00
Partner	David M. Nemecek	Kirkland & Ellis LLP	2003	2003	CA	\$1,395	2.4	\$3,348.00
Partner	Browning P.C. Marc D	Kirkland & Ellis LLP	1998	1998	CA	\$1,375	4.2	\$5,775.00
Partner	Isaac M Pachulski	Pachulski Stang Ziehl Young Jones &	2014	2014	CA	\$1,295	0.7	\$906.50
Partner	Walker Elizabeth W	Sidley Austin LLP	1984	1984	CA	\$1,250	3.7	\$4,625.00
Partner	David Stern	Klee, Tuchin, Bogdanoff & Stern, LLP	1975	1975	CA	\$1,245	67.4	\$83,913.00
Partner	Michael Tuchin	Klee, Tuchin, Bogdanoff & Stern, LLP	1990	1990	CA	\$1,245	191.1	\$237,919.50
Partner	Richard M. Pachulski	Pachulski Stang Ziehl Young Jones &	1979	1979	CA	\$1,245	274.7	\$342,001.50
Partner	Dennis Arnold	Gibson Dunn & Crutcher, LLP	1976	1975	CA	\$1,210	65.2	\$78,892.00
Partner	Cromwell Montgomery	Gibson Dunn & Crutcher, LLP	1997	1997	CA	\$1,205	0.9	\$1,084.50
Partner	Oscar Garza	Gibson Dunn & Crutcher, LLP	1990	1990	CA	\$1,205	116.1	\$139,900.50
Partner	Austin V Schwing	Gibson Dunn & Crutcher, LLP	2000	2000	CA	\$1,155	0.7	\$808.50
Partner	Douglas Michael Fuchs	Gibson Dunn & Crutcher, LLP	2007	2007	CA	\$1,155	53.5	\$61,792.50
Partner	Annie Kim	Proskauer Rose LLP	2004	2004	CA	\$1,125	11.6	\$13,050.00
Partner	Jonathan Benloulou	Proskauer Rose LLP	2006	2006	CA	\$1,125	2.9	\$3,262.50
Partner	James I. Stang	Pachulski Stang Ziehl Young Jones &	1980	1980	CA	\$1,095	63.4	\$69,423.00
Partner	Farshad E. More	Gibson Dunn & Crutcher, LLP	2003	2003	CA	\$1,080	0.8	\$864.00
Partner	Jesse I. Shapiro	Gibson Dunn & Crutcher, LLP	2000	2000	CA	\$1,080	10.9	\$11,772.00
Partner	David Fidler	Klee, Tuchin, Bogdanoff & Stern, LLP	1998	1997	CA	\$1,075	237.9	\$255,742.50
Special	Brian Stern	Milbank Tweed Hadley & McCloy LLP	2003	2003	CA	\$1,065	7.5	\$7,987.50
Special	Haig Maghakian	Milbank Tweed Hadley & McCloy LLP	2002	2002	CA	\$1,065	264.8	\$282,012.00
Partner	Jesse A. Cripps Jr.	Gibson Dunn & Crutcher, LLP	2011	2011	CA	\$1,045	16.2	\$16,929.00
Partner	Mehta Anjna	Kirkland & Ellis LLP	2000	2000	CA	\$1,045	10.9	\$11,390.50
Of Counsel	Rehta J. Gruber	Pachulski Stang Ziehl Young Jones &	1982	1982	CA	\$1,025	9.1	\$9,327.50
Partner	Samuel Newman	Gibson Dunn & Crutcher, LLP	2001	2001	CA	\$1,010	326.5	\$329,765.00
Partner	Debra I. Grassgreen	Pachulski Stang Ziehl Young Jones &	1992	1992	CA	\$995	15.7	\$15,621.50
Associate	Jessica Dombroff	Milbank Tweed Hadley & McCloy LLP	2009	2009	CA	\$995	13.3	\$13,233.50
Partner	Katherine V.A Smith	Gibson Dunn & Crutcher, LLP	2015	2015	CA	\$995	0.6	\$597.00
Partner	Matthew B Dubeck	Gibson Dunn & Crutcher, LLP	2017	2017	CA	\$995	44.1	\$43,879.50
Partner	Robert J. Pfister	Klee, Tuchin, Bogdanoff & Stern, LLP	2001	2001	CA	\$995	123.3	\$122,683.50
Partner	David M. Bertenthal	Pachulski Stang Ziehl Young Jones &	1993	1989	CA	\$975	6.5	\$6,337.50
Partner	Jeffrey N. Pomerantz	Pachulski Stang Ziehl Young Jones &	1989	1989	CA	\$975	66.5	\$64,837.50
Associate	Campbell Gavin	Kirkland & Ellis LLP	2012	2012	CA	\$950	336.5	\$319,675.00
Partner	Henry C. Kevane	Pachulski Stang Ziehl Young Jones &	1986	1986	CA	\$950	4.8	\$4,560.00
Associate	Olsen Katrina	Kirkland & Ellis LLP	2014	2014	CA	\$950	4.6	\$4,370.00
Partner	Stanley E. Goldich	Pachulski Stang Ziehl Young Jones &	1980	1980	CA	\$925	7	\$6,475.00
Associate	Najeh Baharun	Milbank Tweed Hadley & McCloy LLP	2013	2013	CA	\$910	28.3	\$25,753.00
Partner	David M. Guess	Klee, Tuchin, Bogdanoff & Stern, LLP	2005	2005	CA	\$895	84.5	\$75,627.50
Partner	Maria Sountas	Klee, Tuchin, Bogdanoff & Stern, LLP	2006	2006	CA	\$895	23.2	\$20,764.00
Partner	Whitman L. Holt	Klee, Tuchin, Bogdanoff & Stern, LLP	2005	2005	CA	\$895	54.7	\$48,956.50
Associate	Allison Balick	Gibson Dunn & Crutcher, LLP	2009	2009	CA	\$875	5.4	\$4,725.00
Associate	Caldon Brendan W	Kirkland & Ellis LLP	2007	2007	CA	\$875	1.5	\$1,312.50
Associate	Daniel B. Denny	Gibson Dunn & Crutcher, LLP	2005	2005	CA	\$875	436.1	\$381,587.50
Associate	Douglas G. Levin	Gibson Dunn & Crutcher, LLP	2009	2009	CA	\$875	205.2	\$179,550.00
Associate	Genevieve G. Weiner	Gibson Dunn & Crutcher, LLP	2007	2007	CA	\$875	93.7	\$81,987.50
Partner	Maxim B. Litvak	Pachulski Stang Ziehl Young Jones &	1997	1997	CA	\$875	89.6	\$78,400.00
Associate	Melissa Leigh Barshop	Gibson Dunn & Crutcher, LLP	2006	2006	CA	\$875	5	\$4,375.00
Associate	Jonathan Schaefer	Gibson Dunn & Crutcher, LLP	2016	2016	CA	\$860	1.9	\$1,634.00
Partner	Joshua M. Fried	Pachulski Stang Ziehl Young Jones &	1995	1995	CA	\$850	74.1	\$62,985.00
Of Counsel	Guruie Julian I	Klee, Tuchin, Bogdanoff & Stern, LLP	2007	2007	CA	\$825	39.3	\$32,422.50

Associate	Ian T. Long	Gibson Dunn & Crutcher, LLP	2015	2015 CA	\$820	140	\$114,800.00
Associate	Goldberg Zachary	Milbank Tweed Hadley & McCloy LLP	2016	2016 CA	\$790	162.4	\$128,296.00
Associate	Lee Muhyung	Proskauer Rose LLP	2015	2015 CA	\$780	28.2	\$21,996.00
Partner	Jamie L. Edmonson	Venable LLP	1996	1996 CA	\$765	180.3	\$137,929.50
Associate	Tiffany X. Phan	Gibson Dunn & Crutcher, LLP	2013	2013 CA	\$760	8.7	\$6,612.00
Of Counsel	Erin Gray	Pachulski Stang Ziehl Young Jones &	1992	1991 CA	\$750	9.9	\$7,425.00
Partner	Justin D. Yi	Klee, Tuchin, Bogdanoff & Stern, LLP	2009	2009 CA	\$750	3.9	\$2,925.00
Associate	Chapple Catherine L.	Morrison & Foerster LLP	2012	2012 CA	\$725	4	\$2,900.00
Associate	Jonathan M. Weiss	Klee, Tuchin, Bogdanoff & Stern, LLP	2012	2012 CA	\$725	195.4	\$141,665.00
Of Counsel	William Ramseyer	Pachulski Stang Ziehl Young Jones &	1980	1980 CA	\$725	18.8	\$13,630.00
Associate	Sarah A. Carnes	Cooley LLP	2014	2014 CA	\$710	146.1	\$103,731.00
Associate	Latta R T	Jones Day	2011	2011 CA	\$700	194.5	\$136,150.00
Associate	Samuel M. Kidder	Klee, Tuchin, Bogdanoff & Stern, LLP	2012	2012 CA	\$675	88.6	\$59,805.00
Associate	Thomas H Alexander	Gibson Dunn & Crutcher, LLP	2015	2015 CA	\$660	23.7	\$15,642.00
Associate	Sasha M. Gurvitz	Klee, Tuchin, Bogdanoff & Stern, LLP	2014	2014 CA	\$625	114.9	\$71,812.50
Associate	Robert J. Smith	Klee, Tuchin, Bogdanoff & Stern, LLP	2016	2016 CA	\$600	35.8	\$21,480.00
Associate	Brashears Travis C	Proskauer Rose LLP	2016	2016 CA	\$595	8.3	\$4,938.50
Associate	Matthew S Coe-Odess	Gibson Dunn & Crutcher, LLP	2016	2016 CA	\$595	16.9	\$10,055.50
Associate	Katherine A Lau	Gibson Dunn & Crutcher, LLP	2017	2017 CA	\$525	97.7	\$51,292.50
Associate	Tran J L	Jones Day	2015	2015 CA	\$525	60.2	\$31,605.00
Associate	Nicholas A. Koffroth	Venable LLP	2012	2012 CA	\$515	94.9	\$48,873.50
Associate	Liu R Q	Jones Day	2015	2015 CA	\$475	34.2	\$16,245.00
Associate	Stuart B W	Jones Day	2013	2013 CA	\$475	208.6	\$99,085.00
Associate	Doyle A M	Jones Day	2017	2017 CA	\$450	6.5	\$2,925.00
Associate	Udenka Honieh	Brown Rudnick LLP	2017	2017 CA	\$375	1	\$375.00

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

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

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

9 On July 11, 2024, I caused service of true and correct copies of the document entitled

10 **CONSUMER WATCHDOG'S RESPONSE TO INSURANCE INDUSTRY COMMENTS ON**  
11 **ITS REQUEST FOR FINDING OF ELIGIBILITY TO SEEK COMPENSATION;**  
12 **DECLARATION OF PAMELA PRESSLEY**

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

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

26 I declare under penalty of perjury that the foregoing is true and correct. Executed on July 11, 2024 at  
27 Los Angeles, California.

28   
Kaitlyn Gentile

## Service List

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Jon Phenix  
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- FAX
- U.S. MAIL
- OVERNIGHT MAIL
- HAND DELIVERED
- EMAIL