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BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA

In the Matter of the Rate Application of  
General Insurance Company of  
America,  
Applicant.

File No.: 24-1184

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

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

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

In support of its petition, Consumer Watchdog alleges:

**I. THE APPLICATION**

1. On or about June 5, 2024, Applicant filed a Prior Approval Rate Application with the California Department of Insurance (“CDI”), seeking approval of an overall 13.7% rate (\$64.6 million) increase to its homeowners line of business (File No. 24-1184 [“the Application”]).

2. On or about June 28, 2024, the public was notified by the CDI of the Application.

**II. PETITIONER**

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

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

1           5.       Consumer Watchdog has served as a public watchdog to enforce Proposition 103's  
2 protections with regard to property-casualty insurance rates and practices by: monitoring insurer  
3 rollback settlements and the status of the rollback regulations; reviewing and challenging rate  
4 filings made by insurers seeking to implement excessive and/or unfairly discriminatory rates  
5 and/or practices; participating in rulemaking and adjudicatory hearings before the CDI to  
6 implement and enforce Proposition 103's consumer protections; and educating the public  
7 concerning industry underwriting and rating practices, their rights under Proposition 103, and  
8 other provisions of state law. Consumer Watchdog has also initiated, intervened, or appeared as  
9 amicus curiae in virtually every action in state court involving the interpretation and application  
10 of Proposition 103 and the Insurance Code.<sup>1</sup>

11           6.       Consumer Watchdog has initiated and intervened in numerous proceedings before  
12 the CDI related to the implementation and enforcement of Proposition 103's reforms, including  
13 over 150 such proceedings in the last twenty years. In every rate proceeding that has resulted in a  
14 final decision and in which Consumer Watchdog sought compensation from 2003–2022, the  
15 Commissioner found that Consumer Watchdog made a substantial contribution under Insurance  
16 Code section 1861.10(b) and the implementing regulations. Most recently in 2023, the  
17 Commissioner found that Consumer Watchdog made a substantial contribution to his decisions in  
18 two homeowners insurance rate matters and to his adoption of regulations requiring the public  
19 disclosure of wildfire risk models and mitigation discounts to homeowners who take steps to  
20 protect their homes from wildfires.

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24 <sup>1</sup> For example, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805; *20th Century Ins. Co. v.*  
25 *Garamendi* (1994) 8 Cal.4th 216; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243;  
26 *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473; *Spanish*  
27 *Speaking Citizens' Found. v. Low* (2000) 85 Cal.App.4th 1179; *Donabedian v. Mercury Ins. Co.*  
28 *(2004) 116 Cal.App.4th 968; State Farm Mut. Auto. Ins. Co. v. Garamendi* (2004) 32 Cal.4th  
1029; *The Found. for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th  
1354; *Ass'n of Cal. Ins. Cos. v. Poizner* (2009) 180 Cal.App.4th 1029; *Mercury Cas. Co. v.*  
*Jones* (2017) 8 Cal.App.5th 561; *Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th 82; and *State*  
*Farm General Ins. Co. v. Lara* (2021) 71 Cal.App.5th 197.

### **III. ISSUES AND EVIDENCE TO BE PRESENTED AND POSITIONS OF PETITIONER**

7. In the rate proceeding initiated by Consumer Watchdog's Petition, Consumer Watchdog will present and elicit evidence to show that the rates proposed in the Application result in rates that are excessive and/or unfairly discriminatory in violation of Insurance Code section 1861.05, subdivision (a), which provides that "[n]o rate shall be approved or remain in effect which is excessive, inadequate, [or] unfairly discriminatory." Additionally, Consumer Watchdog will present and elicit evidence that Applicants' proposed rates violate 10 CCR § 2644.1, which provides that "[n]o rate shall be approved or remain in effect that is above the maximum permitted earned premium as defined in section 2644.2."

8. Based on Consumer Watchdog's preliminary analysis in consultation with its actuarial expert and the information contained in the Application and publicly available, Consumer Watchdog has identified the following issues with the Application on which it intends to present and elicit evidence as set forth in (a)–(d) below. Each of these issues is directly relevant to determining whether Applicant's proposed rate increase is excessive under Insurance Code section 1861.05(a) and the prior approval rate regulations, 10 CCR § 2644.1 et seq. Consumer Watchdog intends to request further information on these issues through informal/formal discovery from the Applicant and reserves the right to develop and refine its positions as more information is made available.

- a. Loss and Premium Trends (10 CCR § 2644.7): Consumer Watchdog's current position, to the extent now known based on the information in the Application at this time, is that Applicant's frequency and severity trend selections result in excessive net trends which overstate the projected losses, causing an inflated rate indication. In the Explanatory Memorandum filed with the Application, R-Square values are given as support for General Insurance's 16-point trend selections. R-Square may not be a useful goodness-of-fit metric in this context, as it measures how much of the variation in the dependent variables (frequency, severity, and pure premium) is explained by the independent variables (which are not specified by Applicant). In cases where the dependent variables experience sharp changes, as we see with the closed frequency

1 and paid severity data (e.g., 2023Q2), the modeled trend line may not “fit” very well  
2 in terms of R-Square, even if it is reasonable over the data period under consideration.  
3 R-Square values dubiously indicating “poor fit” are particularly common when the  
4 independent variable is a simple numerical progression (e.g., 1, 2, 3, 4 . . .), as seems  
5 to be the case here.

6  
7 In the Explanatory Memorandum, Applicant states, “On the severity side, inflationary  
8 impacts are still a concern as loss trends continue to be elevated.” However, data from  
9 the Federal Reserve<sup>2</sup> and a report from Verisk<sup>3</sup> show a flattening of the inflationary  
10 curve for residential construction materials since mid-2022, signifying a return to pre-  
11 COVID growth rates in reconstruction costs. Of particular relevance to this filing, the  
12 Verisk report states, “California’s rank changed most significantly, falling from the  
13 14th-highest [residential reconstruction] cost increase in January 2024 to the 44th-  
14 highest in April 2024.”<sup>4</sup>

15  
16 Consumer Watchdog has analyzed the actual and fitted net trends on both a numerical  
17 and graphical basis for each of the possible trend bases (Closed/Paid, Reported/Paid,  
18 Closed/Total Paid, and Reported/Total Paid). Considering the frequency, severity,  
19 and pure premium trends separately, as Applicant has done in the Memo, it is clear  
20 that longer-term trend factors are in line with both the most recent three quarters and  
21 the vast majority of the historical data. These lower trend factors are more reasonable  
22 and actuarially sound than the 16-point factors selected by Applicant. Consumer  
23 Watchdog’s preliminary analysis produces an overall rate indication that is  
24 substantially lower than the 13.7% rate increase proposed by Applicant. Based on  
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26 <sup>2</sup> Fed. Reserve Bank of St. Louis, Federal Reserve Economic Data, [fred.stlouisfed.org](https://fred.stlouisfed.org).

27 <sup>3</sup> Verisk, 360Value Quarterly Reconstruction Cost Analysis, Q2 2024: United States,  
28 <https://www.verisk.com/4995f8/siteassets/media/underwriting-v/resources/360value-quarterly/360value-q2-2024-quarterly-reconstruction-cost-analysis.pdf>.

<sup>4</sup> *Id.* at p. 3.

1 these findings, Applicant does not fully support the statement from the Explanatory  
2 Memorandum that “the 16-point Closed Frequency and Paid Severity trends . . . best  
3 reflect the anticipated future changes given the range of permissible choices.”

4 b. Improper Loss Development (10 CCR § 2644.6): Applicant has used the combined  
5 loss & DCCE incurred development method in this filing. Given that pure loss  
6 develops quite differently from DCCE for this book of business (12-Ult LDF of 1.671  
7 for paid pure loss and 5.584 for paid DCCE), Consumer Watchdog’s current position,  
8 to the extent now known based on the information in the Application at this time, is  
9 that Applicant’s development patterns should be analyzed separately to properly  
10 estimate the ultimate values. Applicant has failed to justify the use of combined Loss  
11 and DCCE in its analysis of development patterns.

12 c. Catastrophe Adjustment (10 CCR § 2644.5): Consumer Watchdog’s current position,  
13 to the extent now known based on the information in the Application at this time, is  
14 that Applicant has not supported the methodology used to develop the catastrophe  
15 adjustment factor. Specifically, the straight average Ratio of Total to Non-Cat on  
16 page 3 of Exhibit 9 (1.270) is calculated using an unsupported methodology. It is  
17 unclear how Applicant is combining the Legacy and NHC data; there is a “Legacy  
18 Adjustment Factor” shown on page 3, but no details are given as to how this factor  
19 was derived. Of particular concern is the fact that the analogous straight average  
20 Ratio of Total to Non-Cat for NHC alone (page 7 of Exhibit 9) is only 1.205, whereas  
21 the same ratio for Legacy (page 10 of Exhibit 9) is 1.324. This value is highly  
22 leveraged by the anomalous 84-96 Development Ratio of 1.062 for Accident Year  
23 2016 on page 8. The Combined straight average Ratio of Total to Non-Cat on page 3  
24 is inflated by the straight average Ratio of Total to Non-Cat for Legacy, driving an  
25 overstated selection of 1.240. This selection and the subsequent catastrophe  
26 adjustment factor of 1.256 contribute directly to Applicant’s overall rate indication,  
27 which is also overstated as a result. Consumer Watchdog’s preliminary analysis  
28 shows that a lower catastrophe adjustment factor, based on tempering the impact of

1 the 84-96 Legacy Development Ratio for Accident Year 2016, is more actuarially  
2 sound. This reduced adjustment factor contributes to an overall rate indication that is  
3 substantially lower than the 13.7% increase proposed by Applicant. Based on these  
4 findings, Applicant has not supported the actuarial soundness of its selected  
5 catastrophe adjustment factor.

- 6 d. Improper / Unsupported Excluded Expenses (10 CCR § 2644.10): Applicant has not  
7 shown that the sum of the institutional advertising expenses listed on page 4.1 of the  
8 Prior Approval Rate Template, \$2.3 million, is appropriate. Consumer Watchdog's  
9 current position, to the extent now known, is that Applicant has failed to provide  
10 sufficient information in the filing to support the claim that 100% of advertising  
11 expenses over the last three years have been institutional. Per the regulation:  
12 "Institutional advertising' means advertising not aimed at obtaining business for a  
13 specific insurer and not providing consumers with information pertinent to the  
14 decision whether to buy the insurer's product." Based on the information currently  
15 available in the Application, and subject to review of additional information that may  
16 be obtained from Applicant during the proceeding through formal or informal  
17 discovery on these and other excluded expenses items, it is Consumer Watchdog's  
18 position that Applicant has not proven that its three-year average excluded expense  
19 ratio of 2.1% shown on page 4.2 of the Prior Approval Rate Template is appropriate.  
20 Applicant has not provided examples of non-institutional advertising in accordance  
21 with the above-referenced regulation and with the CDI's Prior Approval Rate Filing  
22 Instructions. Consumer Watchdog reserves the right to seek discovery and raise  
23 additional issues regarding the accuracy of the amounts listed in page 4.2 of the Prior  
24 Approval Rate Template for other categories of excluded expenses that should be  
25 reflected in the rate calculation but may not be adequately reflected in the filing,  
26 including political contribution and lobbying expenses, excessive executive  
27 compensation, bad faith judgments and associated DCCE, costs of unsuccessful  
28 defense of discrimination claims, and fines and penalties.

1           9.       This petition is based upon Consumer Watchdog’s preliminary analysis of the  
2 Application. Thus, Consumer Watchdog reserves the right to modify, withdraw, and/or add issues  
3 for consideration and its positions on each issue as more information becomes available through  
4 discovery or otherwise.

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

6           10.      The authority for this petition for hearing is Insurance Code section 1861.10,  
7 subdivision (a), which grants “any person” the right to initiate or intervene in a proceeding  
8 permitted or established by Proposition 103 and the right to enforce Proposition 103. Specifically,  
9 as stated above, Consumer Watchdog initiates this proceeding to enforce Insurance Code section  
10 1861.05 and the Commissioner’s rate regulations, 10 CCR § 2644.1 et seq.

11          11.      Additionally, a hearing is authorized pursuant to Insurance Code section 1861.05,  
12 subdivision (c), which allows “a consumer or his or her representative” to request a hearing on a  
13 rate application and 10 CCR § 2653.1, which provides that “any person, whether as an individual,  
14 representative of an organization, or on behalf of the general public, may request a hearing by  
15 submitting a petition for hearing.” Given that Applicant’s requested rate change exceeds 7%,  
16 Insurance Code section 1861.05(c) requires that the Commissioner “must hold a hearing upon a  
17 timely request.”

18          12.      This petition is timely pursuant to Insurance Code section 1861.05, subdivision (c),  
19 and 10 CCR § 2646.4(a)(1) because is filed within forty-five (45) days of the June 28, 2024  
20 public notice date.

21 **V. INTEREST OF PETITIONER**

22          13.      Consumer Watchdog’s interest in the above-captioned proceeding is to ensure that  
23 Applicant’s homeowners insurance policyholders are charged rates and premiums that comply  
24 with the provisions of Insurance Code section 1861.05(a)’s requirement that “no rate shall be  
25 approved or remain in effect which is excessive, inadequate, [or] unfairly discriminatory or  
26 otherwise in violation of this chapter,” and the requirements contained in the regulations  
27 promulgated thereunder. For many homeowners, their home is their most valuable asset and they  
28 are required to purchase homeowners insurance by their mortgage lenders. Consumers who are



1 overcharged by insurers for this insurance coverage and/or arbitrarily non-renewed, even when  
2 they have undertaken significant wildfire mitigation efforts to protect their homes and lower their  
3 risk of loss, are part of Consumer Watchdog’s core constituency. The specific issues and positions  
4 to be taken by Consumer Watchdog in this proceeding, to the extent known at this time, are set  
5 forth in paragraph 8 *ante*.

6 14. As noted in paragraphs 3–6 *ante*, Consumer Watchdog’s staff and consultants  
7 have substantial experience and expertise in insurance rate matters, which Consumer Watchdog  
8 believes will aid the CDI in its review of the Application and aid the Commissioner in making  
9 his ultimate decision as to whether to approve or disapprove the requested rate. As noted in  
10 paragraph 6 above, the Commissioner has found that Consumer Watchdog has made a  
11 substantial contribution to his decisions in every rate proceeding that has resulted in a final  
12 decision and in which Consumer Watchdog sought compensation from 2003–2022, and three  
13 additional proceedings in 2023. If leave to intervene is granted, Consumer Watchdog will  
14 participate fully in all aspects of this proceeding.

15 15. Consumer Watchdog also has an interest in assuring that Applicant, the CDI, and  
16 the Insurance Commissioner comply with the laws enacted by the voters under Proposition 103,  
17 and the rules and regulations that implement those laws, including that all information submitted  
18 to the CDI in connection with the Application is made publicly available.

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

20 16. The authority for Consumer Watchdog’s petition to intervene is Insurance Code  
21 section 1861.10, subdivision (a), which grants “any person” the right to “initiate or intervene in  
22 any proceeding permitted or established pursuant to this chapter [Chapter 9 of Part 2 of  
23 Division 1 of the Insurance Code] . . . and enforce any provision of this article.” This proceeding  
24 is a rate proceeding to enforce Insurance Code section 1861.05 pursuant to Insurance Code  
25 section 1861.10(a), and hence is a proceeding both “permitted” and “established” by Chapter 9.  
26 Per the voters’ instruction, the mandatory right to intervene under section 1861.10(a), like all the  
27 provisions of Proposition 103, must be “liberally construed and applied in order to fully promote  
28 its underlying purposes.” (Prop. 103, § 8.) Thus, section 1861.10 must be interpreted and applied

1 broadly in a manner to fully encourage consumer participation. (*Ibid.*; see also *Ass’n of*  
2 *California Ins. Cos. v. Poizner*, *supra*, 180 Cal.App.4th at 1052 [stating “the goal of fostering  
3 consumer participation in the administrative rate-setting process” as “one of the purposes of  
4 Proposition 103”].) The broad intervention standard enacted by section 1861.10 ensures that  
5 consumers will be able to participate in proceedings independently of the CDI staff who may  
6 take different positions or emphasize different issues in the proceeding, and with all rights  
7 accorded to any other party, including the right to raise additional issues and/or violations as they  
8 become known during the course of the proceeding through informal or formal discovery.

9       17. This petition to intervene is also authorized by 10 CCR § 2661.1 et seq. In  
10 compliance with 10 CCR § 2661.3, the specific issues to be raised and positions to be taken by  
11 Consumer Watchdog, *to the extent known at this time*, are set forth in paragraph 8 *supra*. Each of  
12 these issues relate directly to specific standards and requirements under the ratemaking formula at  
13 10 CCR § 2644.1 et seq. and thus are directly relevant to ultimately determining whether  
14 Applicant’s requested rate is excessive or otherwise unjustified. Although consumer presence in  
15 departmental proceedings typically results in significant reductions to policyholders’ rates, the  
16 amount of savings for each individual consumer is outweighed by the time and expense of hiring  
17 individual counsel or an advocacy group to protect his or her rights. Thus, an independent  
18 organization like Consumer Watchdog introduces a voice that otherwise would be absent from  
19 this proceeding.

## 20 **VII. PARTICIPATION OF CONSUMER WATCHDOG**

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

## 24 **VIII. INTENT TO SEEK COMPENSATION**

25       19. The Commissioner has awarded Consumer Watchdog compensation for its  
26 reasonable advocacy and witness fees and expenses in past departmental proceedings. The  
27 Commissioner issued Consumer Watchdog’s latest Finding of Eligibility on August 2, 2024,  
28 effective for two years as of July 12, 2024. Consumer Watchdog was previously found eligible to

1 seek compensation on July 26, 2022, effective as of July 12, 2022; August 25, 2020, effective as  
2 of July 12, 2020; July 12, 2018; July 14, 2016; July 24, 2014; July 24, 2012; July 2, 2010;  
3 August 25, 2008; July 14, 2006; July 2, 2004; June 20, 2002; October 1, 1997; September 26,  
4 1995; September 27, 1994; and September 13, 1993.

5 20. Pursuant to 10 CCR § 2661.3(c), Consumer Watchdog’s estimated budget in this  
6 proceeding is attached hereto as Exhibit A. Consumer Watchdog has based its estimated budget  
7 on several factors including: (1) the technical and legal expertise needed to address these issues;  
8 (2) its current best estimate of the time needed to participate effectively in this proceeding, taking  
9 into account the time already expended by Consumer Watchdog’s legal and actuarial staff and an  
10 estimate of time needed to complete remaining tasks through completion of a noticed evidentiary  
11 hearing; and (3) past experience in similar rate proceedings before the CDI. The estimated budget  
12 is reasonable and the staffing level is appropriate, given the expertise that Consumer Watchdog  
13 brings to these proceedings when the issues involved are issues at the very core of its  
14 organizational mission and strike at the very heart of Proposition 103 itself. The attorney,  
15 paralegal, and staff actuary hourly rates contained in the attached budget do not exceed market  
16 rates as defined by 10 CCR § 2661.1(c).<sup>5</sup> The budget presented in the attached Exhibit A is a  
17

18 <sup>5</sup> 10 CCR § 2661.1(c) defines “market rates” as “the prevailing rate for comparable services in the  
19 private sector in the Los Angeles and San Francisco Bay Areas *at the time of the Commissioner’s*  
20 *decision awarding compensation* for attorney advocates, non-attorney advocates, or experts with  
21 similar experience, skill and ability.” (Emphasis added.) Attached as Exhibit B and Exhibit C are  
22 the two most recent Decisions Awarding Compensation by Commissioner Lara to Consumer  
23 Watchdog in 2023 in rate proceedings, which found that the *same* 2024 rates used in the estimated  
24 budget set forth in Exhibit A for its attorneys and paralegal, Mr. Rosenfield, Ms. Pressley, Mr.  
25 Mellino, Mr. Powell, and Ms. Gentile, were reasonable and did not exceed market rates in the  
26 private market in Los Angeles and the San Francisco Bay Area. Those decisions also found  
27 Consumer Watchdog’s consulting actuary Allan I. Schwartz’s 2023 hourly rate was reasonable  
28 and did not exceed market rates. (Exh. B [Decision Awarding Compensation, July 12, 2023, *In*  
*the Matter of the Rate Applications of Farmers Insurance Exchange, Fire Insurance Exchange,*  
*and Mid-Century Insurance Company*, File No. PA-2022-00007], pp. 9–11, 15; Exh. C [Decision  
Awarding Compensation, Nov. 8, 2023, *In the Matter of the Rate Application of CSAA Insurance*  
*Exchange*, File No. PA-2023-00004], pp. 4–7, 10.) Consumer Watchdog will submit a declaration  
from Mr. Schwartz supporting his 2024 hourly rate when it submits any request for compensation  
in this matter. Mr. Armstrong is Consumer Watchdog’s staff actuary with over 12 years of  
professional actuarial experience who joined staff in May 2023. His \$425 hourly rate in the

1 preliminary estimate, and Consumer Watchdog reserves the right to amend its proposed budget as  
2 its expenses become more certain, or in its request for final compensation. Further, Consumer  
3 Watchdog affirms that it will file an amended budget as soon as possible when it learns that its  
4 total estimated budget amount increases by \$10,000 or more, in accordance with 10 CCR  
5 § 2661.3(d).

6 WHEREFORE, Consumer Watchdog respectfully requests that the Insurance  
7 Commissioner GRANT its petition for hearing and petition to intervene in the proceeding, having  
8 all rights and responsibilities accorded any other party to the proceeding.

9  
10  
11 DATED: August 12, 2024

Respectfully submitted,  
Harvey Rosenfield  
Pamela Pressley  
Benjamin Powell  
CONSUMER WATCHDOG

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15 By: *Pamela Pressley*  
16 Pamela Pressley  
17 Attorney for CONSUMER WATCHDOG  
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25 \_\_\_\_\_  
26 estimated budget in Exhibit A is comparable to the \$415 market rate found reasonable by the  
27 Commissioner in the Decisions attached as Exhibits B and C for one of Mr. Schwartz's former  
28 associates who does not have the additional Fellow Casualty Actuarial Society designation that  
Mr. Armstrong does. Since this is a preliminary estimated budget, and section 2661.1(c) defines  
"market rate" as the prevailing market rates at the time of the Commissioner's compensation  
award, Consumer Watchdog intends to submit further support for its attorneys' and actuaries'  
market rates at the time it submits any request for compensation.

I, Pamela Pressley, verify:

2. I personally prepared, in consultation with Consumer Watchdog’s actuarial expert, the pleading titled “Consumer Watchdog’s Petition for Hearing, Amended Petition to Intervene, and Notice of Intent to Seek Compensation” filed in this matter. All of the factual matters alleged therein are true of my own personal knowledge, or I believe them to be true after conducting some inquiry and investigation.

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

*Pamela Pressley*  
Pamela Pressley

# **EXHIBIT A**

**EXHIBIT A  
PRELIMINARY BUDGET**

**ITEMS**

**ESTIMATED COST**

1. Consumer Watchdog Attorneys, Paralegal, and Staff Actuary

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

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

Benjamin Powell (Staff Attorney) @ \$350 per hour, 200 hours ..... \$70,000

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

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

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

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

- Supervise Consumer Watchdog counsel and participate in strategy discussions.

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

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

2. Consumer Watchdog Expenses

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

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

TOTAL ESTIMATED BUDGET: \$199,425

## **EXHIBIT B**



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

In the Matter of the Requests for Compensation of	)	FILE NO. RFC-2023-006
	)	
<b>CONSUMER WATCHDOG,</b>	)	
	)	
Intervenor.	)	<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

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

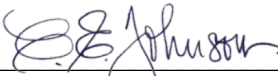
  X   **(By Email)** on those identified parties in said action, in accordance with Code of Civil Procedure §1013, by emailing true copies thereof at the address set forth below.

***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

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(via Email and U. S. Mail)

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# **EXHIBIT C**

Consumer Watchdog (“CW” or Petitioner), files this Request for Compensation (RFC) in the amount of \$77,693.50, for its intervention in proceedings initiated by a Rate Application (RA) filed by CSAA Insurance Exchange (CSAA or Applicant). CSAA did not oppose the RFC. Upon consideration of all the facts and evidence in this case, and for the reasons explained below, the Request for Compensation is GRANTED.

## 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 Decl., ¶ 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.

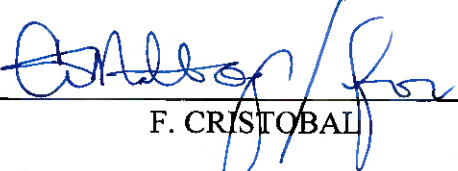
I am readily familiar with the business practices of the California Department of Insurance for collecting and processing correspondence for mailing, electronic filing and electronic mail. On August 18, 2023, I served **DECISION AWARDING COMPENSATION** regarding **In the Matter of the Request for Compensation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

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