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Electronically FILED by
Superior Court of California,
County of Los Angeles
4/17/2026 4:18 PM
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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**

13 **CONSUMER WATCHDOG, a non-profit**
14 **organization,**

15 **Petitioner/Plaintiff,**

16 **v.**

17 **RICARDO LARA, in his official capacity as the**
18 **Insurance Commissioner of the State of**
19 **California; CALIFORNIA DEPARTMENT OF**
20 **INSURANCE; and DOES 1-20,**

21 **Respondents/Defendants.**

CASE NO. 25STCP01367

PETITIONER CONSUMER
WATCHDOG'S OPENING BRIEF IN
SUPPORT OF PETITION FOR WRIT OF
MANDATE; REQUEST FOR JUDICIAL
NOTICE; DECLARATIONS OF RYAN
MELLINO AND BENJAMIN A.
ARMSTRONG

Date: June 30, 2026
Time: 9:30 A.M.
Dept No.: 85
Judge: James C. Chalfant
Action Filed: April 14, 2025

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INTRODUCTION

Pursuant to two bulletins (Bulletins 2024-8 and 2025-4 [the “Bulletins”])¹, in the past year Commissioner Lara has approved the recoupment of hundreds of millions of dollars in FAIR Plan assessment costs² paid by FAIR Plan member insurers from their own, non-FAIR Plan policyholders—e.g., State Farm, Allstate, and other admitted-market customers—through “temporary supplemental fees.”³ Petitioner contends that the Commissioner is not empowered to unilaterally authorize this transfer of funds to FAIR Plan member insurers from their own policyholders. The FAIR Plan Statutes (Ins. Code §§ 10090 et seq.)⁴ do not allow any such transfer of insurers’ statutory liability. The fee pass-throughs operate in substance as a tax on consumers to subsidize that liability. The FAIR Plan Statutes explicitly assign all expenses and losses, including assessment costs, to FAIR Plan member insurers as part of a symmetrical structure wherein the insurers also receive all profits of the FAIR Plan. The Department’s scheme thus charges ordinary homeowners and renters for a financial obligation imposed by statute on insurers, with no corresponding benefit to those consumers for the surcharge. It effectively makes California consumers reinsurers of the companies they are insured by.

Nothing in the statutory framework authorizes those member insurers to recoup assessment costs from their policyholders through separate surcharges. The conflict between the Bulletins and the FAIR Plan Statutes, which require insurers to proportionally share in the FAIR Plan’s profits and losses, is direct and irreconcilable. The Commissioner has no authority to alter the statutory symmetry.

Rather than argue the pass-throughs are permitted under the FAIR Plan Statutes, Respondents seek to sidestep that question by arguing that Proposition 103 grants the Commissioner the authority to permit the pass-throughs. In its ruling on demurrer, this Court previously found that the pass-throughs were valid under Proposition 103 as “non-rate charge[s] that affect the cost of insurance.” (Exh. C [Demurrer Order], p. 10.) Critically, the Court’s demurrer ruling did not address the statutory conflict claim that is now before the Court, which claim survived demurrer. (*Id.*, p. 17.) And the Court’s

¹ Attached as Exhs. A & B to accompanying Declaration of Ryan Mellino. All subsequent exhibit cites are to exhibits attached to the Mellino Declaration.

² See accompanying Declaration of Benjamin Armstrong, ¶ 4.

³ As used herein, the terms “temporary supplemental fees,” “pass-throughs,” and “surcharges” are equivalent unless otherwise indicated.

⁴ All subsequent citations are to the Insurance Code unless otherwise indicated.

1 Proposition 103 analysis rested solely on the procedural question of whether rule-change applications
2 are a type of rate application—not on whether the substance of the pass-throughs conflicts with the
3 FAIR Plan Statutes, or whether the pass-throughs can lawfully exist as a “non-rate charge that affects
4 the price of insurance.” Evaluating the demurrer, the Court tested the legal sufficiency of the complaint,
5 accepting factual assertions of the moving party as true. Now, the framework shifts to a more developed
6 record, as shown below. And as conclusively construed by the California Supreme Court, there is no
7 such thing as a “non-rate charge that affects the price of insurance” under Proposition 103. If a charge
8 affects the cost of insurance, it must be considered part of the rate/premium. If a charge does not affect
9 the cost of insurance and thus is not part of the rate/premium, Proposition 103 provides no authority to
10 permit it. Thus, the pass-throughs either violate or are not authorized by Proposition 103.

11 For the following reasons, Petitioner is entitled to writ relief. The FAIR Plan Statutes make
12 assessment costs an insurer obligation, full stop. The Statutes allocate the responsibility proportionally
13 to member insurers, with no provision for policyholder surcharges. That statutory conflict cannot be
14 cured by the invocation of Proposition 103 or administrative fiat—an agency cannot exercise its powers
15 in a way that conflicts or is inconsistent with the governing statutes; here, the FAIR Plan Statutes.
16 Further, Proposition 103 cannot justify the surcharges: it governs ratemaking, and a charge either falls
17 within ratemaking (in which case the Bulletins unlawfully exclude it from rate treatment) or outside it
18 (in which case Proposition 103 provides no authority for it at all). Therefore, Petitioner respectfully
19 requests that the Court issue a writ of mandamus invalidating the Bulletins and ordering Respondents to
20 establish a process for insurers to return any surcharges already collected.

21 **BACKGROUND**

22 **I. Factual Background**

23 **A. The California FAIR Plan Statutes Require Proportional Sharing of Profits and 24 Losses by Member Insurers**

25 The California FAIR Plan was established in 1968 as a joint reinsurance association to provide
26 basic property insurance where coverage is unavailable in the voluntary market. (Exh. D, “Operational
27 Assessment Report, California FAIR Plan Association,” Rudmose & Noller Advisors, LLC as Special
28 Examiner for the Department of Insurance, June 15, 2022, pp. 2–3.) While subject to the
Commissioner’s supervision (§ 10095, subd. (g)), the FAIR Plan is a private association of insurance

1 companies, not a public entity. (§ 10091, subd. (a).) It “writes its own policies, collects premiums, pays
2 claims and producer commissions, and incurs general expenses.” (Exh. D, p. 4.) Its regular operations
3 are administered by a governing committee comprised of member insurer voting representatives.
4 (§§ 10094, subd. (a), 10095, subd. (d).) The Statutes mandate participation by admitted property insurers
5 and provide that “an insurer shall participate in the writings, expenses, profits, and losses of the
6 association in the proportion that its premiums written during the second preceding calendar year bear to
7 the aggregate premiums written by all insurers in the program...” (§§ 10095, subds. (a), (c), 10098.)
8 They also authorize the FAIR Plan, with the Commissioner’s approval, to assess its members in amounts
9 sufficient for its operations. (§ 10094, subd. (c).) In short, the FAIR Plan “is a mechanism to spread risk,
10 premiums, losses, and expenses among the participating insurers.” (Exh. D, p. 4.)

11 FAIR Plan profits or losses are “allocated to pool years,” with losses assessed against member
12 insurers once the relevant pool year closes, and profits either distributed or applied to subsequent pool
13 years. (*Ibid.*) Since issuing \$260 million in assessments in 1994 and 1995, “the FAIR Plan has
14 distributed approximately \$438.4 million to members when pool years were closed.” (*Id.*, p. 17.) The
15 FAIR Plan has traditionally purchased far less reinsurance coverage than “other FAIR plans or residual
16 market facilities of similar size” “since it can assess its insurance company members to fund liquidity
17 needs and cover losses resulting from insufficient premiums or catastrophes.” (*Id.* at pp. 26–27.)

18 Nothing in the FAIR Plan Statutes authorizes member insurers to recover assessment costs from
19 their own non-FAIR Plan policyholders via surcharges. The Statutes fix the responsibility to cover FAIR
20 Plan costs on the member insurers and leave it there.

21 **B. Proposition 103 Regulation of Rates/Premiums**

22 Proposition 103 was enacted in response to “[e]normous increases in the cost of insurance [that]
23 made it both unaffordable and unavailable to millions of Californians,” where “the existing laws
24 inadequately protect[ed] consumers and allow[ed] insurance companies to charge excessive, unjustified
25 and arbitrary rates.” (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 812–813, quoting
26 Proposition 103’s statement of findings and purpose.) “The initiative’s stated purpose is to ensure that
27 ‘insurance is fair, available, and affordable for all Californians.’” (*Id.* at p. 813.) Proposition 103
28 instituted a “prior approval” system of ratemaking, “under which, in the words of Insurance Code

1 section 1861.05, subdivision (a), the Insurance Commissioner must approve a rate applied for by an
2 insurer before its use, looking to whether the rate in question is ‘excessive, inadequate, unfairly
3 discriminatory or otherwise in violation of’ specified law.” (*20th Century Ins. Co. v. Garamendi* (1994)
4 8 Cal.4th 216, 243 [hereinafter “*20th Century*”].) Consumers are entitled to initiate or intervene in a rate
5 proceeding concerning any rate-change application, and the Commissioner must hold a public hearing if
6 that requested rate change is greater than 7%. (§§ 1861.05, subd. (c), 1861.10, subd. (a).) Rates are
7 determined according to the “ratemaking formula[, which] is designed to yield a premium that the
8 insurer should receive from its insureds in order to earn a sum amounting to (1) the reasonable cost of
9 providing insurance and (2) the capital used and useful for providing insurance multiplied by a fair rate
10 of return.” (*20th Century, supra*, 8 Cal.4th at p. 251; Cal. Code Regs., tit. 10 (“10 CCR”) §§ 2644.1 et
11 seq. [ratemaking formulas and underlying components] see generally Exh. E [Prior Approval Rate
12 Application Filing Instructions].) Proposition 103 must be “liberal[ly] constru[ed] to fully promote its
13 underlying purposes.” (*Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th 82, 103, quotations omitted.) In
14 addition to rate-change applications, insurers also file rule-change applications when implementing a
15 change “without rate impact.” (Exh. E, p. 7.) Rule-change applications are reviewed to determine if the
16 proposed change would have a “rate impact” (*ibid.* [insurers may implement rule changes once “the
17 Department confirms there is no rate impact”]), and the Department does not require insurers to provide
18 much of the documentation required for complete rate applications unless a rate impact is found (*ibid.*).

19 C. Bulletins 2024-8 and 2025-4

20 Beginning in 2024, the Commissioner issued two Bulletins directed at insurer “recoupment” of
21 FAIR Plan assessment costs, without any public notice or input. Issued on September 3, 2024, Bulletin
22 2024-8 set out “pass-through” scenarios under which member insurers could seek to impose surcharges
23 on their policyholders to recover the cost of FAIR Plan assessments, and required requests to be
24 submitted for prior approval under Proposition 103. The Commissioner stated his “belie[f that] this
25 sounder financial sustainability structure [established by the bulletin] is necessary to ensure the FAIR
26 Plan’s financial resiliency,” and characterized the bulletin as “modernizing” and “strengthening the
27 FAIR Plan.” (Exh. A, pp. 2, 4.) Insurers were required to provide their policyholders with a surcharge
28 notice explaining the purpose of the pass-throughs—“To assure stability in the California property

1 insurance market and to assure the continued availability of property insurance in California” (*id.*, p. 4)
2 —paraphrasing the first two enumerated purposes of the FAIR Plan Statutes (§ 10090, subs. (a)–(b)).

3 Bulletin 2025-4, issued on February 11, 2025 in conjunction with an approved \$1 billion
4 assessment, provided “updated guidance” describing the procedure by which member insurers may
5 request the Commissioner’s prior approval “to seek recoupment from their policyholders of assessment
6 amounts paid to the FAIR Plan.” (Exh. B, pp. 1–2.) The Commissioner reiterated his statements about
7 the purpose of the surcharges, and the bulletin required an equivalent policyholder notice as Bulletin
8 2024-8. (*Id.*, pp. 5–6.) Bulletin 2025-4 slightly modified the pass-through scenarios described in Bulletin
9 2024-8.⁵ The first scenario (*id.*, pp. 2–3) provides that if

10 the FAIR Plan is authorized to issue assessment(s) of up to \$1 billion for personal lines or up to
11 \$1 billion for commercial lines in one calendar year, the FAIR Plan’s member insurers may
12 recoup 50% of the amount the insurer paid for the assessment(s), but only if the insurer confirms
13 that its assessment payment was not covered by reinsurance or reimbursed through other means.

14 The second scenario (*id.*, p. 3) provides that if

15 the FAIR Plan is authorized to issue assessment(s) exceeding \$1 billion for personal lines or
16 exceeding \$1 billion for commercial lines in one calendar year, the FAIR Plan’s member insurers
17 may recoup 100% of any portion of the assessment above \$1 billion for the line assessed, but
18 only if the insurer confirms that its assessment payment was not covered by reinsurance or
19 reimbursed through other means.

20 The Bulletins’ operative terms purport to place the surcharges outside the ratemaking formula
21 inputs. (See, e.g., 10 CCR §§ 2644.2, 2644.3.) Bulletin 2025-4 states that amounts recouped “through
22 temporary supplemental fees on policyholders shall not be considered premium” or “losses for the
23 purpose of any subsequent rate change application” (Exh. B, p. 5), and the Bulletins characterize the
24 requests as “rule-change applications” (Exhs. A & B, p. 2); that is, filings “without rate impact.”
25 Together, these directives exclude the surcharges from the prior approval ratemaking process established
26 by Section 1861.05 and the ratemaking formula (10 CCR §§ 2644.1 et seq.) that govern the calculation
27 of the appropriate, lawful rates/premiums insurers are allowed to charge policyholders.

28 Both Bulletins analogize the pass-throughs being implemented to those permitted by “other
existing California insurance safety net mechanisms in place today,” specifically referencing the

⁵ Petitioner herein focuses on only the first two pass-through scenarios; the same arguments apply to the
“high value commercial property policies” pass-through scenario. (Exhs. A & B, p. 3.)

1 California Insurance Guarantee Association (“CIGA”), the California Life and Health Insurance
2 Guarantee Association (“CLHIGA”), and the California Earthquake Authority (“CEA”). (Exh. A, p. 4;
3 Exh. B, p. 5.) Like the FAIR Plan, each of these safety nets is authorized to make assessments of
4 member insurers if necessary to cover costs. (§§ 1063.5, 1063.145 (CIGA); § 1067.08, subd. (a)
5 (CLHIGA); § 10089.23, subd. (a)(1) (CEA).) Unlike the FAIR Plan, policyholder “surcharges” to
6 recover insurer assessment costs are expressly authorized under those statutes. (§ 1063.14, subd. (a)(1)
7 (CIGA); 1067.08, subd. (i)(1) (CLHIGA); § 10089.29, subd. (b)(1) (CEA).) The Bulletins directly
8 mirror aspects of those other statutory schemes that are not found in the FAIR Plan Statutes, including
9 providing that amounts recouped through surcharges are not considered premium (§ 1063.14, subd.
10 (a)(2) (CIGA); § 1067.08, subd. (i)(1) (CLHIGA); § 10089.29, subd. (b)(1) (CEA)) and requiring
11 surcharge notices explaining the purpose of the surcharge (§ 1063.145 (CIGA); § 1067.08, subd. (j)
12 (CLHIGA); § 10089.29, subd. (b)(2) (CEA)).

13 **II. Procedural History**

14 Consumer Watchdog filed its verified petition on April 14, 2025, alleging three causes of action
15 for mandamus and declaratory relief under the Insurance Code and the Administrative Procedure Act.
16 (Exh. F [Writ Petition], ¶¶ 55–85.) Respondents demurred. On July 22, 2025, the Court issued a
17 tentative ruling—later adopted as its order—sustaining without leave to amend the first and second
18 causes of action; overruling the demurrer to the third cause of action, which alleges that the pass-through
19 scheme conflicts with, and violates, the FAIR Plan statutes; and holding Consumer Watchdog may
20 pursue the statutory conflict claim without exhausting administrative remedies. (Exh. C, p. 17.)

21 **STANDARD OF REVIEW**

22 Petitioner seeks a traditional writ of mandate under Code of Civil Procedure section 1085. Such a
23 writ issues when (1) a respondent has a clear, present, and ministerial duty to act, and (2) the petitioner
24 has a clear, present, and beneficial right to performance of that duty. (*Kavanaugh v. West Sonoma*
25 *County Union High School Dist.* (2003) 29 Cal.4th 911, 916.) Where, as here, the agency’s action
26 presents a pure question of law—whether the Bulletins conflict with governing statutes—the Court
27 reviews the matter de novo with no deference to the agency’s legal conclusions. (*Yamaha Corp. of*
28 *America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7–8.) Because the Commissioner’s Bulletins

1 exceed his statutory authority under the FAIR Plan Statutes, and because Petitioner has no plain, speedy,
2 or adequate remedy at law, the writ must issue. (Code Civ. Proc., § 1086.)

3 Here, the material facts are documentary and uncontested: the text of the FAIR Plan Statutes and
4 Proposition 103, and the Commissioner’s Bulletins. “As in any case involving statutory interpretation,
5 [the Court’s] fundamental task here is to determine the Legislature’s intent so as to effectuate the law’s
6 purpose.” (*People v. Cole* (2006) 38 Cal.4th 964, 974, quotations omitted.) Courts first “examin[e] the
7 statutory language, giving it a plain and commonsense meaning.” (*Id.* at p. 975.) To “determine [the]
8 scope and purposes” of a statute, courts “construe the words in question in context, keeping in mind the
9 statute[’s] nature and obvious purposes,” and must “consider[] it in the context of the statutory
10 framework as a whole.” (*Ibid.*) “If the statutory language is unambiguous, then its plain meaning
11 controls.” (*Ibid.*) If ambiguity is discerned, courts then “may look to extrinsic aids, including the
12 ostensible objects to be achieved and the legislative history.” (*Ibid.*)

13 ARGUMENT

14 The question here is straightforward: are the pass-throughs permitted by the Bulletins in conflict
15 or inconsistent with the FAIR Plan Statutes, specifically Section 10095(c)? The answer must be yes. The
16 FAIR Plan Statutes assign the duty to cover FAIR Plan losses squarely on member insurers. They
17 contain no language—express or implied—permitting the Commissioner to exercise his discretion to
18 permit member insurers to shift that financial liability to consumers. The Bulletins attempt precisely
19 what the statutes do not permit: allowing the reassignment of insurer assessment costs to policyholders
20 who have no relationship with and receive no direct benefit or coverage from the FAIR Plan at all.

21 The FAIR Plan Statutes foreclose any policyholder pass-throughs. Their text, structure, and
22 history make clear that FAIR Plan assessment costs are the *joint liability of participating insurers*. Every
23 similar program cited by Respondents—CIGA, CLHIGA, the CEA—includes explicit statutory
24 language permitting consumer surcharges. The omission here, even after multiple amendments of the
25 relevant statutory sections, must be given effect. The Commissioner cannot supply through bulletins
26 what the Legislature has repeatedly declined to enact.

27 Rather than try to explain how pass-throughs are consistent with Section 10095(c), Respondents
28 instead seek to place the pass-throughs outside the scope of the FAIR Plan Statutes, claiming that the

1 FAIR Plan Statutes have nothing to do with the lawfulness of the pass-throughs, but instead Proposition
2 103 is the relevant statutory authority that justifies the pass-throughs. However, it is black letter law that
3 an agency cannot issue regulations that conflict with *any* governing statutes. The Commissioner cannot
4 do under Proposition 103 what he is prohibited from doing by the FAIR Plan Statutes. Form does not
5 confer substantive authority. Because the Bulletins in substance authorize insurers to shed a financial
6 obligation the FAIR Plan Statutes expressly impose on them, the conflict is direct regardless of the
7 purported procedural packaging.

8 But even if the Court finds no conflict with the FAIR Plan Statutes, the surcharges must still be
9 found unlawful under Proposition 103. In a characterization previously accepted by this Court,
10 Respondents described the pass-throughs as a “non-rate charge that affects the price of insurance.”
11 However, under governing law, there is no such thing as a lawful “non-rate charge that affects the price
12 of insurance” under Proposition 103—if a charge “affects the price of insurance,” it must be considered
13 part of the rate. If a charge does not “affect the price of insurance,” then it is not part of the rate, but
14 neither can it be authorized by Proposition 103. Finding that the Commissioner can unilaterally impose
15 such charges would invert Proposition 103’s purposes by allowing the Commissioner to invent and
16 permit new fees or charges outside the regulatory process and public scrutiny mandated by the voters.

17 **I. The FAIR Plan Statutes Fix Liability for Assessment Costs on Member Insurers and
18 Foreclose Any Policyholder Pass-Throughs**

19 **A. The Costs of Operating the FAIR Plan Are Statutorily Required to Be Borne by
20 FAIR Plan Member Insurers**

21 The FAIR Plan Statutes created a *joint reinsurance association* of insurers, not a joint consumer
22 association or cooperative. (§§ 10090–10095.) Consumers, including FAIR Plan policyholders, have no
23 role in the governance of the FAIR Plan and no ownership in the plan—the member insurers fill those
24 roles. The Statutes require every admitted property insurer to participate in and fund the Plan’s
25 obligations “in proportion to its writings” in the voluntary market (§ 10095, subd. (c))—the
26 “Proportional Sharing” requirement. (See also *California Fair Plan Assn. v. Garnes* (2017) 11
27 Cal.App.5th 1276, 1283 [the FAIR Plan “administer[s] a program to equitably apportion [basic property]
28 insurance, and the risks and benefits it entails, among California insurers”].)

1 The purposes of the FAIR Plan Statutes further describe the Legislature’s intent—“To provide
2 for the equitable distribution among admitted insurers of the responsibility for insuring qualified
3 property for which basic property insurance cannot be obtained through the normal insurance market by
4 the establishment of a FAIR Plan.” (§ 10090, subd. (d).) An insurer voluntarily writing policies in
5 certain high-risk areas is entitled to “be proportionately relieved of [its] liability to participate in [the
6 FAIR Plan].” (§ 10094.2.) Nothing in the FAIR Plan Statutes authorizes the Commissioner to transfer
7 that liability to FAIR Plan policyholders, let alone the policyholders of all admitted insurers in the state.
8 The statutory design—mandatory insurer participation and responsibility for insuring qualified property,
9 proportional sharing of profits and losses among admitted insurers, and lack of provision for
10 policyholder reimbursement of insurers—reflects a carefully crafted symmetry of obligations on
11 member insurers. It forecloses any reading of the FAIR Plan Statutes as authorizing the Commissioner
12 to permit a consumer surcharge to recover FAIR Plan assessment costs.

13 The only published California decision interpreting section 10095, subdivision (c), *Ohio*
14 *Casualty Ins. Co. v. Garamendi* (2006) 137 Cal.App.4th 64, is highly instructive. There, three affiliated
15 FAIR Plan member insurers sought to avoid paying assessment costs by arguing that because none of
16 the companies were writing new or renewal business after December 1992, and two of the companies
17 had surrendered their certificates of authority to the Commissioner at that time, they did not “qualif[y]
18 for FAIR Plan membership during pool years 1993 and 1994” when the assessments were made. (*Id.* at
19 p. 71.) After finding the FAIR Plan Statutes still required the companies to pay the assessments, the
20 court evaluated the companies’ argument that this result infringed on their right to withdraw from the
21 market. (*Id.* at pp. 79–80.) Rejecting this argument, the court stated: “the imposition of the statutory
22 obligation to participate in the FAIR Plan’s writings, expenses, profits and losses until an insurer has no
23 direct written premiums in the second preceding year is not only rational and fair, but virtually required
24 by the language of the FAIR Plan Act.” (*Id.* at p. 82.) The court noted that allowing an insurer to
25 “enjoy[] the benefits” of the FAIR Plan but “avoid its share of the obligations” would “destroy the
26 symmetry of the legislative scheme.” (*Id.* at pp. 82–83.) The court further found that such a result would
27 “be inequitable, as any exemption for appellant[insurers] from these obligations would simply transfer
28 them to other insurers, increasing their financial burden.” (*Id.* at p. 83.)

1 Here, the pass-throughs lead to the exact result condemned by *Ohio Casualty*—allowing insurers
2 to “enjoy the benefits” of the FAIR Plan (equitable dispersion of risk, distribution of profits) while
3 “avoiding their obligations” (liability for losses and assessment costs). This directly conflicts with both
4 the plain language of section 10095 (c) and the symmetry intended by the Legislature. Critically,
5 insurers may recoup assessment costs from their policyholders under the Bulletins, but no provision
6 requires them to pass any FAIR Plan *profits* back to those same policyholders. Nothing in the Statutes
7 authorizes this “heads insurers win, tails consumers lose” outcome. The Legislature has not amended the
8 FAIR Plan Statutes to add any surcharge authority despite amending the relevant sections multiple times
9 in recent years. (See fn. 9, *post.*)

10 **B. The Pass-Throughs Violate the Proportional Sharing Requirement as Amongst
11 Member Insurers**

12 The pass-throughs further conflict with the proportional sharing requirement as amongst FAIR
13 Plan member insurers in several ways. First, the Bulletins grant the Commissioner discretion over
14 whether an insurer is permitted to pass-through assessment costs, and if so, in what amount. But the
15 Proportional Sharing requirement is mandatory—“an insurer shall participate in the writings, expenses,
16 profits, and losses of the association in the proportion that its premiums written during the second
17 preceding calendar year bear to the aggregate premiums written by all insurers in the program....”
18 (§ 10095, subd. (c); see also § 16 [“As used in [the Insurance] code the word ‘shall’ is mandatory and
19 the word ‘may’ is permissive, unless otherwise apparent from the context”].) The Commissioner has no
20 discretion to allow deviations from that requirement, no matter what authority he claims to be operating
21 under. Such a result is not only unlawful, but also inequitable, as some insurers may end up bearing
22 more of the financial burdens than others. (See *Ohio Casualty, supra*, 137 Cal.App.4th at p. 83.)

23 Additionally, the Bulletins create distinctions between member insurers that the Proportional
24 Sharing requirement does not permit. For example, if the FAIR Plan issued a \$1.5 billion assessment,
25 with \$1.1 billion allocated to residential insurance and \$400 million to commercial insurance, under the
26 Bulletins’ tiered structure, an insurer writing only residential lines could recoup 100% of its assessment
27 costs while an insurer writing only commercial lines could recoup only 50%—a distinction section
28 10095(c) nowhere authorizes. (Exh. B, pp. 2–3.) The reinsurance carve-out compounds this disparity,

1 effectively rewarding insurers who chose not to purchase reinsurance at the expense of those who did.
2 These distinctions are flatly impermissible under section 10095(c).

3 **C. The FAIR Plan Statutes, Not Proposition 103, Provide the Proper Statutory**
4 **Framework for Analyzing the Legality of the Pass-Throughs**

5 Respondents argue that the pass-throughs do not violate section 10095(c) because the statute
6 “does not look to whether, or the extent to which, individual members thereafter recoup (from any
7 source) some or all of the amount they paid to FAIR Plan,” and because “Section 10095(c) governs the
8 FAIR Plan’s internal affairs (i.e., relations between and among FAIR Plan and its members), not
9 relations between FAIR Plan’s members and third parties such as policyholders and reinsurers.” (Exh. G
10 [Respondents’ Responses to Form Interrogatories], No. 15.1.) That is, even though Section 10095(c)
11 clearly requires member insurers to proportionally share in the FAIR Plan’s expenses, since the statute
12 does not explicitly state what happens afterwards, the Commissioner can, through a different statutory
13 scheme, allow insurers to subsequently directly collect those expenses from their policyholders.

14 Respondents seek to obscure the undeniable fact that the Bulletins clearly rely on the FAIR Plan
15 Statutes to provide the substantive justification for allowing the pass-throughs. The Bulletins invoke the
16 purposes of the FAIR Plan Statutes, not the purposes of Proposition 103. The Bulletins require insurers
17 to give notice to surcharged policyholders that directly invoke the purposes of the FAIR Plan Statutes
18 and reference the FAIR Plan four times—neither Proposition 103 nor its purposes are referenced in the
19 notice. (Exh. A, pp. 3–4; Exh. B, p. 5.) The Bulletins explicitly state that the pass-throughs are
20 “necessary to ensure the FAIR Plan’s long-term financial resiliency”—with no mention of supporting or
21 implementing Proposition 103. (Exh. A, p. 4; Exh. B, p. 5.) Proposition 103 is relevant only insofar as
22 the Bulletins direct insurers to submit pass-through applications through a filing procedure developed
23 pursuant to Proposition 103. All the substantive justification for the pass-throughs stated in the Bulletins
24 relies on the FAIR Plan Statutes—it would make a mockery of statutory interpretation and common
25 sense to nevertheless conclude that the FAIR Plan Statutes have no relevance to whether FAIR Plan
26 assessment costs can be passed through to Californians.

27 Respondents’ insistence on form over substance in asking the Court to ignore the practical,
28 substantive justification for, and effect of, the pass-throughs runs contrary to California law. A “general
principle of statutory construction is that courts do not place form over substance where doing so defeats

1 the objective of a statute, especially a statute designed to protect a public interest.”⁶ (*County of Kern v.*
2 *T.C.E.F., Inc.* (2016) 246 Cal.App.4th 301, 320; Civ. Code § 3528.) “[T]he substance and not the mere
3 form of transactions constitutes the proper test for determining their real character. If this were not true it
4 would be comparatively simple to circumvent by sham the provisions of statutes framed for the
5 protection of the public.” (*T.C.E.F., supra*, 246 Cal.App.4th at p. 320.) As characterized by
6 Respondents, the pass-throughs are the exact kind of circumvention by sham condemned by case law.
7 Respondents plead technical compliance with Section 10095(c), while entirely ignoring the substantive
8 purpose and effect of the Bulletins is to allow FAIR Plan member insurers to recoup their FAIR Plan
9 assessment costs from their policyholders. An agency may not “hide the preempted [i.e. impermissible]
10 substance of a regulation behind its nonpreempted form.” (*Bravo Vending v. City of Rancho Mirage*
11 (1993) 16 Cal.App.4th 383, 405.) Respondents noted the Bulletins do not directly approve or guarantee
12 approval of any pass-through application (Exh. G, No. 15.1), but that is irrelevant—if surcharges, the
13 substance of the Bulletins, conflict with the FAIR Plan Statutes, the Commissioner lacks discretion to
14 establish an approval process for such unlawful surcharges in the first instance.⁷

15 **II. Other Statutory Insurance Safety Net Mechanisms Explicitly Permit Surcharges; the Lack**
16 **of Any Surcharge Provision in the FAIR Plan Statutes Confirms the Lack of Pass-Through**
17 **Authority**

18 California’s Insurance Code reflects a consistent drafting practice: when Sacramento wants
19 policyholders to help finance an industry “safety-net,” it writes surcharge authority into the statute. As
20 recognized by the California Supreme Court: “It is a settled rule of statutory construction that where a
21 statute, with reference to one subject contains a given provision, the omission of such provision from a
22 similar statute concerning a related subject is significant to show that a different legislative intent existed
23 with reference to the different statutes.” (*In re Jennings* (2004) 34 Cal.4th 254, 273.)

24 Like the FAIR Plan, CIGA, CLHIGA, and the CEA are “safety-net” programs; both Bulletins
25 highlight the similarities. Each other program statutorily provides for assessments of participating

26 ⁶ The “field of insurance so greatly affects the public interest that the industry is viewed as a ‘quasi-
27 public’ business.” (*20th Century Ins. Co. v. Superior Court* (2001) 90 Cal.App.4th 1247, 1265.) The
28 FAIR Plan Statutes were designed to protect the public’s interest in available basic property insurance.

⁷ There is no dispute that the Bulletins were issued to enable approval of pass-through applications, and
the Commissioner has approved approximately \$420 million in pass-throughs, and approved surcharge
filings for every insurer that applied for a pass-through. (Declaration of Benjamin Armstrong, ¶¶ 3–4).

1 insurers and contains an express surcharge mechanism.⁸ By contrast, the FAIR Plan Statutes—enacted
2 in 1968 and repeatedly revisited⁹—assign assessment costs to member insurers and make no provision
3 for recouping those assessments from policyholders. Given that juxtaposition, the absence of surcharge
4 text in the FAIR Plan is not a gap ripe for administrative innovation; it is a boundary on administrative
5 power. The Legislature’s failure to provide for FAIR Plan assessment cost surcharges is probative in
6 exactly the way California courts recognize: when a specific mechanism appears in related statutes but is
7 omitted from the statute at issue, courts treat the omission as intentional. That is the posture here.¹⁰ The
8 statutory design and legislative record point in the same direction: no pass-through authority exists under
9 the FAIR Plan Statutes, and the Commissioner cannot accomplish that result via bulletin.

10 **III. Proposition 103 Cannot Authorize a Surcharge the FAIR Plan Statutes Forbid**

11 Unable to cite any text in Section 10095(c) authorizing the pass-throughs, Respondents instead
12 “contend the Bulletins were validly issued under Proposition 103” (Exh. J [Answer], ¶ 84) ostensibly
13 because insurers are instructed to upload their filings through the Department’s prior-approval web
14 portal. Petitioner addresses Respondents’ Proposition 103 argument *post*. But the Court need not reach
15 this argument because even if the pass-throughs could be independently justified under Proposition 103,
16 they are still unlawful if they conflict with the FAIR Plan Statutes. (*Credit Ins. Gen. Agents Assn. v.*
17 *Payne* (1976) 16 Cal.3d 651, 656 [“The [insurance] commissioner, of course, has no power to vary or
18 enlarge the terms of an enabling statute, or to issue regulations which conflict with this or any other
19 statute”].) Thus, if this Court agrees with Petitioner that the pass-throughs conflict with the FAIR Plan
20 Statutes, the inquiry is over—the pass-throughs are unlawful and the Bulletins should be struck down.

21
22
23 ⁸ Assessments are provided for in sections 1063.145 (CIGA), 1067.08, subdivision (a) (CLHIGA), and
24 10089.23, subdivision (a)(1) (CEA), and policyholder “surcharges” are authorized by sections 1063.14,
25 subdivision (a)(1) (CIGA), 1067.08, subdivision (i)(1) (CLHIGA), and 10089.29, subdivision (b)(1)
(CEA). (See also § 1872.87 [providing for surcharges to recoup assessment costs].)

26 ⁹ For example, Section 10094 has been amended twice in the past five years (Stats.2021, c. 128 (S.B.11),
27 § 2; Stats.2025, c. 474 (A.B.234), § 1); Section 10095 has been amended three times in the past ten
28 years (Stats.2016, c. 543 (S.B.1302), § 2; Stats.2020, c. 258 (A.B.3012), § 7; Stats.2023, c. 180
(S.B.505), § 1).

¹⁰ Additionally, two recent legislative proposals to amend the FAIR Plan Statutes to provide specific
statutory authority for surcharges failed to proceed into law. (Exh. H [A.B. 2996, as introduced Feb. 16,
2024]; Exh. I [Department’s 2023 proposed legislation].)

1 **IV. Proposition 103 Does Not Empower the Commissioner to Unilaterally Authorize “Non-**
2 **Rate Charges that Affect the Price of Insurance”¹¹**

3 Respondents rely on statutes enacted by California voters to protect themselves *against* unjust
4 rates/premiums as their sole legal support for the transfer of financial risk and liability from insurers to
5 policyholders. The Court’s demurrer order found the “Commissioner had authority under Proposition
6 103 for the pass-throughs in the Bulletins,” but that holding was expressly limited to the procedural
7 question of whether rule-change applications qualify as rate applications under Proposition 103—it was
8 not a merits determination that the substance of the pass-throughs is lawful. (Exh. C, p. 15 [finding “that
9 a rule-change applications are [] a type of rate application”].) This Court now adjudicates the legal
10 questions on a full record. That distinction matters: the question now before the Court—whether
11 Proposition 103 authorizes the Commissioner to establish a “non-rate charge that affects the price of
12 insurance” that is exempt from Section 1861.05 (a)’s mandatory prior approval rate evaluation standard
13 used to determine whether rates are excessive or inadequate—was not decided on demurrer.

14 The fundamental flaw in Respondents’ argument is their belief that Proposition 103 empowers
15 the Commissioner to authorize “non-rate charge[]s that affect[] the price of insurance.” Nothing in
16 Proposition 103—nor any provision of the Insurance Code that implements it—empowers the
17 Commissioner to authorize the transfer of FAIR Plan assessment costs from insurers to their
18 policyholders, nor to otherwise unilaterally impose “non-rate charges that affect the price of insurance.”
19 Any charge that affects the price of insurance must be considered legally part of the rate.

20 **A. A “Non-Rate Charge That Affects the Price of Insurance” Is a Legal Oxymoron**
21 **Under Proposition 103**

22 In the Demurrer Order, the Court adopted a characterization used in Respondents’ briefing that
23 the pass-throughs are a “non-rate charge that affects the price of insurance.” (Exh. C, p. 10 [“the pass-
24 through is clearly part of the price [but not rate] the insurers will charge their insureds for the benefit of
25 obtaining, renewing, or (as alleged) keeping their insurance policies”]; see Exh. K [Respondents’ Reply
26 ISO Demurrer], p. 4.) But as conclusively interpreted by the California Supreme Court, anything that
27 “affects the price of insurance” is part of the “rate” as that term is used in Proposition 103.¹² As stated in

27 ¹¹ All terms addressed in this section are interpreted as construed under Proposition 103.

28 ¹² The Commissioner has recognized that the “term ‘premium’ has several different (and sometimes
conflicting) meanings depending upon the context in which it is used.” (Exh. L [Opinion of

1 20th Century, *supra*, 8 Cal.4th at p. 240: “For purposes [of Proposition 103], a rate is the price or
2 premium that an insurer charges its insureds for insurance.” (See also *id.* at p. 251 [“The ratemaking
3 formula is designed to yield a premium that the insurer should receive from its insureds in order to earn
4 a sum amounting to (1) the reasonable cost of providing insurance...”]; *Mercury, supra*, 35 Cal.App.5th
5 at p. 97 [“according to well-established law and regulations, premium includes all payments made by an
6 insured that are part of the cost of insurance”]; 10 CCR § 2360.0¹³ [defining “Premium” to mean “the
7 final amount charged to an insured” including “surcharges, fees charged by the insurer and all other
8 items which change the amount the insurer charges to the insured”]; *Calfarm, supra*, 48 Cal.3d at p. 813
9 [term “charge” in Section 1861.01, subd. (a) interpreted to mean “rate”].) The Commissioner has
10 previously confirmed this understanding. (Exh. M [Responses to Initial Public Comments, No. RH-329],
11 p. 11 [the “California Supreme Court has stated that the term ‘rate’, as used in 1861.05, means the same
12 thing as ‘premium’”]; see also pp. 4–5.) In short, the terms “rate,” “premium,” “charge,” and “price” are
13 effectively synonymous under Proposition 103—each refers to the final amount insureds must pay to
14 cover the cost of their insurance.

15 Therefore, if any fee/charge is “part of the cost of insurance” / “change[s] the amount the insurer
16 charges to the insured,” it is part of the premium/rate “according to well-established law and
17 regulations.” If a fee is not “part of the cost of insurance,” it is not considered part of the premium/rate.
18 There is no legal room for a middle ground under Proposition 103, wherein a fee is not considered as
19 part of the premium/rate but also considered to affect the price of insurance—a fee must land in one of
20 the two lawful buckets. This conclusion was clearly stated by the California Supreme Court and
21 contemporaneously confirmed by the Commissioner, and is therefore binding on this Court.

22 While instituting a number of changes to California’s insurance regulatory system, Proposition
23 103’s most significant reform was implementation of a prior approval system of ratemaking. The
24 Commissioner’s prior approval ratemaking obligation is imposed by Section 1861.05(a), which states:

25 _____
26 Commissioner on Referral in *Williams v. Interins. Exchange of the Auto. Club* (San Diego Sup. Ct., Case
27 No. GIC 836845) April 25, 2006], p. 3.) The terms ‘premium’ and ‘rate’ are construed here pursuant to
28 only Proposition 103, as that is the statutory authority claimed by Respondents. Whether or not the pass-
throughs are “premium” or “rates” in a different context is ultimately irrelevant here.

¹³ This regulation was enacted as part of the implementation of Proposition 103. (See Exh. M, p. 1.)

1 “[n]o rate shall be approved or remain in effect which is excessive, inadequate, unfairly discriminatory
2 or otherwise in violation of this chapter.” While the Supreme Court found the Commissioner had broad
3 discretion over how to implement the initiative, such discretion much be confined to the scope of the
4 initiative. (*California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 6 [“Administrative
5 discretion is not a roving commission to rewrite statutes to suit agency convenience”].)

6 Proposition 103 does not authorize the Commissioner to issue regulations permitting charges that
7 are not “part of the cost of insurance”—that is, not part of the premium/rate. Nothing in Proposition 103
8 even arguably grants the Commissioner authority to unilaterally authorize the pass-through of fees
9 assessed against insurers under a completely unrelated statutory scheme via a direct surcharge by those
10 insurers to their policyholders. Such a process is entirely contrary to the purposes of Proposition 103.
11 That the Commissioner has established a process for insurers to file “rule-change” applications under
12 Proposition 103 for filings claimed to have no “rate impact” does not provide the Commissioner with the
13 substantive authority to permit the pass-throughs merely by using that process.

14 Under this framework, the pass-throughs are unlawful no matter which bucket they are placed in.
15 Either the pass-throughs “affect the cost of insurance” and are unlawfully excluded from being
16 considered part of the rate/premium under Proposition 103, or they do not “affect the cost of insurance”
17 and thus do not fall within the scope of the Commissioner’s regulatory authority under Proposition 103.

18 **B. None of the Insurance Code Sections Cited in the Bulletins Support Pass-Through
19 Authority**

20 Without explanation, the Bulletins cite several Insurance Code sections as support for the pass-
21 throughs (Exh. A, fn. 6; Exh. B, fn. 8), but none are availing. Two sections are “see” cited—sections
22 1861.05, subdivision (b), and 1861.02, subdivision (c). The former states: “Every insurer which desires
23 to change any rate shall file a complete rate application with the commissioner.” Given that the
24 Department denies the pass-throughs are, or impact, rates, and does not require pass-throughs to be
25 requested through complete rate applications, that subdivision cannot authorize them. The latter
26 provision concerns auto insurance and is entirely irrelevant.¹⁴

27 ¹⁴ The same is true for the three “see also” cites to non-Proposition 103 provisions. Section 1857.7
28 simply lists information that must be provided in a “complete rate application” under section 1861.05,
subdivision (b). Section 1857.9 requires insurers to report to the Commissioner information collected by
“licensed advocacy organizations.” Section 1864 concerns childcare liability coverage and is completely

1 **C. Finding That Proposition 103 Permits a “Non-Rate Charge That Affects the Price of**
2 **Insurance” Would Allow Pass-Throughs of Otherwise Excluded Expenses**

3 A finding that the pass-throughs are authorized by Proposition 103 as a “non-rate charge that
4 affects the price of insurance” would substantially conflict with the language and intent of Proposition
5 103 and write a gaping loophole into the law, leading to potentially grave consequences.

6 Take the situation at hand. A statute imposes mandatory costs on insurers. The Commissioner,
7 without following any public regulatory process, issued Bulletins on the Department’s website
8 permitting those insurers to pass the statutory costs directly through to their policyholders, while
9 excluding the money collected by the insurer from being considered as premium and thus placing the
10 pass-throughs outside of the rate review procedures mandated by Proposition 103 (§ 1861.05).

11 If this process is construed to be authorized by Proposition 103, there is effectively no limit on
12 the costs of insurance the Commissioner could allow an insurer to pass through to its policyholders by
13 simply designating them “non-rate charges.” Unless a statute explicitly states that a particular insurer
14 expense cannot subsequently be fully passed through to policyholders, the Commissioner could issue a
15 bulletin to permit any insurer to surcharge the cost to its policyholders using provisions analogous to the
16 Bulletins here and thereby evade the full rate review required under Section 1861.05.

17 The logic has no limiting principle. Fines and penalty costs are expressly excluded from being
18 considered ratemaking expenses by regulation; so are judgments and litigation expenses attributable to
19 insurer bad faith, discrimination, and related unlawful business practices. (10 CCR § 2644.10, subds.
20 (c)–(e).) In other words, insurers cannot use those expenses to justify higher rates. But under
21 Respondents’ theory, the Commissioner could designate such expenses—or any other insurer expense—
22 as “non-rate charges” and authorize a direct surcharge to policyholders, bypassing Section 1861.05(a)’s
23 excessive/inadequate standard entirely. He could even authorize surcharges reimbursing insurers for
24 otherwise prohibited political expenditures expenses (10 CCR § 2644.10, subd. (a)), *including*
25 *contributions to Insurance Commissioner campaigns*—creating a feedback loop Proposition 103’s
26 accountability provisions were designed to prevent. A voter-enacted prior-approval regime born of

27 _____
28 irrelevant. None of these sections even arguably give the Commissioner the authority to permit pass-
throughs of FAIR Plan assessment costs or authorize non-rate charges that affect the price of insurance.

1 outrage over excessive rates cannot also be the vehicle by which the Commissioner places and permits
2 insurer costs outside of full rate review.

3 Permitting the Commissioner to unilaterally authorize new “non-rate charges” without any
4 public process would also directly conflict with Proposition 103’s purposes “to protect consumers from
5 arbitrary insurance rates and practices, to encourage a competitive insurance marketplace, to provide for
6 an accountable Insurance Commissioner, and to ensure that insurance is fair, available, and affordable
7 for all Californians.” (Prop. 103, § 2.) Unilaterally authorizing a charge to be imposed outside the rate-
8 review process—potentially at the request of the very industry the charge would benefit—is the
9 definition of arbitrary.

10 And under this Court’s prior interpretations that the Commissioner is authorized by Proposition
11 103 to permit ‘non-rate charges’ requested through rule-change applications without complying with the
12 APA (Exh. C, pp. 10–15), there would be no effective recourse should the Commissioner permit any
13 such charges, even ones lobbied for by insurers. Courts will not consider the wisdom of decisions of a
14 quasi-legislator like the Commissioner, nor any evidence presented to contradict the evidence relied on
15 to support his decision. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 579.)
16 Because “non-rate charges” fall outside the APA, they could be struck down only if “entirely lacking in
17 evidentiary support,” a more deferential standard of review than the “substantial evidence” test. (See
18 Standard of Review for Questions of Discretion, California Practice Guide: Administrative Law Ch. 17-
19 E [“The substantial evidence test applies to APA rulemaking reviewed under declaratory judgment [],
20 but the ‘entirely lacking’ test applies to other quasi-legislative decisions”].) Thus, any non-rate charge
21 with any evidentiary support would have a nearly irrebuttable presumption of legality. It is therefore
22 imperative for the integrity of California’s prior approval system that the Court reject the argument that
23 Proposition 103 grants the Commissioner unilateral authority to permit “non-rate charges that affect the
24 cost of insurance.”

25 **D. The Pass-Throughs Are Either Unauthorized by or Violate Proposition 103**

26 If the pass-throughs are characterized as a charge that does not “affect the cost of insurance,”
27 they are outside the scope of any authority provided by Proposition 103. This construction is supported
28 by the plain language of the Bulletins that excludes pass-throughs from consideration as premiums or

1 losses, which are fundamental aspects of ratemaking. Under Proposition 103, the Commissioner has no
2 authority to allow insurers to impose surcharges on their policyholders outside of the ratemaking process
3 required by Section 1861.05. And nothing in Proposition 103 even arguably grants the Commissioner
4 authority to unilaterally authorize pass-throughs of fees assessed against insurers under an unrelated
5 statutory scheme in the form of a direct surcharge by those insurers to their policyholders.

6 If the pass-throughs are considered to “affect the cost of insurance,” as the Court found in the
7 Demurrer Order, they must be considered as part of the premium/rate paid by a policyholder. As noted
8 *ante*, the Supreme Court in *20th Century* held that “the term ‘rate’, as used in 1861.05, means the same
9 thing as ‘premium.’” (Exh. M, p. 11.) “Surcharges” and “fees” that “change the amount the insurer
10 charges to the insured” are expressly defined as “premium.” (10 CCR § 2360.0, subd. (d).) In short:
11 “well-established law and regulations” hold that “premium includes all payments made by an insured
12 that are part of the cost of insurance.” (*Mercury, supra*, 35 Cal.App.5th at p. 97.) The Commissioner
13 cannot by fiat characterize a fee as “affecting the cost of insurance” but exclude the fee from being
14 considered premium and thus not subject it to the normal ratemaking process. The Commissioner’s chief
15 job under Proposition 103 is to ensure that “[n]o rate shall be approved or remain in effect which is
16 excessive, inadequate, unfairly discriminatory, or otherwise in violation of this chapter.” (§ 1861.05,
17 subd. (a).) Because the pass-throughs are declared to be neither premium nor losses, and thus “without
18 rate impact,” pass-through applications are not reviewed for compliance with Section 1861.05(a). As the
19 Bulletins expressly preclude treating the pass-throughs as rate/premium, the pass-throughs are unlawful
20 under Proposition 103 to the extent they “affect the cost of insurance.”

21 **V. Declaratory and Injunctive Relief Are Required to End an Unlawful Transfer of Consumer
22 Funds**

23 In addition to issuing a writ prohibiting the Commissioner from continuing to permit pass-
24 throughs, a declaration and permanent injunction are required to remedy this ongoing unlawful transfer
25 of money from consumers to the FAIR Plan’s member insurers. Under Code of Civil Procedure section
26 1060, the Court may declare the parties’ rights where an actual controversy exists. The controversy here
27 is direct: whether the Commissioner has authority to permit insurers to pass-through FAIR Plan
28 assessment costs to their non-FAIR Plan policyholders. Because the governing statutes answer “no,” the
Court should declare the Bulletins invalid. Such a declaration will resolve the legal issue prospectively,

1 DATE: APRIL 17, 2026

CONSUMER WATCHDOG

2
3 By: Ryan Mellino

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5 RYAN MELLINO

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Service List

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