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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Rate/Rule Applications of
Farmers Insurance Exchange,
Fire Insurance Exchange, and
Mid-Century Insurance Company,
Applicants.

File Nos.: 23-1129, 23-1129-A, 23-1129-B

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

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

1 Pursuant to Insurance Code sections 1861.05 and 1861.10(a) and the Settlement
2 Stipulation in the recently concluded rate proceeding (PA-2023-00009) on the homeowners rate
3 applications of Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century
4 Insurance Company (“Farmers” or “Applicants”), Consumer Watchdog hereby petitions for a
5 hearing and requests that it be granted leave to intervene in the proceeding on Applicants’ above-
6 referenced Rate and Rule Applications seeking approval of new property-level and community-
7 level mitigation designations and discounts to comply with California Code of Regulations, title
8 10 (“10 CCR”), section 2644.9. Consumer Watchdog intends to seek compensation in this
9 proceeding, and, pursuant to 10 CCR, section 2661.3, subdivision (c), Consumer Watchdog’s
10 proposed budget is attached hereto as Exhibit A.

11 In support of its petition, Consumer Watchdog alleges:

12 **I. THE APPLICATIONS**

13 1. On or about April 12, 2023, Applicants filed Prior Approval Rate and Rule
14 Applications with the California Department of Insurance (“CDI”), seeking approval of rule and
15 rating plan changes to implement new property-level and community-level mitigation
16 designations and discounts to comply with 10 CCR Section 2644.9, “Consideration of Mitigation
17 Factors; Wildfire Risk Models” (File Nos. 23-1129, 23-1129-A, and 23-1129-B [“the
18 Applications”]).

19 2. On or about May 5, 2023, the public was notified of the Applications.

20 **II. PETITIONER**

21 3. Petitioner Consumer Watchdog is a nonprofit, nonpartisan, public interest
22 corporation organized to represent the interests of consumers and taxpayers. A core focus of
23 Consumer Watchdog’s advocacy is the representation of the interests of insurance consumers and
24 policyholders, particularly as they relate to the implementation and enforcement of Proposition
25 103, in matters before the Legislature, the courts, and the CDI.

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

3 5. Consumer Watchdog has served as a public watchdog with regard to insurance
4 rates and insurer rollback liabilities under Proposition 103 by: monitoring rollback settlements
5 and the status of the rollback regulations; reviewing and challenging rate filings made by insurers
6 seeking excessive rates; participating in rulemaking and adjudicatory hearings before the CDI
7 including the rulemaking proceeding that led to the adoption of the mitigation discount and
8 wildfire risk model regulations in 10 CCR § 2644.9; and educating the public concerning industry
9 underwriting and rating practices, their rights under Proposition 103, and other provisions of state
10 law. Consumer Watchdog has also initiated and intervened in actions in state court and appeared
11 as amicus curiae in matters involving the interpretation and application of Proposition 103 and the
12 Insurance Code.¹

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

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

1 **III. EVIDENCE**

2 7. In the proceeding initiated by Consumer Watchdog’s petition, Consumer
3 Watchdog will present and elicit evidence to show that the proposed rate and rule changes result
4 in rates that are excessive and/or unfairly discriminatory in violation of Insurance Code section
5 1861.05, subdivision (a), which provides that “[n]o rate shall be approved or remain in effect
6 which is excessive, inadequate, [or] unfairly discriminatory.” Additionally, Consumer Watchdog
7 will present and elicit evidence that Applicants’ proposed rating plan and rule changes
8 potentially violate 10 CCR § 2644.9’s requirements relating to the use of wildfire risk models
9 and the implementation of mandatory wildfire risk mitigation factors.

10 8. Based on Consumer Watchdog’s preliminary analysis in consultation with its
11 actuarial expert and the information contained in the Applications, Consumer Watchdog has
12 identified the following issues with the Applications on which it intends to present and elicit
13 evidence as set forth in (a)–(c) below.

- 14 a. 10 CCR § 2644.9(d)(1)(B) [property mitigation discounts]; see also (d)(1)(A)
15 [community mitigation discount]; 10 CCR § 2644.9(g): The regulation provides, “The
16 rating plan shall reflect, and the rate offered to the applicant or insured shall be based
17 in part on, the reduced wildfire risk resulting from each and every property-level
18 wildfire risk mitigation effort listed in subdivisions (d)(1)(B)1.a. through (d)(1)(B)1.e.
19 and (d)(1)(B)2.a. through (d)(1)(B)2.e., below, that is undertaken with respect to an
20 individual property being assessed for risk.” (10 CCR § 2644.9(d)(1)(B) [property
21 mitigation discounts]; see also (d)(1)(A) [community mitigation discount].) The
22 regulation further provides, “To the extent the insurer’s own California data is not
23 fully credible, the insurer shall credibility-weight its data with an appropriate
24 complement of credibility to support each segment, rating differential, or premium
25 surcharge. If the Commissioner aggregates California premium-and-loss data by
26 wildfire risk to create a fire and wildfire exposure risk manual pursuant to Insurance
27 Code section 929.2, an insurer may rely on the then-current version of the manual as
28 support for each segment, rating differential, or surcharge being requested in

1 connection with a residential property rate application, either directly or as a
2 complement of credibility to the insurer’s own California wildfire loss data.” (10 CCR
3 § 2644.9(g).) Farmers has not demonstrated compliance with the regulation as its
4 proposal fails to provide any meaningful premium discounts to homeowners who
5 complete the wildfire mitigation measures set forth in § 2644.9. Per comments made
6 by Farmers during a call with Consumer Watchdog on August 9, 2023, the average
7 mitigation discount for customers with FireLine scores of 0–3 is \$20 to \$30. This
8 could conceivably be justified, as customers in those areas have negligible wildfire
9 risk. However, for customers with higher FireLine scores (and thus more significant
10 wildfire risk), the average discount is still quite small—in the range of \$40 to \$75—
11 again per Farmers’ comments. This is especially troubling given that, as Farmers
12 revealed for the first time in its August 8, 2023 email response to Consumer
13 Watchdog’s August 7 email, customers must pay out-of-pocket for a home inspection
14 in order to even be eligible for the mitigation discounts, and Farmers stated on the
15 aforementioned August 9 call that the cost of the inspection is around \$100. Since the
16 average mitigation discount across all of Farmers’ business is in the range of \$20 to
17 \$75, the average net “discount” is in fact a surcharge when the \$100 inspection cost is
18 factored in.

- 19 b. Ins. Code § 1859: Farmers fails to disclose the cost of the home inspection in their
20 proposed rate or rule manuals, instead giving the impression that any premium
21 discounts for undertaking wildfire mitigation measures (which are themselves quite
22 costly) will have a net effect of reducing the overall amount consumers pay for
23 homeowners insurance.
- 24 c. 10 CCR § 2644.9(h)–(k): Based on the information and documents provided by
25 Farmers to date in response to Consumer Watchdog’s prior requests for information in
26 PA-2023-00009 regarding the written procedure Farmers proposes to adopt to comply
27 with subdivisions (h)–(k) of the regulation, it appears that Farmers’ written procedures
28 and notifications do not include a clear explanation of all the information required

1 under the regulation, including but not limited to the rate impact of the wildfire risk
2 score, and steps the homeowner could take to lower their score.

3 9. Consumer Watchdog reserves the right to modify, withdraw, and/or add issues for
4 consideration as more information becomes available, including but not limited to violations of
5 Insurance Code section 1859 and 1861.07 for failure to publicly disclose information in its filings
6 that will affect policyholders' rates and premiums.

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

8 10. The authority for this petition for hearing is Insurance Code section 1861.10,
9 subdivision (a), which grants "any person" the right to initiate or intervene in a proceeding
10 permitted or established by Proposition 103 and the right to enforce Proposition 103. Specifically,
11 as stated above, Consumer Watchdog initiates this proceeding to enforce Insurance Code sections
12 1861.05 and 1861.07 and 10 CCR § 2644.9.

13 11. Additionally, a hearing is authorized pursuant to Insurance Code section 1861.05,
14 subdivision (c), which allows "a consumer or his or her representative" to request a hearing on a
15 rate application, and 10 CCR § 2653.1, which provides that "any person, whether as an
16 individual, representative of an organization, or on behalf of the general public, may request a
17 hearing by submitting a petition for hearing."

18 12. Although this petition was not filed within forty-five (45) days of the May 5, 2023
19 public notice date pursuant to Insurance Code section 1861.05, subdivision (c), and 10 CCR
20 § 2646.4(a)(1), it is timely, as Consumer Watchdog, Farmers, and the CDI previously stipulated
21 that Consumer Watchdog will be permitted to intervene and participate in discussions regarding
22 the Applications. (Settlement Stipulation, Aug. 10, 2023, *In the Matter of the Rate Applications*
23 *of Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance*
24 *Company*, File No. PA-2023-00009, p. 2, ¶ 3.)

25 **V. INTEREST OF PETITIONER**

26 13. Consumer Watchdog's interest in the above-captioned proceeding is to ensure that
27 Applicants' homeowners insurance policyholders are charged rates and premiums that comply
28 with the provisions of Insurance Code section 1861.05(a)'s requirement that "no rate shall be

1 approved or remain in effect which is excessive, inadequate, [or] unfairly discriminatory or
2 otherwise in violation of this chapter,” and the requirements contained in the regulations
3 promulgated thereunder. For many homeowners, their home is their most valuable asset and they
4 are required to purchase homeowners insurance by their mortgage lenders. Consumers who are
5 overcharged by insurers for this insurance coverage and/or arbitrarily non-renewed, even when
6 they have undertaken significant wildfire mitigation efforts to protect their homes and lower their
7 risk of loss, are part of Consumer Watchdog’s core constituency.

8 14. As noted in paragraphs 3–6 above, Consumer Watchdog’s staff and consultants
9 have substantial experience and expertise in insurance rate matters, which Consumer Watchdog
10 believes will aid the CDI in its review of the Applications and aid the Commissioner in making
11 his ultimate decision as to whether to approve or disapprove the requested rates. If leave to
12 intervene is granted, Consumer Watchdog will participate fully in all aspects of this proceeding.

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

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

17 16. The authority for Consumer Watchdog’s petition to intervene is Insurance Code
18 section 1861.10, subdivision (a), which grants “any person” the right to “initiate or intervene in
19 any proceeding permitted or established pursuant to this chapter [Chapter 9 of Part 2 of Division 1
20 of the Insurance Code] . . . and enforce any provision of this article.” This proceeding is a
21 proceeding to enforce Insurance Code sections 1861.05 and 1861.07 pursuant to Insurance Code
22 section 1861.10(a), and hence is a proceeding both “permitted” and “established” by Chapter 9.
23 This petition to intervene is also authorized by 10 CCR § 2661.1 et seq. Although consumer
24 presence in departmental proceedings typically results in significant reductions to policyholders’
25 rates, the amount of savings for each individual consumer is outweighed by the time and expense
26 of hiring individual counsel or an advocacy group to protect his or her rights. Thus, an
27 independent organization like Consumer Watchdog introduces a voice that otherwise would be
28 absent from this proceeding.

1 **VII. PARTICIPATION OF CONSUMER WATCHDOG**

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

5 **VIII. INTENT TO SEEK COMPENSATION**

6 18. The Commissioner has awarded Consumer Watchdog compensation for its
7 reasonable advocacy and witness fees and expenses in past departmental proceedings. The
8 Commissioner issued Consumer Watchdog’s latest Finding of Eligibility on July 26, 2022,
9 effective for two years as of July 12, 2022. Consumer Watchdog was previously found eligible to
10 seek compensation on August 25, 2020, effective as of July 12, 2020; July 12, 2018; July 14,
11 2016; July 24, 2014; July 24, 2012; July 2, 2010; August 25, 2008; July 14, 2006; July 2, 2004;
12 June 20, 2002; October 1, 1997; September 26, 1995; September 27, 1994; and September 13,
13 1993.

14 19. Consumer Watchdog intends to seek compensation in this proceeding. Pursuant to
15 10 CCR § 2661.3(c), Consumer Watchdog’s estimated budget in this proceeding is attached
16 hereto as Exhibit A. Consumer Watchdog has based its estimated budget on several factors
17 including: (1) the technical and legal expertise needed to address these issues; (2) its current best
18 estimate of the time needed to participate effectively in these proceedings, taking into account the
19 time already expended by Consumer Watchdog staff and its consulting actuary and an estimate of
20 time needed to complete remaining tasks through completion of the proceeding; and (3) past
21 experience in similar rate proceedings before the CDI. The estimated budget is reasonable and the
22 staffing level is appropriate, given the expertise that Consumer Watchdog and its consultants
23 bring to these proceedings when the issues involved are issues at the very core of its
24 organizational mission and strike at the very heart of Proposition 103 itself. The budget presented
25 in the attached Exhibit A is a preliminary estimate, and Consumer Watchdog reserves the right to
26 amend its proposed budget as its expenses become more certain and/or if an evidentiary hearing is
27 noticed, or in its request for final compensation. Consumer Watchdog will give notice of such
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1 modifications as soon as practicable after it discovers the need to revise its estimates and shall
2 comply with the budget revision requirements in the relevant intervenor regulations.

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

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6 DATED: August 30, 2023

Respectfully submitted,
Harvey Rosenfield
Pamela Pressley
Benjamin Powell
Ryan Mellino
CONSUMER WATCHDOG

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11 By: *Pamela Pressley*
12 Pamela Pressley
13 Attorney for CONSUMER WATCHDOG
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**EXHIBIT A
PRELIMINARY BUDGET**

ITEMS

ESTIMATED COST

1. Consumer Watchdog Attorneys and Paralegal

Pamela Pressley (Senior Staff Attorney) @ \$595 per hour, 50 hours \$29,750

- Draft and edit petition for hearing and petition to intervene; supervise Consumer Watchdog counsel; confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions with CDI and Applicants' counsel regarding issues raised by the petition; assist in all phases of proceeding and preparation of request for compensation.

Benjamin Powell (Staff Attorney) @ \$350 per hour, 75 hours \$26,250

- Confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions and communications with CDI and Applicants' counsel; prepare request for compensation.

Kaitlyn Gentile (Paralegal) @ \$200 per hour, 25 hours \$5,000

- Draft and edit petition for hearing and petition to intervene; prepare requests for information; prepare request for compensation.

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

- Supervise Consumer Watchdog counsel and participate in strategy discussions.

2. Expert Witness: Ben Armstrong

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

- Staff actuary to review filing and additional information submitted by Applicants; prepare requests for information and actuarial analysis; participate in meet and confers with the parties as needed.

3. Consumer Watchdog Expenses

Office expenses (photocopies, facsimile, telephone calls, postage, etc.)\$1,000

TOTAL ESTIMATED BUDGET: \$114,925