

1 Harvey Rosenfield, SBN 123082  
2 Pamela Pressley, SBN 180362  
3 Benjamin Powell, SBN 311624  
4 Ryan Mellino, SBN 342497  
5 CONSUMER WATCHDOG  
6 6330 San Vicente Blvd., Suite 250  
7 Los Angeles, CA 90048  
8 Tel. (310) 392-0522  
9 Fax (310) 392-8874  
10 harvey@consumerwatchdog.org  
11 pam@consumerwatchdog.org  
12 ben@consumerwatchdog.org  
13 ryan.m@consumerwatchdog.org

14 Attorneys for CONSUMER WATCHDOG

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA

In the Matter of the Rate Applications of

Farmers Insurance Exchange,  
Fire Insurance Exchange, and  
Mid-Century Insurance Company,

Applicants.

File No.: 23-844; 23-844-A; 23-844-B

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

[Ins. Code §§ 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 Applications of Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company (“Applicants” or “Farmers”), at which time Applicants 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 the Applications. 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 APPLICATIONS**

1. On or about March 31, 2023, Applicants filed Rate Applications with the California Department of Insurance (“CDI”), seeking approval of an overall 25.5% rate increase to their Homeowners Program line of insurance (File Nos. 23-844; 23-844-A; 23-844-B [“the Applications”]) effective July 1, 2024, on top of a previously approved 17.7%, which takes effect on June 17, 2023.

2. On or about April 14, 2023, the public was notified by the Department of the Applications.

**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.

5. Consumer Watchdog has served as a public watchdog with regard to insurance rates and insurer rollback liabilities under Proposition 103 by: monitoring rollback settlements and the status of the rollback regulations; reviewing and challenging rate filings made by insurers seeking excessive rates; participating in rulemaking and adjudicatory hearings before the CDI; and educating the public concerning industry underwriting and rating practices, their rights under Proposition 103, and other provisions of state law. Consumer Watchdog has also initiated and intervened in actions in state court and appeared as amicus curiae in matters involving the interpretation and application of Proposition 103 and the Insurance Code.<sup>1</sup>

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

### **III. EVIDENCE**

7. At the requested public hearing, Consumer Watchdog will present and elicit evidence to show that the rates proposed in the Applications are excessive and/or unfairly

---

<sup>1</sup> For example, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243; *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473; *Spanish Speaking Citizens’ Found. v. Low* (2000) 85 Cal.App.4th 1179; *Donabedian v. Mercury Ins. 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; *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.

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 and the information contained in the Applications and publicly available from the Department’s website, Consumer Watchdog has identified the following issues with respect to the Applications on which it intends to present and elicit evidence as set forth in sections (a)–(f) below.

a) Projected Losses (10 CCR § 2644.4): Applicants use just one model for their Fire Following Earthquake provision, which appears to be unreasonably high. Providing the results of more than one computer catastrophe model is generally preferable to showing the results of just a single model. Applicants have indicated that demand surge for “buildings, content and time” (Exhibit 9, Line (7)) was included, but failed to provide the support for, and impact of, demand surge. Furthermore, Applicants have not shown that the models used conform to the standards of practice as set forth by the Actuarial Standards Board and that the models are based upon the best available scientific information for assessing earthquake frequency, severity, damage, and loss, and that the projected losses derived from the model meet all applicable statutory standards.

b) Catastrophe Adjustment (10 CCR § 2644.5): Contrary to the rate application instructions that call for Excel spreadsheets with formulas intact, Applicants failed to provide the formulas. Applicants have also not justified why it is appropriate to use “Total / Non-Cat” ratios by quarterly time period instead of annual time periods. In addition, Applicants have not shown that the catastrophe adjustment used reflects any changes between the insurer’s historical and prospective exposure to catastrophe due to a change in the mix of business. Furthermore, the Catastrophe Factor was unduly influenced and

1 biased by the unusual experience during various time periods, which should be spread out  
2 over a longer time period.

3 c) Loss and Premium Trends (10 CCR § 2644.7): The selected annual net trends for the  
4 water and other coverages are among the highest of the possible twenty values based  
5 upon the applicable regulation. The excessive net trends overstate the projected loss  
6 resulting in an inflated rate indication. Also, Applicants do not demonstrate that the  
7 selected trend factors and trend data period used are the most actuarially sound.

8 d) Improper / Unsupported Excluded Expenses (10 CCR§ 2644.10): Applicants have not  
9 shown that all of their institutional advertising expenses have been reflected in the  
10 excluded expense provision. In addition, Applicants did not show any excluded expenses  
11 in the category “Excessive payments to affiliates”. The Regulation states, “The following  
12 expense items shall not be allowed for ratemaking purposes . . . All payments to  
13 affiliates, to the extent that such payments exceed the fair market rate or value of the  
14 goods or services in the open market.” Applicants have not shown that the payment  
15 represents a fair market rate or value. Applicants have not shown that the value of \$0  
16 used for excluded expenses for this category complies with the regulation. There may  
17 also be excluded expenses for other categories that should be reflected in the rate  
18 calculation but were not adequately reflected in the filings.

19 e) Improper / Unsupported Variance 7B (10 CCR § 2644.27(f)(7)(B)): While a variance  
20 from the loss development section of the regulation (10 CCR § 2644.6) could be  
21 appropriate, Applicants failed to prove that their selected loss development adequately  
22 reflects the appropriate impact for the adjustments.

23 f) Improper / Unsupported Variance 8B (10 CCR § 2644.27(f)(8)(B)): While a variance  
24 from the trend section of the regulation (10 CCR § 2644.7) could be appropriate,  
25 Applicants failed to prove that its trend selections adequately reflect the appropriate  
26 impact for the adjustments.

27 9. This petition is based upon Consumer Watchdog’s preliminary analysis of the  
28 Applications. Thus, Consumer Watchdog reserves the right to modify, withdraw, and/or add

1 issues for consideration as more information becomes available, including but not limited to  
2 violations of Insurance Code section 1859 for failure to disclose information in its filings that  
3 will affect policyholders' rates and premiums.

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

5 10. The authority for this petition for hearing is Insurance Code section 1861.10,  
6 subdivision (a), which grants "any person" the right to initiate or intervene in a proceeding  
7 permitted or established by Proposition 103 and the right to enforce Proposition 103.  
8 Specifically, as stated above, Consumer Watchdog initiates this proceeding to enforce Insurance  
9 Code sections 1861.05 and 1861.02 and the Commissioner's regulations.

10 11. Additionally, this petition is authorized pursuant to Insurance Code section  
11 1861.05, subdivision (c), which allows "a consumer or his or her representative" to request a  
12 hearing on a rate application and 10 CCR § 2653.1, which provides that "any person, whether as  
13 an individual, representative of an organization, or on behalf of the general public, may request a  
14 hearing by submitting a petition for hearing." Since Applicants are requesting rate changes  
15 exceeding 7%, the Commissioner is required to hold a hearing in response to this timely petition  
16 pursuant to Insurance Code section 1861.05(c).

17 12. This petition is timely pursuant to Insurance Code section 1861.05, subdivision  
18 (c), and 10 CCR § 2646.4(a)(1) because it is filed within forty-five (45) days of the April 14,  
19 2023 public notice date, excluding the Memorial Day Holiday on Monday, May 29, 2023.

20 **V. INTEREST OF PETITIONER**

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

lenders. Consumers who are overcharged by insurers for homeowners and renters insurance coverage and/or arbitrarily non-renewed are part of Consumer Watchdog's core constituency.

14. As noted in paragraphs 3–6 above, Consumer Watchdog's staff and consultants have substantial experience and expertise in insurance rate matters, which Consumer Watchdog believes will aid the CDI in its review of the Applications and aid the Commissioner in making his ultimate decision as to whether to approve or disapprove the requested rate. As noted in paragraph 6 above, the Commissioner has found that Consumer Watchdog has made a substantial contribution in all of the rate proceedings in which it has intervened in the last twenty years that have proceeded to a final decision wherein Consumer Watchdog has sought compensation. If leave to intervene is granted, Consumer Watchdog will participate fully in all aspects of this proceeding.

15. Consumer Watchdog also has an interest in ensuring that Applicants, the CDI, and the Insurance Commissioner comply with the laws enacted by the voters under Proposition 103, and the rules and regulations that implement those laws, including that all information submitted to the Department in connection with the Applications is made publicly available.

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

16. The authority for Consumer Watchdog's petition to intervene is Insurance Code section 1861.10, subdivision (a), which grants "any person" the right to "initiate or intervene in any proceeding permitted or established pursuant to this chapter [Chapter 9 of Part 2 of Division 1 of the Insurance Code] . . . and enforce any provision of this article." This proceeding is a proceeding to enforce Insurance Code sections 1861.05 and 1861.02 pursuant to Insurance Code section 1861.10(a), and hence is a proceeding both "permitted" and "established" by Chapter 9. This petition to intervene is also authorized by 10 CCR § 2661.1 et seq. Although consumer presence in departmental proceedings typically results in significant reductions to policyholders' rates, the amount of savings for each individual consumer is outweighed by the time and expense of hiring individual counsel or an advocacy group to protect his or her rights. Thus, an independent organization like Consumer Watchdog introduces a voice that otherwise would be 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  
4 or 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  
19 the time already expended by Consumer Watchdog staff and its consulting actuary and an  
20 estimate of time needed to complete remaining tasks through completion of a noticed evidentiary  
21 hearing; and (3) past experience in similar rate proceedings before the CDI. The estimated  
22 budget is reasonable and the staffing level is appropriate, given the expertise that Consumer  
23 Watchdog and its consultants bring to these proceedings when the issues involved are issues at  
24 the very core of its organizational mission and strike at the very heart of Proposition 103 itself.  
25 The budget presented in the attached Exhibit A is a preliminary estimate, and Consumer  
26 Watchdog reserves the right to amend its proposed budget as its expenses become more certain,  
27 or in its request for final compensation. Consumer Watchdog will give notice of such  
28



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.

5  
6 DATED: May 30, 2023

Respectfully submitted,

7  
8 Harvey Rosenfield  
9 Pamela Pressley  
10 Benjamin Powell  
11 Ryan Mellino  
12 CONSUMER WATCHDOG

13 By: *Pamela Pressley*  
14 Pamela Pressley  
15 Attorneys for CONSUMER WATCHDOG  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**VERIFICATION OF PAMELA PRESSLEY IN SUPPORT OF CONSUMER  
WATCHDOG'S PETITION FOR HEARING, PETITION TO INTERVENE, AND  
NOTICE OF INTENT TO SEEK COMPENSATION**

I, Pamela Pressley, verify:

1. I am an attorney employed by Consumer Watchdog. If called as a witness, I could and would testify competently to the facts stated in this verification.

2. I personally prepared the pleading titled “Consumer Watchdog’s Petition for Hearing, 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.

3. Pursuant to California Code of Regulations, title 10, section 2661.3, Consumer Watchdog attaches as Exhibit A its estimated budget in this proceeding.

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

Executed May 30, 2023 at Los Angeles, California.

*Pamela Pressley*  
Pamela Pressley

**EXHIBIT A  
PRELIMINARY BUDGET**

**ITEMS**

**ESTIMATED COST**

1. Consumer Watchdog Attorneys and Paralegal

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

- Edit petition for hearing and petition to intervene; supervise Consumer Watchdog counsel; oversee preparation of legal documents; 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; edit request for compensation and supporting attorney declaration.

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

- Draft and edit petition for hearing and petition to intervene; Confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions with CDI and Applicant's counsel; draft briefing of legal issues; conduct discovery and preparation for evidentiary hearing; participate in evidentiary hearing and post-hearing legal briefing; edit request for compensation.

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

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

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

- Supervise Consumer Watchdog counsel and participate in strategy discussions.

2. Consumer Watchdog Expenses

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

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

Consumer Watchdog Subtotal .....\$156,925

3. Expert Witness: AIS Risk Consultants, Inc.

Allan I. Schwartz, President of AIS Risk Consultants @ \$915 per hour, 200 hours..... \$183,000

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

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

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

1 4. Travel by Mr. Schwartz

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

3 AIS Risk Consultants Subtotal..... \$229,500

4  
5 TOTAL ESTIMATED BUDGET: \$386,425  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28