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13 BEFORE THE INSURANCE COMMISSIONER
14 OF THE STATE OF CALIFORNIA

15 In the Matter of the Rule Application of
16 State Farm General Insurance Company,
17 Applicant.

18 File No.: 24-426

19 **CONSUMER WATCHDOG'S**
20 **PETITION FOR HEARING,**
21 **PETITION TO INTERVENE, AND**
22 **NOTICE OF INTENT TO SEEK**
23 **COMPENSATION**

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

1 Consumer Watchdog hereby requests that the Insurance Commissioner notice a public
2 hearing pursuant to Insurance Code sections 1861.05, subdivisions (a) and (c), and 1861.10,
3 subdivision (a), on the issues raised in this petition regarding the above-referenced Rule Change
4 Application of State Farm General Insurance Company (“State Farm” or “Applicant”), at which
5 time Applicant will be directed to appear and respond to the issues raised in this petition.

6 Consumer Watchdog also hereby requests that it be granted leave to intervene in the proceeding
7 on Applicant’s Rule Change Application pursuant to Insurance Code section 1861.10(a).

8 Consumer Watchdog intends to seek compensation in this proceeding, and, pursuant to
9 California Code of Regulations, title 10 (“10 CCR”), section 2661.3 subdivision (c), Consumer
10 Watchdog’s proposed budget is attached hereto as Exhibit A.

11 In support of its petition, Consumer Watchdog alleges:

12 **I. THE APPLICATION**

13 1. On or about February 5, 2024, Applicant filed a Rule Change Application with
14 the California Department of Insurance (“CDI”), proposing the implementation of community
15 and property level wildfire mitigation discounts for its Homeowners Program.

16 2. On or about March 8, 2024, the public was notified by the CDI of the Application.

17 **II. PETITIONER**

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

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

27 5. Consumer Watchdog has served as a public watchdog with regard to insurance
28 rates and insurer rollback liabilities under Proposition 103 by: monitoring rollback settlements

1 and the status of the rollback regulations; reviewing and challenging rate filings made by insurers
2 seeking excessive rates; participating in rulemaking and adjudicatory hearings before the CDI;
3 and educating the public concerning industry underwriting and rating practices, their rights under
4 Proposition 103, and other provisions of state law. Consumer Watchdog has also initiated and
5 intervened in actions in state court and appeared as amicus curiae in matters involving the
6 interpretation and application of Proposition 103 and the Insurance Code.¹

7 6. Consumer Watchdog has initiated and intervened in numerous proceedings before
8 the CDI related to the implementation and enforcement of Proposition 103's reforms, including
9 over 150 such proceedings in the last twenty years. In every proceeding that has resulted in a
10 final decision and in which Consumer Watchdog sought compensation from 2003–2022, the
11 Commissioner found that Consumer Watchdog made a substantial contribution, meaning that its
12 participation was separate and distinct from any other party and that it presented relevant issues,
13 evidence, and arguments that resulted in more credible, non-frivolous information being
14 available to the Commissioner in making his final decision.

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

16 7. In the proceeding initiated by Consumer Watchdog's petition, Consumer
17 Watchdog will present and elicit evidence to show that Applicant's proposed rating plan and rule
18 changes potentially violate Insurance Code section 1861.05(a), which provides that "[n]o rate
19 shall be approved or remain in effect which is excessive, inadequate, [or] unfairly
20 discriminatory" and 10 CCR § 2644.9's requirements relating to the use of wildfire risk models
21 and the implementation of mandatory wildfire risk mitigation factors. Consumer Watchdog will
22

23
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' Found. v. Low* (2000) 85 Cal.App.4th 1179; *Donabedian v. Mercury Ins. Co.*
28 *(2004) 116 Cal.App.4th 968; State Farm Mut. Auto. Ins. Co. v. Garamendi* (2004) 32 Cal.4th
1029; *The Found. for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th
1354; *Ass'n of Cal. Ins. Cos. v. Poizner* (2009) 180 Cal.App.4th 1029; *Mercury Cas. Co. v.*
Jones (2017) 8 Cal.App.5th 561; *Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th 82; and *State*
Farm General Ins. Co. v. Lara (2021) 71 Cal.App.5th 197.

1 additionally present and elicit evidence to show that Applicant has failed to make all information
2 available for public inspection in violation of Insurance Code section 1861.07.

3 8. Based on Consumer Watchdog’s preliminary analysis in consultation with its
4 actuarial expert and the information contained in the Application, Consumer Watchdog has
5 identified the following issues with the Application on which it intends to present and elicit
6 evidence as set forth in (a)–(e) below.

7 a. 10 CCR § 2644.9(f) states: “Any rating plan or Wildfire Risk Model submitted to the
8 Commissioner in connection with a complete rate application . . . shall be available
9 for public inspection.” Per 10 CCR § 2644.9(b)(6)(A): “The term ‘Wildfire Risk
10 Model’ means any tool, instrumentality, means or product . . . that is used by an
11 insurer, in whole or in part, to measure or assess the wildfire risk associated with a
12 residential or commercial structure for purposes of: 1. Classifying individual
13 structures according to their wildfire risk; or 2. Estimating losses corresponding to
14 such wildfire risk classifications.” State Farm acknowledges in the document “HO
15 Wildfire Mitigation Questionnaire.pdf” that “our geographical rating factor [is]
16 based on wildfire models,” but goes on to allege that it “do[es] not use a ‘wildfire
17 risk scoring model’ that differentiates wildfire risk based on individual policyholder
18 or applicant’s wildfire risk.” However, the wildfire models being used by State Farm
19 in creating geographical rating factors clearly fall under the definition of “wildfire
20 risk model,” as the models are used to “classify[] individual structures according to
21 their wildfire risk” based on the address where the structure is located. Therefore,
22 State Farm must provide and make publicly available the wildfire models on which
23 its geographical rating factors are based.

24 b. Pursuant to 10 CCR § 2644.9(g): “Any rate application shall incorporate the
25 insurer’s own California wildfire loss data to the extent that it is credible to support
26 each segment, rating differential, or surcharge being requested. To the extent the
27 insurer’s own California data is not fully credible, the insurer shall credibility-weight
28 its data with an appropriate complement of credibility to support each segment,

1 rating differential, or premium surcharge.” State Farm has failed to provide the
2 required data to support that its mitigation discounts are proper and justified. The
3 document “CA HO 2024-09-01 Compare.pdf,” provided with this filing, lists the two
4 community-level and ten property-level mitigation factors required by 10 CCR
5 § 2644.9. Proposed discount amounts are given for each factor. However, no
6 supporting wildfire loss data whatsoever is incorporated, whether that be the
7 insurer’s own California data or an appropriate complement of credibility. Exhibit
8 19-A merely states that “[t]he rating relativities for the new wildfire mitigation
9 credits were chosen based on actuarial judgment,” and goes on to reference a CAS
10 research paper used by State Farm to assist in the allocation of the judgmentally-
11 selected total property-level discount down to the individual mitigation efforts.
12 These supporting statements are not sufficient to comply with the requirements of 10
13 CCR § 2644.9(g).

14 Additionally, State Farm’s proposed maximum mitigation discount of 6.4%
15 (excluding the optional IBHS Prepared Home discount) for completion of both
16 community-level factors, all ten property-level factors, and the Board of Forestry and
17 Fire Protection Fire Risk Reduction designation, is lower than the 7.0% maximum
18 mitigation discount effective 6/1/23 (also exclusive of the IBHS discount). There is a
19 maximum mitigation discount of 4.3% based only on property-level factors in this
20 filing, as opposed to a maximum discount of 5% previously. State Farm does not
21 explain why a higher maximum discount was available for the filing effective 6/1/23
22 that requires completion of only five property-level mitigation factors, while the
23 maximum discount proposed in this filing is lower despite requiring completion of ten
24 property-level mitigation factors. There is no apparent justification for this reduction
25 in available mitigation discounts (exclusive of IBHS discounts for which
26 policyholders must pay a \$125 inspection fee).

- 27 c. Subdivision (k)(3) of 10 CCR § 2644.9 states: “Whenever a wildfire risk score, or
28 other wildfire risk classification used by the insurer to segment, create a risk

1 differential or surcharge the premium for a particular policyholder or applicant, . . .
2 the insurer shall . . . provide in writing: A detailed written explanation of why the
3 policyholder or applicant received the assigned score or classification; the
4 explanation shall make specific reference to the features of the property in question
5 that influenced the assignment of the score or classification.” State Farm has failed
6 to provide an example of any such detailed written explanation of the rationale for
7 the territory factor assigned to the particular policyholder or applicant, which is
8 based on a wildfire model per “HO Wildfire Mitigation Questionnaire.pdf.”

9 d. Subdivision (l) of 10 CCR § 2644.9 states: “When an insurer responds to the
10 applicant or policyholder in connection with an appeal pursuant to subdivision (i) or
11 (j) of this section, it shall also notify the policyholder or applicant in writing that the
12 policyholder or applicant may contact the Department of Insurance for assistance
13 In any event, the insurer shall provide the policyholder or applicant with the
14 Department of Insurance toll-free consumer hotline and web address of the
15 Department’s Consumer Complaint Center.” State Farm has failed to provide an
16 example of how this required information will be communicated to the policyholder
17 or applicant, making it impossible to ascertain whether it is in compliance with the
18 regulation.

19 e. In the document “CA HO 2024-09-01 Compare.pdf,” the discounts for IBHS
20 Wildfire Prepared Home and IBHS Wildfire Prepared Home Plus are given as 2.0%
21 and 3.8%, respectively. However, in the document “Non-Tenant Mitigation Credit
22 Notification.pdf,” the same discounts are given as 6.0% and 8.0%. This discrepancy
23 must be corrected by State Farm.

24 9. This petition is based upon Consumer Watchdog’s preliminary analysis of the
25 Application. Thus, Consumer Watchdog reserves the right to modify, withdraw, and/or add
26 issues for consideration as more information becomes available, including but not limited to
27 violations of Insurance Code section 1859 if it is discovered during the course of the proceeding
28 that Applicant has willfully withheld information from, or knowingly given false or misleading

1 information to, the Commissioner or to any rating organization, advisory organization, insurer or
2 group, association, or other organization of insurers that will affect its rates, rating systems, or
3 premiums that are the subject of this filing.

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 section 1861.05 and the Commissioner’s regulations.

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

15 12. This petition is timely pursuant to Insurance Code section 1861.05, subdivision
16 (c), and 10 CCR § 2646.4(a)(1) because it is filed within forty-five (45) days of the March 8,
17 2024 public notice date.

18 **V. INTEREST OF PETITIONER**

19 13. Consumer Watchdog’s interest in the above-captioned proceeding is to ensure that
20 Applicant’s homeowners insurance policyholders are charged rates and premiums that comply
21 with the provisions of Insurance Code section 1861.05(a)’s requirement that “no rate shall be
22 approved or remain in effect which is excessive, inadequate, [or] unfairly discriminatory or
23 otherwise in violation of this chapter,” the requirements contained in 10 CCR § 2644.9
24 pertaining to wildfire risk mitigation discounts, models and wildfire risk scores, and the public
25 access requirements of Insurance Code section 1861.07. For many homeowners, their home is
26 their most valuable asset and they are required to purchase homeowners insurance by their
27 mortgage lenders. Consumers who are overcharged by insurers for this insurance coverage
28 and/or arbitrarily non-renewed are part of Consumer Watchdog’s core constituency.

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

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

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

14 16. The authority for Consumer Watchdog’s petition to intervene is Insurance Code
15 section 1861.10, subdivision (a), which grants “any person” the right to “initiate or intervene in
16 any proceeding permitted or established pursuant to this chapter [Chapter 9 of Part 2 of Division
17 1 of the Insurance Code] . . . and enforce any provision of this article.” This proceeding is a
18 proceeding to enforce Insurance Code section 1861.05, pursuant to Insurance Code section
19 1861.10(a), and hence is a proceeding both “permitted” and “established” by Chapter 9. Per the
20 voters’ instruction, the mandatory right to intervene under section 1861.10(a), like all the
21 provisions of Proposition 103, must be “liberally construed and applied in order to fully promote
22 its underlying purposes.” (Prop. 103, § 8.) Thus, section 1861.10 must be interpreted and applied
23 broadly in a manner to fully encourage consumer participation. (*Ibid.*; see also *Ass’n of*
24 *California Ins. Cos. v. Poizner, supra*, 180 Cal.App.4th at 1052 [stating “the goal of fostering
25 consumer participation in the administrative rate-setting process” as “one of the purposes of
26 Proposition 103”].) The broad intervention standard enacted by section 1861.10 ensures that
27 consumers will be able to participate in proceedings *independently of the CDI staff* who may take
28 different positions or emphasize different issues in the proceeding, and with all rights accorded

1 to any other party, including the right to raise additional issues and/or violations as they become
2 known during the course of the proceeding through informal or formal discovery.

3 17. This petition to intervene is also authorized by 10 CCR § 2661.1 et seq. In
4 compliance with 10 CCR § 2661.3, the specific issues to be raised and positions to be taken by
5 Consumer Watchdog, *to the extent known at this time*, are set forth in paragraph 8, *supra*. Each
6 of these issues are directly relevant to determining whether Applicant's requested rating plan
7 changes are in compliance with Insurance Code sections 1861.05(a) and 1861.07 and 10 CCR
8 § 2644.9. Although consumer presence in departmental proceedings typically results in
9 significant reductions to policyholders' rates, the amount of savings for each individual
10 consumer is outweighed by the time and expense of hiring individual counsel or an advocacy
11 group to protect his or her rights. Thus, an independent organization like Consumer Watchdog
12 introduces a voice that otherwise would be absent from this proceeding.

13 **VII. PARTICIPATION OF CONSUMER WATCHDOG**

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

17 **VIII. INTENT TO SEEK COMPENSATION**

18 19. The Commissioner has awarded Consumer Watchdog compensation for its
19 reasonable advocacy and witness fees and expenses in past departmental proceedings. The
20 Commissioner issued Consumer Watchdog's latest Finding of Eligibility on July 26, 2022,
21 effective for two years as of July 12, 2022. Consumer Watchdog was previously found eligible to
22 seek compensation on August 25, 2020, effective as of July 12, 2020; July 12, 2018; July 14,
23 2016; July 24, 2014; July 24, 2012; July 2, 2010; August 25, 2008; July 14, 2006; July 2, 2004;
24 June 20, 2002; October 1, 1997; September 26, 1995; September 27, 1994; and September 13,
25 1993.

26 20. Consumer Watchdog intends to seek compensation in this proceeding. Pursuant to
27 10 CCR § 2661.3(c), Consumer Watchdog's estimated budget in this proceeding is attached
28 hereto as Exhibit A. Consumer Watchdog has based its estimated budget on several factors

1 including: (1) the technical and legal expertise needed to address these issues; (2) its current best
2 estimate of the time needed to participate effectively in these proceedings, taking into account
3 the time already expended by Consumer Watchdog’s legal and actuarial staff and an estimate of
4 time needed to complete remaining tasks through completion of a noticed evidentiary hearing;
5 and (3) past experience in similar rate proceedings before the CDI. The estimated budget is
6 reasonable and the staffing level is appropriate, given the expertise that Consumer Watchdog and
7 its consultants bring to these proceedings when the issues involved are issues at the very core of
8 its organizational mission and strike at the very heart of Proposition 103 itself. The budget
9 presented in the attached Exhibit A is a preliminary estimate, and Consumer Watchdog reserves
10 the right to amend its proposed budget as its expenses become more certain, or in its request for
11 final compensation. Consumer Watchdog will give notice of such modifications as soon as
12 practicable after it discovers the need to revise its estimates and shall comply with the budget
13 revision requirements in the relevant intervenor regulations.

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

17
18 DATED: April 22, 2024

Respectfully submitted,
Harvey Rosenfield
Pamela Pressley
Ryan Mellino
CONSUMER WATCHDOG

19
20
21
22 By: *Ryan Mellino*
23 Ryan Mellino
24 Attorneys for CONSUMER WATCHDOG
25
26
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1 **VERIFICATION OF RYAN MELLINO IN SUPPORT OF CONSUMER WATCHDOG'S**
2 **PETITION FOR HEARING, PETITION TO INTERVENE, AND NOTICE OF INTENT**
3 **TO SEEK COMPENSATION**

4 I, Ryan Mellino, verify:

5 1. I am a staff attorney for Consumer Watchdog. If called as a witness, I could and
6 would testify competently to the facts stated in this verification.

7 2. I personally prepared the pleading titled "Consumer Watchdog's Petition for
8 Hearing, Petition to Intervene, and Notice of Intent to Seek Compensation" filed in this matter.
9 All of the factual matters alleged therein are true of my own personal knowledge, or I believe
10 them to be true after conducting some inquiry and investigation.

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

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

15 Executed April 22, 2024 at Los Angeles, California.

16 
17 _____
18 Ryan Mellino

**EXHIBIT A
PRELIMINARY BUDGET**

<u>ITEMS</u>	<u>ESTIMATED COST</u>
1. <u>Consumer Watchdog Attorneys and Paralegal</u>	
Pamela Pressley (Senior Staff Attorney) @ \$595 per hour, 100 hours	\$59,500
• Draft and edit petition for hearing and petition to intervene; supervise Consumer Watchdog counsel; oversee preparation of motions, briefing; confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions with CDI and Applicant’s counsel; assist in all phases of proceeding, evidentiary hearing, and preparation of post-hearing briefing.	
Ryan Mellino (Staff Attorney) @ \$250 per hour, 200 hours.....	\$50,000
• Confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions with CDI and Applicant’s counsel; participate in briefing legal issues; conduct discovery, preparation of motions, and preparation for evidentiary hearing; participate in examination of witnesses and all phases of evidentiary hearing and post-hearing legal briefing; prepare request for compensation.	
Kaitlyn Gentile (Paralegal) @ \$200 per hour, 50 hours	\$10,000
• Draft and edit petition for hearing and petition to intervene; assist with discovery and preparation of motions and briefs; prepare request for compensation.	
Harvey Rosenfield (Of Counsel) @ \$695 per hour, 15 hours	\$10,425
• Supervise Consumer Watchdog counsel and participate in strategy discussions.	
2. <u>Expert Witness: Ben Armstrong</u>	
Ben Armstrong, Staff Actuary @ \$425 per hour, 100 hours	\$42,500
• Staff 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 insurer’s expert witnesses.	
3. <u>Consumer Watchdog Expenses</u>	
Office expenses (photocopies, facsimile, telephone calls, postage, etc.)	\$2,000
Travel (ground transportation; airfare; hotel)	\$5,000
<u>TOTAL ESTIMATED BUDGET:</u>	<u>\$179,425</u>