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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Request for Finding of
Eligibility to Seek Compensation of:

CONSUMER WATCHDOG

File No. IE-2024-0002

**INSURANCE COMMISSIONER'S
RULING ON REQUEST FOR A FINDING
OF ELIGIBILITY TO SEEK
COMPENSATION**

Pursuant to Insurance Code section 1861.10, subdivision (b), and Title 10 of the California Code of Regulations¹, Title 10, sections 2661.3, subdivisions (g), and 2662.2, subdivision (a), Consumer Watchdog submitted a Request for Finding of Eligibility to Seek Compensation (Request) on or about June 3, 2024. The Commissioner has completed review of the Request and hereby issues the following determination.

APPLICABLE LEGAL STANDARD

In November 1988, California voters approved Proposition 103, which made changes in the regulation of automobile insurance, as well as the approval of premium rates for property and casualty lines of insurance in California. (Ins. Code § 1861.01, et seq.) Proposition 103 also allows for public participation through consumer intervention.² (Ins. Code § 1861.10.) Any

¹ All further references to regulations are to Cal. Code Regs., tit. 10.
² California Insurance Code section 1861.10 states in relevant part:

- (a) Any person may initiate or intervene in any proceeding permitted or established pursuant to this chapter, challenge any action of the commissioner under this article and enforce any provision of the article.
- (b) The commissioner or a court shall award reasonable advocacy and witness fees and expenses to any person who demonstrates that (1) the person represents the interests of consumers, and (2) that he or she has made a substantial contribution to the adoption of any order, regulation, or decision by the commissioner or a court.

1 person who “represents the interests of consumers” and intends to raise any issue relevant to a
2 rate proceeding is permitted to intervene. (Ins. Code § 1861.01(a); Regs. §§ 2661.2, 2661.3(g).)
3 Recognizing the importance of public participation, the Legislature also authorized the award of
4 certain costs, expenses, and reasonable attorneys’ fees to an intervenor who makes a “substantial
5 contribution” to a rate decision. (Ins. Code § 1861.10(b); Reg. § 2661.2(a), (d), (k), (l).)

6 To seek compensation for substantially contributing to a rate decision, the proposed
7 intervenor must first file a verified request for finding of eligibility to seek compensation with the
8 Office of the Public Advisor. (Ins. Code § 1861.10(b); Regs. §§ 2661.3(g), 2662.2(a).) The request
9 must include a showing that the proposed intervenor “represents the interests of consumers,” as
10 well as documentation reflecting the composition of the group’s members and board of directors,
11 funding sources, and certain corporate records. (Ins. Code § 1861.10(b); Regs. §§ 2662.2(a),
12 2661.2(j).) The proposed intervenor may also be required to submit additional information in
13 support of the request. (*Id.* at § 2662.2(a).) A finding of eligibility is good for two years.

14 Section 2662.2, subdivision (a), sets out the requirements potential intervenors need to
15 demonstrate in order to be determined eligible to request compensation, which include the
16 following:

17 (1) a showing by the intervenor or participant that it represents the
18 interests of consumers³, including a description of the previous
work of the intervenor or participant; and,

19 (2) in the case of groups representing the interests of consumers, the
20 request shall include the following as exhibits:

21 (A) a copy of the group’s articles of incorporation, by-laws, or
22 (for groups not organized as corporations) other organizational
documents,

23 (B) if the group has members, the approximate number of
current members,

24 (C) composition of the group’s current Board of Directors -
25 including the name and business address of each director and/or
the name and business address of the principals of the group if it

26 ³ Section 2661.1, subdivision (j), defines representing the interests of consumers as follows:

27 “Represents the Interests of Consumers” means that the intervenor represents the interests of individual
28 insurance consumer[s], or the intervenor is a group organized for the purpose of consumer protection as
demonstrated by, but is not limited to, a history of representing consumers in administrative, legislative
or judicial proceedings.”

1 is not a corporation,

2 (D) newsletter circulation, if any, along with a representative
3 sample of newsletters and/or any other publication issued by the
4 intervenor in California during the previous twelve (12) months,

5 (E) any annual or year-end report for the prior year,

6 (F) a statement as to whether or not the group has been granted
7 non-profit status under Internal Revenue Code Section 501(c),
8 and

9 (G) in order to allow a determination whether the group actually
10 does represent the interests of consumers, a listing, by general
11 category, of the group's funding sources for the prior twenty-
12 four (24) months and the approximate total percentage of the
13 group's annual budget from each funding category. Each
14 foundation, corporate, business, or government grant shall be
15 separately listed by name of foundation, corporation, business,
16 or government agency and amount of grant. For each individual
17 who contributed at least five percent of the group's annual
18 budget, the name of the individual and the total amount of the
19 annual contribution shall be separately listed.

20 It also allows the Public Advisor to require additional information if needed. (Reg. § 2662.2(a).)

21 A granting of the request for eligibility does not ensure compensation in intervened proceedings.

22 Rather, compensation may be awarded for distinct contributions, "there is no real dispute an
23 intervenor cannot 'merely participate' or 'parrot' other litigants." (*See State Farm General*
24 *Insurance Company v. Lara* (2021) 71 Cal.App.5th 197, 214.) Further, nothing in the regulations
25 prohibit any person from intervening or participating in department proceedings if that person is
26 not seeking compensation.

27 Finally, nothing in the finding of eligibility prohibits or limits "any person or group from
28 making any presentation or advocating any position which is otherwise admissible." (Reg. §
2662.2(g).) To that end, and in furtherance of the spirit of Proposition 103, the Department has
properly allowed public participation in the request for eligibility process, and has posted all
comments regarding the present request for eligibility on the Department website.

26 FINDINGS

27 All of the findings below are based on documents received by the Department and are
28 available on the Department's public website:

1 Consumer Watchdog is currently eligible to seek compensation as an intervenor with the
2 Department through July 12, 2024.

3 Consumer Watchdog submitted a verified Request on or about June 3, 2024, pursuant to
4 Section 2662.2.

5 Consumer Watchdog submitted the following information in its Request in accordance
6 with the requirements of section 2662.2, subdivision (a)(2)(A)-(G) as follows:

- 7 • Consumer Watchdog provided a copy of its articles of incorporation and by-laws.
- 8 • Consumer Watchdog acknowledged it has no members.
- 9 • Consumer Watchdog listed the names of all individuals on its current Board of
10 Directors and provided a business address at which they could all receive correspondence.
- 11 • Consumer Watchdog has no newsletter circulation, but updates interested parties
12 via its website, email, and social media.
- 13 • Consumer Watchdog did not provide a year-end report as it does not produce one,
14 but provided a self-compiled list of highlights from July 2022-May 2024.
- 15 • Consumer Watchdog submitted a letter from the IRS attesting to its status as a
16 501(c)(3) corporation.
- 17 • Consumer Watchdog submitted a self-compiled list of its funding sources – grants
18 (35.15%), individual contributions (19.44%), attorney/intervenor fees (42.46%),
19 investment income (2.84%). No further details were provided besides the listing of
20 foundation grants. Consumer Watchdog does not receive any corporate, business or
21 government grants.

22 The Commissioner then issued an Order on or about June 19, 2024, allowing public
23 participation in the subject Request by submitting public comment to the Department by June 28,
24 2024, and allowing Consumer Watchdog the opportunity to address such public comments by
25 July 12, 2024.

26 All of the public comments can be accessed online, many of the comments raised from
27 both industry and publicly elected officials raised the following common questions:
28

- 1 • How does Consumer Watchdog represent consumers when they have no members
2 in their organization? What consumers *do* Consumer Watchdog represent? If
3 Consumer Watchdog has no members, and no voters they are accountable to, then
4 who watches the “Watchdog”?
- 5 • Is intervening in a rate filing proceeding the only metric used by Consumer
6 Watchdog in determining they promote the interest of consumers?
- 7 • Does Consumer Watchdog’s intervention serve as a positive for consumers, or
8 does it result in unnecessary delay?
- 9 • How much are reductions in an insurer’s rate application due to Consumer
10 Watchdog versus the role of the Department of Insurance? And how much has
11 Consumer Watchdog actually saved consumers when they ultimately approve rate
12 filings that lead to increased premiums for consumers?
- 13 • Has Consumer Watchdog evaluated their role in the creation or exacerbation of
14 challenges currently in the California insurance marketplace?

15 Consumer Watchdog submitted a response to public comments on or about July 12, 2024.

16 In it, Consumer Watchdog acknowledges that the sole purpose of the Request “is to obtain a
17 preliminary determination that a person or organization does in fact represent consumers for
18 purposes of submitting a request for compensation at the conclusion of a Departmental
19 proceeding; such a finding is valid in any proceeding commenced.” (Consumer Watchdog
20 Response, p. 6:1-5.) In support of the fact that Consumer Watchdog represents consumers, it
21 submitted a list of over 120 rate and rulemaking proceedings in which they participated in over
22 the past three decades. (Request, pp. 3-8.) However, Consumer Watchdog failed to provide a
23 description of the work it conducted pursuant to section 2662.2, subdivision (a)(1). After
24 receiving public comment noting this failure, Consumer Watchdog then submitted additional
25 description of the work performed. (Consumer Watchdog Response, pp. 17-19.)

26 **DETERMINATION**

27 Consumer Watchdog described the process of requesting eligibility to seek compensation
28 from the Department as “Orwellian”. This is an interesting summary from the organization whose

1 founding member is the architect of Proposition 103. Proposition 103 has allowed, from the time
2 it was implemented in 1988, for any person to initiate or intervene in any proceeding before the
3 Department and to challenge any action of the Insurance Commissioner. Significantly, Consumer
4 Watchdog is the primary financial beneficiary of a process it created over thirty years ago, and a
5 process that constitutes the largest source of funding for its organization. Now, public participants
6 have commented on Consumer Watchdog’s Request to the Insurance Commissioner for a finding
7 of eligibility to seek compensation from the Department for its work as an intervenor, raising
8 questions as to its role, and Consumer Watchdog’s instinct is to provide literary references instead
9 of literal answers.

10 The role of intervenors in rate filings is to speak on behalf of consumers, whose point of
11 view may go unheard. The purpose of the intervenor process is to provide value for consumers
12 and not simply duplication of the Department’s efforts. To that end, it cannot go unsaid that the
13 Department is the ultimate champion on behalf of California consumers. The Department reports
14 to the Commissioner who is elected by California consumers and directly accountable to the
15 citizenry. The Department’s role is to thoroughly review each and every rate application
16 submitted by insurers, and to ensure that rates are not “excessive, inadequate or unfairly
17 discriminatory”, all while being responsive and accountable directly to the people.

18 Consumer Watchdog, who has no members and is accountable to no one but itself, fails to
19 acknowledge the role of the Department’s rate regulation branch in the rate application process,
20 and wrongly contends to have saved consumers \$6 billion in insurance premiums since 2002. The
21 Department’s rate regulation branch analyzes all rate change requests to ensure that what is being
22 requested by insurers is compliant under Proposition 103. If proposed rates are excessive, the
23 Department then requires insurers to reduce the proposed rates to no greater than the maximum
24 permitted rate under Proposition 103. The goal of inviting additional public participation is to
25 bring in a unique perspective or additional value, and not to simply participate for participation’s
26 sake.

27 While Consumer Watchdog’s June 3, 2024 Request asserts it has been found eligible to
28 seek compensation numerous times since 1993, the Commissioner notes the common questions

1 raised in the public comments above, and anticipates future requests by Consumer Watchdog to
2 address these questions in the first instance without the need for subsequent briefing by the
3 applicant. Two examples come to mind. First, Consumer Watchdog states it has no members. It is
4 unclear how an organization with no members can represent the interests of consumers if they are
5 not accountable to the consumers they claim to represent. This information was not clear from the
6 Request, but Consumer Watchdog claims in its Response to public comments that it
7 communicates with consumers by (1) responding to consumer complaints received via phone and
8 its website, and (2) it has an email list and social media. There does not appear to be any direct
9 outreach with consumers via town halls or community meetings with insurance consumers,
10 individuals or business, nor with other organizations or non-profits.

11 Second, Consumer Watchdog's initial Request failed to provide any specificity in the
12 description of the work performed as intervenors or participants in Department proceedings. Only
13 upon receiving public comment on this deficiency did Consumer Watchdog provide additional
14 information. The Commissioner notes though that even with the additional information, it is
15 unclear what work Consumer Watchdog actually performed in the rate application process versus
16 that of the Department. This is an area where the Commissioner will expect a stronger description
17 in the first instance of the work performed by Consumer Watchdog. Without more detailed
18 description, it remains unseen if the work performed constituted mere participation, which does
19 not serve as a basis for the future recovery of fees.

20 Thus, after reviewing both Consumer Watchdog's Request and subsequent Response,
21 collectively, Consumer Watchdog has met the minimal threshold requirements of section 2662.2,
22 and is eligible to seek compensation in Department proceedings under Insurance Code section
23 1861.10. However, Consumer Watchdog provided a de minimus amount of information to meet
24 section 2662.2 before providing additional information in response to public comment. The
25 Commissioner will expect Consumer Watchdog to fully embrace the letter and spirit of
26 Proposition 103 by providing more information upfront when Consumer Watchdog's eligibility
27 expires in two years.

28

1 As noted above, the granting of Consumer Watchdog’s present request for eligibility does
2 not ensure compensation in intervened proceedings. Any recovery of funds for participation in a
3 Department proceeding requires a separate petition to recover such fees based upon a showing of
4 “substantial contribution,” which is defined as “a significant, distinct contribution” under
5 Insurance Code section 1861.10, subdivision (b). Mere participation, or duplication of
6 Department work, does not constitute a substantial contribution. Finally, nothing in the
7 regulations prohibit any person from intervening or participating in department proceedings if
8 that person is not seeking compensation.

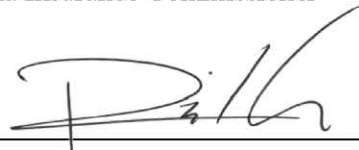
9 **ORDER**

10 Based on the foregoing, Consumer Watchdog is deemed eligible to seek compensation
11 from the Department for participating in Department proceedings pursuant to Insurance Code
12 section 1861.10, for a period not to exceed two years from July 12, 2024.

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14 Dated: August 2, 2024

RICARDO LARA
California Insurance Commissioner

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SERVICE LIST
In the Matter of the Request for Finding of Eligibility to Seek Compensation of:
CONSUMER WATCHDOG
Case No. IE-2024-0002

<u>Name/Address</u>	<u>Phone/Fax Numbers</u>	<u>Method of Service</u>
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