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Attorneys and Advocate for CONSUMER WATCHDOG

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Rulemaking Hearing re: Amendments to Sections 2632.5 and 2632.11, Subchapter 4.7, Title 10, of the California Code of Regulations.	FILE NO.: REG-2018-00020 **CONSUMER WATCHDOG'S REQUEST FOR COMPENSATION**

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I. INTRODUCTION

Consumer Watchdog, Participant in the above-referenced proceeding, hereby seeks final compensation in this proceeding before the California Department of Insurance ("CDI") pursuant to Insurance Code § 1861.10 and Cal. Code Regs., tit. 10 ("10 CCR"), §§ 2662.3 and 2662.5. This request seeks compensation in the amount of $25,641.85 for the substantial contribution made by Consumer Watchdog to the final regulations adopted by the Commissioner in this matter, including time spent preparing this request through January 25, 2019. This request is based on the facts as set forth herein and the accompanying declaration of Daniel Sternberg ("Sternberg Decl.").

II. CONSUMER WATCHDOG IS ELIGIBLE TO SEEK COMPENSATION IN THIS PROCEEDING AND ITS REQUEST IS TIMELY

On July 12, 2018, the Insurance Commissioner found Consumer Watchdog eligible to seek compensation in departmental proceedings, pursuant to 10 CCR § 2662.2. This determination is valid for two years and succeeded prior determinations to the same effect issued by the Commissioner.[1] Consumer Watchdog is a longtime participant and intervenor in Department proceedings and a nationally recognized consumer advocacy organization.[2]

Pursuant to the Intervenor Compensation regulations (10 CCR § 2662.3), a request for an award of compensation is to be submitted "within 30 days after the service of the order, decision, regulation or other action of the Commissioner in the proceeding for which intervention was sought," or "within 30 days after the conclusion of the entire proceeding." (*Ibid.*)

The regulations adopted in this proceeding became effective on January 1, 2019. As this request is submitted within 30 days of that date, it is timely pursuant to 10 CCR § 2662.3.

III. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Insurance Code section 1861.05(a) prohibits insurance companies from charging rates that are "excessive, inadequate, unfairly discriminatory, or otherwise in violation of this Chapter [Chapter 9 of Part 2 of Division 1 of the Insurance Code, i.e., Insurance Code §§ 1850.4 through 1870]." As to

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[1] Consumer Watchdog's current Finding of Eligibility succeeded prior determinations issued on July 24, 2016; July 24, 2014; July 24, 2012; July 2, 2010; August 25, 2008; July 14, 2006; July 2, 2004; June 20, 2002; October 1, 1997; September 26, 1995; September 27, 1994; and September 13, 1993.

[2] Consumer Watchdog submitted its Petition to Participate to the Public Advisor and to the staff counsel acting as contact person for the proceeding on January 24, 2019.

automobile insurance, this requirement was made explicit in section 1861.02. To specifically redress the fundamental unfairness of the way in which insurers were determining their automobile insurance rates, section 1861.02(a) transformed the determination of automobile insurance rates and premiums into one based primarily upon factors within a motorist's control—driving safety record, miles driven, and years of driving experience. Any additional rating factors must be adopted by the Commissioner by regulation and be substantially related to the risk of loss. (Ins. Code, § 1861.02(a)(4).) Further, section 1861.03 explicitly makes the Unruh Civil Rights Act—which prohibits discrimination on the basis of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status—applicable to the business of insurance.

Recent testing by the Consumer Federation of America and the Department's own analysis have demonstrated how gender is being abused by insurers to subject drivers to the very unfair rate discrimination that Proposition 103 was adopted to prevent.[3] Recognizing that gender may no longer bear a substantial relationship to the risk of loss, the Insurance Commissioner issued an Invitation to Pre-Notice Public Discussion on Eliminating Gender as an Optional Automobile Insurance Rating Factor on September 18, 2018. The invitation provided draft amendments to 10 CCR §§ 2662.3 and 2662.5 and stated that these proposed changes were precipitated in part by the forthcoming implementation of SB 179, the Gender Recognition Act. On October 2, 2018, CDI held a pre-notice public discussion regarding the contemplated regulatory changes. Consumer Watchdog's advocate and attorneys reviewed the proposed regulatory changes, researched how insurers have applied the gender rating factor, and drafted preliminary comments to deliver orally at the pre-notice public discussion. Consumer Watchdog advocate Daniel Sternberg attended and provided oral comments at the October 2 pre-notice public meeting in Sacramento. Subsequently, Consumer Watchdog reviewed insurers' written comments submitted to the Department on the proposed amendments. (Sternberg Decl., ¶ 25 – 28 and Ex. 1.)

[3] *See* Ex. B [Final Statement of Reasons, REG-2018-00020, Dec. 12, 2018].

On October 19, 2018, CDI issued an Initial Statement of Reasons, Notice of Proposed Action and Notice of Public Hearing to consider amending California Code of Regulations, Title 10, Chapter 5, Subchapter 4.7, Article 3, Sections 2632.5 and 2632.11 to eliminate the use of gender in private passenger automobile insurance rating. A rulemaking hearing was scheduled for December 3, 2018. Consumer Watchdog participated in that public hearing, presenting both written and oral comments taking the position that gender and its application by insurers no longer bears a substantial relationship to the risk of loss, responding to issues raised by insurers as to whether the elimination of gender was appropriate and whether amendments to other optional rating factors should also be considered through this rulemaking, and addressing the proposed amendments' consistency with the Insurance Code and implementing regulations, and their necessity to enforce Proposition 103's mandates. (See Consumer Watchdog Comments attached as Ex. A; (Sternberg Decl., ¶ 28 and Ex. 1.) Consumer Watchdog was one of the only participants in the rulemaking proceeding representing the interests of consumers.

On or about January 2, 2019, the Department issued the final regulations adopted by the Commissioner together with its summary of comments and responses. In the summary of public comments, the Department noted that it concurred with all the comments of Consumer Watchdog in support of the proposed amendments. (Ex. B [Final Statement of Reasons, REG-2018-00020, Dec. 12, 2018].) The regulations became effective on January 1, 2019.

IV. CONSUMER WATCHDOG IS ENTITLED TO AN AWARD OF ITS REASONABLE ADOVACY FEES AND EXPENSES

A. The Substantial Contribution Standard Is Satisfied Here

Consumer Watchdog made a substantial contribution to the Commissioner's adoption of the amendments to the optional rating factor regulations. Proposition 103 requires awards of reasonable advocacy and witness fees and expenses for persons who represent the interests of consumers and who make a "substantial contribution" to decisions or orders by the Commissioner or a court. Insurance Code section 1861.10(b) states:

> 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.

When the statutory criteria are met, an award of reasonable advocacy fees and expenses is mandatory. (Ins. Code § 1861.10(b).) Section 1861.10(b) serves to allow insurance consumers to have their interests represented on an equal basis with the interests of insurers and to allow consumers to enforce Proposition 103. (See *Econ. Empowerment Found. v. Quackenbush* (1997) 57 Cal.App.4th 677, 686 [the purpose of intervenor fees is to encourage consumer participation].) Moreover, section 1861.10(b) should be applied in a manner "which best facilitates compensation." (*Ibid.*)

Pursuant to the intervenor regulations,

> "Substantial Contribution" means that the intervenor substantially contributed, as a whole, to a decision, order, regulation, or other action of the Commissioner by presenting relevant issues, evidence, or arguments which were separate and distinct from those emphasized by the Department of Insurance staff or any other party, such that the intervenor's participation resulted in more credible, and non-frivolous information being available for the Commissioner to make his or her decision than would have been available to a Commissioner had the intervenor not participated.

(10 CCR § 2661.1(k).)

Consumer Watchdog's substantial contribution to the Commissioner's adoption of the final amendments to the optional rating factor regulations is demonstrated by the work product of its attorneys and advocate as summarized in Section III, *supra*, and in the accompanying declaration of Daniel Sternberg and time billing records. (See Ex. A [Consumer Watchdog's Comments]; Sternberg Decl., ¶¶ 27–29 and Ex. 1 [time billing records].) The written and oral comments by Consumer Watchdog, as one of the only consumer advocates to testify at the public hearing, were separate and distinct from any other party and Consumer Watchdog's staff presented information that would not have otherwise been available to the Commissioner in making his decision without Consumer Watchdog's participation. (See *ibid.*) The tasks that each of Consumer Watchdog's attorneys and advocate performed are detailed in Section IV.B below and in the accompanying declaration of Daniel Sternberg and the detailed billing records (attached as Ex. 1 to the Sternberg Decl.). Those descriptions show Consumer Watchdog substantially contributed to the final regulations adopted in this proceeding by:

- participating in the Department's pre-notice public discussion regarding the proposed amendments;
- drafting detailed written comments supporting the proposed amendments; and
- providing oral comments at the public hearing and responding to insurance industry arguments in opposition to the proposed regulations.

(Sternberg Decl., ¶¶ 8, 27–29; Exh. 1.)

The information and input provided by Consumer Watchdog's staff is exactly the type of information that Proposition 103's broad intervention rights are designed to elicit from consumer groups and members of the public. Thus, Consumer Watchdog's contribution to the Commissioner's final regulatory amendments in this proceeding undoubtedly meets the requirements of Insurance Code section 1861.10(b) and 10 CCR § 2661.1(k), in that Consumer Watchdog provided substantial, relevant, and credible information that would have otherwise not been available to the Commissioner to aid him in determining to adopt the amendments.

B. The Fees and Expenses Requested Are Reasonable

For its substantial contribution, Consumer Watchdog requests reasonable advocacy fees and expenses in the amount of $25,641.85 for the work of its attorneys and advocate. The requested fees and expenses, including the total hours of work performed, and the hourly rates of each Consumer Watchdog staff member are detailed in the attached Ex. C, "Summary of Fees and Expenses," and are summarized as follows:

i. <u>Consumer Watchdog Attorneys and Advocate</u>

Consumer Watchdog has incurred reasonable fees of $25,033.50 for the services of Mike Mattoch, Pamela Pressley, Harvey Rosenfield, and Daniel Sternberg through January 25, 2019, including time spent preparing the instant request for compensation. (Sternberg Decl., Ex. 1.)

Ms. Pressley is an attorney with over twenty-three (23) years of professional experience in consumer litigation and advocacy. She has previously served as litigation director and is now a senior staff attorney for Consumer Watchdog. Since joining Consumer Watchdog in 1999, Ms. Pressley has been a lead attorney in all rate, rulemaking, and litigation matters regarding the enforcement of Proposition 103. In this proceeding, Ms. Pressley served as a supervising attorney and performed the following tasks:

- drafted arguments to illustrate necessity of proposed amendments;
- reviewed the proposed amendments;
- reviewed and revised Consumer Watchdog comments;
- reviewed insurer comments;

- reviewed and edited Consumer Watchdog's Petition to Participate; and
- reviewed and edited this Request for Compensation.

(Sternberg Decl., ¶ 11–14 and Ex. 1.)

Mr. Rosenfield is an attorney and consumer advocate with over thirty-nine (39) years professional experience. He is the founder of Consumer Watchdog and author of Proposition 103. In this matter, Mr. Rosenfield performed the following tasks:

- drafted arguments to illustrate necessity of proposed amendments;
- reviewed proposed amendments; and
- reviewed and revised Consumer Watchdog comments.

(Sternberg Decl., ¶ 15–19 and Ex. 1.)

Mr. Sternberg is an attorney licensed to practice in New York with three (3) years of professional experience in litigation and advocacy. He has been a consumer advocate for Consumer Watchdog since September 2018. Since joining Consumer Watchdog, Mr. Sternberg has devoted a substantial amount of his time specifically to proceedings to enforce Proposition 103. In this proceeding, Mr. Sternberg performed the following tasks:

- participated in discussions with CDI and Consumer Watchdog counsel regarding the proposed regulation amendments;
- drafted Consumer Watchdog's written comments in support of the proposed regulations;
- participated in the pre-notice public hearing on October 2, 2018;
- reviewed insurer comments;
- drafted Consumer Watchdog's Petition to Participate; and
- drafted this Request for Final Compensation and the accompanying Declaration of Daniel Sternberg.

(Sternberg Decl., ¶ 9–10 and Ex. 1.)

Mr. Mattoch is an attorney with over twenty-five (25) years of professional experience in insurance regulation and consumer advocacy. He has been counsel and capitol advocate for Consumer Watchdog since 2018. In this proceeding, Mr. Mattoch performed the following tasks:

- provided oral comments at the public hearing on December 3, 2018 and responded to insurers' testimony at same.

(Sternberg Decl., ¶ 20–23 and Ex. 1.)

ii. Consumer Watchdog's Expenses

The reasonable expenses incurred by Consumer Watchdog in this matter total $608.35. As listed in Ex. C, these include travel expenses to attend the October 2018 public discussion in Sacramento. Consumer Watchdog has mechanisms to track all out-of-pocket expenses. (Sternberg Decl., ¶ 24.)

The amounts set forth in Section IV.B(i)–(ii) are reasonable because they represent the minimal amount of work necessary to effectively participate in this proceeding that resulted in regulations that will ensure drivers are not unfairly overcharged due to an innate, personal characteristic outside of their control that does not bear a substantial relationship to the risk of loss. Consumer Watchdog has cautiously and judiciously kept its attorneys' and advocate's fees and expenses to a minimum.

All professional services are billed at prevailing market rates. The intervenor regulations define "Market Rate" as the "prevailing rate for comparable services in the private sector in the Los Angeles and San Francisco Bay Areas at the time of the Commissioner's decision awarding compensation." (10 CCR § 2661.1(c)(1).) The accompanying declaration of Daniel Sternberg and the attached exhibits (including the declaration of attorneys' fees expert Richard M. Pearl) establish the reasonableness of the market rates for Consumer Watchdog's attorneys and advocate in this matter.

Consumer Watchdog's out-of-pocket travel expenses were reasonably incurred to carry out Consumer Watchdog's advocacy and are recoverable. (Insurance Code § 1861.10(b) ["The commissioner ... shall award reasonable advocacy and witness fees and expenses…"].) The regulations also allow for the compensation of "reasonable, actual out-of-pocket costs of an intervenor" which "include but are not limited to expenses such as travel costs, transcript charges, postage charges, overnight delivery charges, telephone charges and copying expenses." (10 CCR, § 2661.1(d).)

Finally, this fee request includes the expense of preparing the instant Request for Compensation. This is also reasonable because the regulations permit reimbursement for preparation of a request for an award of compensation. (10 CCR § 2661.1(d).) Preparing such a request requires the petitioner to review the file, review the regulations, cite to the record in this proceeding, review billing and expense records, prepare the request and supporting declarations.

V. CONCLUSION

Consumer Watchdog respectfully requests that the Insurance Commissioner award it compensation for its substantial contribution to the final regulations adopted in the above-referenced proceeding through January 25, 2019 in the amount of $25,641.85.

DATED: February 1, 2019

Respectfully submitted,
Harvey Rosenfield
Pamela Pressley
Daniel Sternberg

CONSUMER WATCHDOG

By: Pamela Pressley
Pamela Pressley
Attorneys & Advocate for CONSUMER WATCHDOG

VERIFICATION OF PAMELA PRESSLEY

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

2. I personally oversaw the preparation of the attached pleading entitled "Consumer Watchdog's Request for Compensation" filed in these proceedings.

3. All of the factual matters alleged therein are true of my own personal knowledge, or I believe them to be true based upon the information available to me from Consumer Watchdog's files regarding these proceedings.

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

Executed on February 1, 2019 at Los Angeles, California.

Pamela Pressley

Pamela Pressley

EXHIBIT A

Consumer Watchdog

VIA EMAIL

December 3, 2018

Emily Gallagher
Rate Enforcement Bureau
California Department of Insurance
45 Fremont Street, 21st fl.
San Francisco, CA 94701

Re: *Notice of Proposed Action and Notice of Public Hearing, Reg-2018-00020, Oct. 19, 2018 – Comments on Department of Insurance Regulation on Gender Non-Discrimination in Automobile Insurance Rating*

Dear Ms. Gallagher:

On behalf of Consumer Watchdog ("CWD"), we write to offer comments in response to the above-docketed notice of rulemaking to amend Cal. Code Regs., tit. 10 ("10 CCR") §§ 2632.5 and 2632.11 to eliminate gender as an optional automobile insurance rating factor.

Consumer Watchdog is a 501(c)(3) nonprofit, nonpartisan, public interest corporation organized to represent the interests of consumers and taxpayers. For 30 years, CWD has served as California's public watchdog with regard to Proposition 103 by, *inter alia*, reviewing and challenging rate filings made by insurers seeking excessive rates; participating in rulemaking and adjudicatory hearings before the California Department of Insurance (the "Department" or "CDI"); monitoring rollback settlements and the status of the rollback regulations; and educating the public concerning their rights under Proposition 103.

CWD appreciated the opportunity to participate in the October 2, 2018 pre-notice public discussion regarding gender-based discrimination in automobile insurance. For the reasons set forth below, CWD supports CDI's proposed amendments to 10 CCR §§ 2632.5 and 2632.11. Furthermore, CWD urges this rulemaking remain limited to the matter of gender non-discrimination and cautions against considering additional amendments to the optional rating factors through this rulemaking as urged by the insurance industry. If insurance companies believe there are additional optional rating factors that meet the statutory requirement of having a substantial relationship to the risk of loss, they should submit a formal rulemaking petition for consideration by the Commissioner.

I. Consumer Watchdog Supports the Department's Proposed Amendments Removing Gender as an Optional Rating Factor

Before the voters enacted Proposition 103, automobile insurance companies were free to set rates by whatever method they chose, often rating drivers and setting premiums based upon

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factors that were completely unrelated to how safely the insured drove—such as the applicant's or insured's record of having or not having prior insurance, the ZIP code where the car was garaged, or personal characteristics beyond the control of the applicant or insured such as his or her age, gender, marital status, and occupation. Furthermore, insurers would apply such optional factors arbitrarily.[1] As a result, good drivers were unfairly overcharged due to factors that they could not control and many drivers were unable to afford or obtain coverage.

Finding that "the existing laws inadequately protect[ed] consumers and allow[ed] insurance companies to charge excessive, unjustified and arbitrary rates" rendering insurance "both unaffordable and unavailable to millions of Californians" (see *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 812-813 [quoting Proposition 103's findings]), the voters enacted Proposition 103 in 1988. Its stated purpose is to ensure that "insurance is fair, available, and affordable for all Californians." (*Id.* at 813.) Insurance Code section 1861.05(a) prohibits insurance companies from charging rates that are "excessive, inadequate, unfairly discriminatory, or otherwise in violation of this Chapter [Chapter 9 of Part 2 of Division 1 of the Insurance Code, i.e., Insurance Code §§ 1850.4 through 1870]." The prohibition against unfairly discriminatory rates is broad enough to encompass discrimination based on innate characteristics such as gender, race, and territory. (See *King v. Meese* (1987) 43 Cal.3d 1217, 1240 (Broussard, J. concurring) ["One can argue that it is unfairly discriminatory to use classifications which result in charging good drivers in some areas more than bad drivers in other parts of the state[.]"].)

As to automobile insurance, this requirement was made explicit in section 1861.02. To specifically redress the fundamental unfairness of the way in which insurers were determining their automobile insurance rates, section 1861.02(a) transformed the determination of automobile insurance rates and premiums into one based primarily upon factors within a motorist's control—driving safety record, miles driven, and years of driving experience. Any additional rating factors must be adopted by the Commissioner by regulation and be substantially related to the risk of loss. (Ins. Code, § 1861.02(a)(4).) Moreover, section 1861.03 explicitly makes the Unruh Civil Rights Act – which prohibits discrimination on the basis of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status – applicable to the business of insurance.

In light of Proposition 103's mandates and the abuses discussed below, it is clear that the use of gender – an innate, personal characteristic outside the control of the applicant or insured – should be eliminated as an optional automobile rating factor to prevent unfair rate discrimination and unjustified premium surcharges that no California consumer or their families should be required to pay.

[1] *See* Lyn Hunstad, Robert Bernstein, and Jerry Turem, California Dep't of Insurance, Impact Analysis of Weighing Auto Rating Factors to Comply With Proposition 103 (Dec. 1994).

First, the use of gender as an optional automobile insurance rating factor can lead to the very unfair and arbitrary rating practices that Proposition 103 was adopted by California voters to prevent. Recent studies demonstrate how gender is being abused by insurers to subject women to unfair discrimination. For example, testing by Consumer Federation of America has shown:

- Insurers usually charge middle-aged and older women with perfect driving records more than men with identical driving records and other characteristics;
- Good drivers faced higher premiums solely because they were women;
- Charging higher premiums to younger women compared to younger men; and
- Some insurers are granting a price break for female drivers while another company in the same market sees a need for a surcharge on those same drivers. (GEICO almost always treats women as higher risk, while State Farm almost never does.)[2]

These disparate pricing examples illustrate how the same driver, with the same safety record, annual mileage, and years of driving experience, potentially faces drastically different automobile insurance rates depending upon his or her gender, not how well they drive.

The Unruh Civil Rights Act made applicable to insurance under Proposition 103 prohibits discrimination on the basis of gender. The time has come "that society should view gender as it now views race: although gender-based calculations for insurance premiums and payments are actuarially sound, feasibility alone does not justify treating men and women differently for insurance purposes."[3] Therefore, gender should not be used as a basis for calculating automobile insurance rates and premiums, because the insurance industry cannot satisfy its burden of justifying the disparate treatment, regardless of whether there is an actuarial relationship to the risk of loss. Eliminating gender as an optional rating factor will ensure that all California drivers, regardless of their gender, are treated fairly under Proposition 103's protections against unfairly discriminatory rates.

Second, there is no compelling justification for basing automobile insurance rates on gender. As stated in the Department's Initial Statement of Reasons:

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[2] *See* Press Release, Consumer Federation of America, Most Large Auto Insurers Charge 40 and 60-Year-Old Women Higher Rates Than Men, Often More Than $100 Per Year (Oct. 12, 2017), https://consumerfed.org/press_release/large-auto-insurers-charge-40-60-year-old-women-higher-rates-men-often-100-per-year/.

[3] Robert H. Jerry II and Kyle B. Mansfield, Justifying Unisex Insurance: Another Perspective (1985), available at https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1631&context=facpubs.

> Gender's relationship to risk of loss no longer appears to be substantial, and the logical justification for the statistical relationship to risk of loss has become suspect because:
>
> - Company experience has come to vary widely, with some companies finding females to be a higher risk while other companies find similarly situated males to be a higher risk.
> - Insurers routinely combine gender with other, more predictive factors like years driving experience.
> - Gender's effect on rates appears to vary widely by location.

(Cal. Dept. of Insurance, Initial Statement of Reasons REG-2018-00020, Oct. 19, 2018.)

Risk purportedly associated with gender is already covered by the mandatory rating factors under Proposition 103, as well as those optional factors that are actually under the control of the applicant or insured. For example, while the pricing gap between men and women may be influenced by (i) more expensive cars typically chosen by men, (ii) the frequency of accidents among women versus men, (iii) gender-based statistics on risky driving behavior, and/or (iv) the average number of miles driven by women vs. men,[4] these risks may be captured already by the mandatory factors of an applicant's driving record, miles driven annually, number of year's driving experience, and/or other optional rating factors such as type or use of vehicle.[5]

II. The Gender Non-Discrimination Rulemaking Process Should Not Be Used as an Opportunity to Request a Comprehensive Review of the Optional Rating Factors

During the October 2, 2018 pre-notice public discussion, as well as through subsequent written comments that have been submitted by the Personal Insurance Federation of California, it has been suggested that the Commissioner consider additional optional rating factors at this time. For the reasons below, Consumer Watchdog respectfully urges the Commissioner to resist such invitations.

First, the Department's Invitation to Pre-Notice Public Discussion, Notice of Proposed Action and Notice of Public Hearing clearly provides that this rulemaking proceeding is specifically limited to the issue of gender non-discrimination. Moreover, the consideration of other factors through this rulemaking would unnecessarily delay amending an optional rating factor that the Department has already studied and determined is no longer an appropriate automobile rating factor.

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[4] *See generally* How Gender Effects Auto Rates, available at https://www.dmv.org/insurance/how-gender-affects-auto-insurance-rates.php.

[5] 10 Cal. Code Regs. § 2632.5(d)(1), (3).

Second, to the extent a member of the public seeks the adoption of any additional optional factors, Proposition 103 and the APA provide a statutory framework for such a request and that framework must be followed.[6] Government Code section 11340.6 provides that "[a]ny interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation." Moreover, Insurance Code section 1861.10(a) specifically provides that "[a]ny person may initiate . . . any proceeding permitted or established pursuant to this chapter [9], . . . and enforce any provision of this article [10]." The requirements of Insurance Code section 1861.02 fall within Chapter 9, and enforcement of section 1861.02 falls within Article 10. Proposition 103 clearly contemplated the utilization of this framework where members of the public believe changes to the optional rating factors are necessary.

For all these reasons, Consumer Watchdog supports the proposed amendment to 10 CCR §§ 2632.5 and 2632.11 to eliminate gender as an optional automobile rating factor.

Sincerely,

Daniel L. Sternberg
Pamela Pressley (SBN 180362)
Harvey Rosenfield (SBN 123082)

Attorneys and Advocate for
CONSUMER WATCHDOG

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[6] In participating in this rulemaking, CWD does not concede that the rating factor regulations or the proposed amendment to eliminate gender as a rating factor constitute regulations establishing or fixing rates under Gov. Code § 11340.9(g).

EXHIBIT B

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, CA 95814

FINAL STATEMENT OF REASONS

GENDER NON-DISCRIMINATION IN AUTOMOBILE INSURANCE RATING

December 12, 2018 **REG-2018-00020**

Exempt Rulemaking

Pursuant to Government Code section 11340.9(g), this proceeding is exempt from the rulemaking provisions of the Administrative Procedure Act.

UPDATED INFORMATIVE DIGEST

The Notice of Proposed Action and Notice of Public Hearing, the Initial Statement of Reasons, and the Text of Regulation were posted on the California Department of Insurance public website on or before October 19, 2018; and copies of the Notice of Proposed Action and Notice of Public Hearing were mailed and/or emailed on October 19, 2018 to members of the public who had requested to be notified of regulatory actions, as well as to stakeholders interested in this rulemaking identified during the stakeholder meeting process and the pre-notice public discussion held on October 2, 2018. The Notice of Proposed Action and Notice of Public Hearing was published in the October 19, 2018 California Regulatory Notice Register. The Notice provided for a comment period commencing October 19, 2018 and concluding December 3, 2018. A public hearing was held on December 3, 2018. Three members of the public testified at the hearing, and five organizations submitted written comments. No changes were made to the proposed regulations published in the California Regulatory Notice Register on October 19, 2018.

UPDATES TO SUMMARY OF EXISTING LAW

There have been no changes in applicable law and regulations since the Notice of Proposed Action was issued.

UPDATES TO EFFECTS, OVERALL PURPOSE, AND ANTICIPATED BENEFITS OF PROPOSED ACTION

There have been no changes to the effects, overall purpose, or anticipated benefits of the proposed action since the Notice of Proposed Action was issued.

UPDATES TO INITIAL STATEMENT OF REASONS

All information set forth in the Initial Statement of Reasons dated October 19, 2018 remains accurate, and does not need to be revised.

UPDATE OF MATERIAL RELIED UPON

No material other than public comments, the transcript of the public hearing, and this Final Statement of Reasons have been added to the rulemaking file since the time the rulemaking record was opened; and no additional material has been relied upon.

UPDATE ON ECONOMIC IMPACT ASSESSMENT

There have been no changes to the Economic Impact Assessment since the Notice of Proposed Action was issued.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

As stated on page 5 of the Notice of Proposed Rulemaking, the Department has determined that the proposed regulations will not impose a mandate upon local agencies or school districts.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

No alternatives were proposed to the Department that would lessen any adverse economic impact on small business. As stated in the Notice of Proposed Rulemaking and the Initial Statement of Reasons, the proposed regulations are not anticipated to have any adverse statewide estimated economic impact on small business because insurers are not considered small businesses by law. See Cal. Gov. Code § 11342.610(b)(2).

ALTERNATIVES DETERMINATION

The Department has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

SUMMARY OF AND RESPONSE TO COMMENTS

The Department received comments from the public in response to the Notice of Proposed Action and Notice of Public Hearing issued on October 19, 2018 and at the Public Hearing held on December 2, 2018. The public comments and the Department’s responses are set forth in the table below.

COMMENTS RECEIVED AND DEPARTMENT RESPONSES

LIST OF COMMENTS RECEIVED

Initial 45-day comment period ending December 3, 2018

No.	Submitted by
1	The General Insurance
2	Personal Insurance Federation of California
3	American Insurance Association and Property Casualty Insurers Association of American
4	Consumer Federation of California Education Foundation
5	Consumer Watchdog

PUBLIC COMMENTS AND DEPARTMENT RESPONSES

Comment period ending December 3, 2018

No.	*Comment*	*10 CCR §*	*Department Response*
1	**The General Insurance**		**Department Response**
1.1	This letter is to provide comment on the proposed regulation 2018 REG-2018-00020. Under the proposed regulation, subsection (c)(1) Revised Class Plan seeks to eliminate gender as a rating variable without any other changes within the Class	2632.5/ 2632.11	Introductory material; no response required.

No.	***Comment***	***10 CCR §***	***Department Response***
	Plan filing.		
1.2	Due to the anticipated influx of filings related to the elimination of gender as a rating variable, we respectfully ask the Department to reconsider this proposed position. With the large amount of filings and the time to review the filings related to this proposed regulation, any other class plan modification would have to wait until approval of the class plan filing to address this regulation. This will greatly inhibit insurers from modifying their programs. Insures ought to be able to file a class plan which could be reviewed in conjunction with the gender removal. This would help save on review time and eliminate the need for two filings.	2632.11	The Department considered the workload related to filing review and determined that the most efficient way to implement this change would be through the submission of revised class plans that change only the gender rating factor component. The process proposed in 2632.11 is streamlined and will save review time. The Department does not consider this a great inhibition to insurers wanting to modify their programs. Insurers are permitted to submit class plan applications that make other changes in addition to the removal of gender prior to January 1, 2019. Insurers are permitted to submit class plan applications that make changes to other factors at any time, including January 1, 2019 through July 1, 2019, so long as gender has already been removed. Allowing insurers to file a complete class plan that removes gender was considered. However, complete class plan filings from a large number of insurers would greatly inhibit the Department and its resources and would lead to significant delays in approval for all filings.
1.3	A change in this proposal would also ensure fairness with insurers who have already filed class plans which include changes outside of the gender rating removal. These insurers, which will have to modified their filed class plans to be in	2632.11	It is unclear to the Department what advantage commenter perceives "insurers who have already filed class plans which include changes outside of the gender rating removal" will receive. Insurers with pending class plan applications must

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	compliance with this regulation, will receive a market advantage since other insurers will not be able to change their programs until after the targeted class plan filing. This could result in an unfair market advantage simply based on the timing concerns put forth in this proposed regulation. For these reasons, we ask the Department to review and revise their position on the scope of changes which can be address with this class plan filing.		file the revised class plan application just as all other insurers that use gender as a rating factor must do. A company with a recently approved class plan may have a slight advantage over a company that does not have such a recent approval in terms of having up-to-date data more easily accessible. However, this is no different than the situation that currently exists without the regulatory change.
2	**Personal Insurance Federation of California**		**Department Response**
2.1	The Personal Insurance Federation of California ("PIFC") has reviewed the public notice draft regulation entitled "REG-2018-00020" (the Proposed Regulation") distributed by the California Department of Insurance ("CDI") and offers the following comments.	2632.5/ 2632.11	Introductory material; no response or required.
2.2	While PIFC has substantial concerns about the substance of the Proposed Regulation, please accept our gratitude for addressing the many procedural concerns we articulated during the regulation workshop process. For instance, in proposed Section 2632.11(c) the CDI provided until July 1, 2019 for a carrier to file a revised class plan to achieve compliance with eliminating the gender optional rating factor. Preparing a revised class plan involves substantial work, and we appreciate the CDI attempting to minimize this additional	2632.11	This comment is generally supportive of the proposed revision to 2632.11(c) and does not require a response.

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	work load.		
2.3	As for the substance of the Proposed Regulation, PIFC respectfully asks the CDI to modify it in two ways: 1) the Proposed Regulations could be improved by allowing insurers to rate non-binary drivers based upon the average of male and female loss experience, which would implement the new law while preserving long-accepted, actuarially-justified gender rating of males and females; and 2) if the CDI intends to adopt a new regulation that triggers an industrywide submission of classification plans, PIFC recommends complementing such a large project with updates to the mandatory and/or optional rating factors so they reflect a) vehicle safety improvements (particularly semi-autonomous vehicle technology) as well as b) safer driving behavior.	2632.5	Allowing insurers to rate non-binary drivers based upon the average of male and female loss experience may not adequately address the problems with the use of gender as a rating factor that the Department identified in the Initial Statement of Reasons, such as unfair discrimination, waning actuarial and logical justification, and lack of driver control over the factor. Updates to the other rating factors could be addressed in a separate rulemaking. The narrow stated purpose of this rulemaking is to eliminate gender from private passenger automobile insurance rating. Delaying the removal of a problematic rating factor to undertake the significant and time consuming task of considering the relative merits of other approved and unapproved factors is not efficient. Further, the mandatory rating factors are set by statute and would require legislative action to revise.
2.4	**There is a Better Alternative for Rating Non-Binary Drivers** While SB 179 (Atkins, Ch. 853 (2017)) provided a third gender option ("non- binary") on the state drivers' license, there is no legislative history to suggest the Legislature intended to eliminate gender-based insurance rating. Of the ten legislative analyses of SB 179, none of them even mention insurance." Gender as an auto rating factor is widely accepted. It is commonly understood that teenage male drivers are generally	2632.5	That the Legislature may not have specifically intended to eliminate gender-based insurance rating with the enactment of the Gender Recognition Act (SB 179 or GRA) does not negate the GRA's relevance as a statement of California's values around the role of gender in society. As expressed in the Initial Statement of Reasons, the GRA is one of the ways in which California has extended legal recognition to persons with nonbinary identities, acknowledging that gender exists along a spectrum rather than a binary. Eliminating gender as a rating factor recognizes current societal values around gender and ensures that nonbinary individuals and people of all genders are treated fairly under Proposition 103's mandate to

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	a higher risk than teenage female drivers.1 Eliminating gender rating would require teenage female drivers to subsidize teenage male drivers. SB 179 does not require this result and there is certainly a sound policy argument for maintaining the present system. The CDI's current implementation of Prop 103 already severely limits the number of rating factors available. Eliminating one that is currently allowed, is non-controversial, and is actuarially significant only further hampers an insurer's ability to match the price charged to the risk presented. If the CDI is committed to eliminating the gender rating factor, we would ask the CDI, at least, to consider allowing continued use of gender for youthful drivers. We suggest a better approach would be for the Commissioner to allow a third classification for non-binary license holders that is an average of male and female. Such a change would recognize the new license category without eliminating justified rate differences by gender. 1 We acknowledge the CDI's reference to possible emerging trends of distracted driving compressing the risk of loss by gender for youthful drivers. However, this is still, at best, an emerging trend and does not justify eliminating a thirty year old rating factor on two months' notice.		avoid unfairly discriminatory rates. The use of gender as a rating factor is not free from controversy. As to its actuarial significance, gender's relationship to risk of loss no longer appears to be as substantial, given that company experience has come to vary widely, insurers routinely combine gender with other, more predictive factors like years driving experience, and gender's effect on risk appears to vary widely by location. Continuing to allow the use of gender as a rating factor for youthful drivers could make the factor even more unfairly discriminatory since on average, experienced male drivers tend to be charged lower rates than experienced female drivers, allowing them to recoup some of the higher premiums they may have paid in their youth. Further, distracted driving does not appear to vary by gender, according to the study from Automotive Fleet referenced in the Initial Statement of Reasons. The apparent fact that distracted driving does not vary by gender is only one of the many reasons the actuarial and logical relationship between gender and risk of loss has become suspect (other reasons cited in the Initial Statement of Reasons include variation based on location and company, and the frequency of gender's combination with more predictive factors.) Allowing insurers to rate non-binary drivers based upon the average of male and female loss experience may not adequately address the problems with the use of gender as a

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			rating factor that the Department identified in the Initial Statement of Reasons, such as unfair discrimination, waning actuarial and logical justification, and lack of driver control over the factor.
2.5	**If a New Regulation is Forthcoming, Is it Time for Additional Rating Factors?** If the CDI decides to move forward with new rules affecting the class plan regulations and trigger the huge administrative burden of reviewing and approving industrywide class plan filings, we urge the CDI to use the public input process to determine if there are other changes to the class plan regulations that are warranted. As the rating factors rules have been “frozen in time" for a significant period of time, there has been notable innovation outside of California allowing insurers to provide discounts for safer driving behavior. The CDI's "Notice of Proposed Action" outlining the justification for the Proposed Regulation endorses the notion that rating factors should be based upon controllable factors. The CDI states: "Eliminating gender from auto rating helps to bring about a regime in which auto insurance rates are based on factors within a driver's control, rather than personal characteristics over which drivers have no control." In the twenty years since the CDI has permitted any new rating variables, new technologies have emerged that allow auto rating based upon controllable driver behavior. <u>These new technologies deserve to be permitted in California- which is now an outlier in banning all sorts of behavioral-based rating</u>	2632.5	Changes to the other rating factors could be addressed in a separate rulemaking. The narrow stated purpose of this rulemaking is to eliminate gender from private passenger automobile insurance rating. Any interested party may file a rulemaking petition proposing the addition of the rating factors suggested in this comment at any time. The limited purpose of this rulemaking aside, delaying the removal of a problematic rating factor that is outside a driver’s control to undertake the significant and time consuming task of considering the relative merits of other approved and unapproved factors is not efficient. The Department has identified problems with the use of gender as a rating factor and is taking appropriate expedient action to resolve them rather than delay for an unspecified amount of time to consider an unspecified universe of other rating factors.

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	methods. For instance, there are several vehicle and driver safety factors that merit consideration for California insurance rates: Vehicle Safety Factors: Vehicle manufacturing and technology has continued to advance in the absence of any California insurance regulatory changes and the existing optional rating factors related to vehicle characteristics are becoming increasingly inadequate. PIFC encourages the CDI to explore whether the existing optional rating factors related to vehicle characteristics (i.e., "Type of vehicle," "Vehicle performance capabilities," and "Vehicle characteristics, including engine size, safety and protective devices ...") are sufficient to give enough weight to vehicle safety, particularly as vehicles become more advanced and "*Smarter*." At some point, insurers will be forced to temper the influence of vehicle safety characteristics to achieve the current regulation's mandatory factor ordering requirements. Tempering justifiable vehicle safety factor weight serves no consumer benefit. We encourage the CDI to solicit additional industry feedback on this issue, including suggestions for new-safety related rating factors. Driver Safety Factors: New technology has allowed consumers in other states to benefit directly from safer driving. Consumers have been permitted to opt-in to technology-based rating systems that track driving behavior. A few examples: • Severity of braking ("slamming the brakes");		

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	• Very fast acceleration; • Sudden lane changes; • Familiarity of driving route; • Weekend, late-night driving; • Trip regularity and familiarity; and • Use of handheld devices causing distracted driving. While there are legitimate privacy issues associated with technology that can track such driving behavior, we encourage the CDI to solicit additional industry feedback on how to incorporate such factors into a consumer opt-in system in California. Climate-Friendly Factors: As a final suggestion, PIFC urges the CDI to consider allowing optional rating factors for all-electronic or paperless relationships. While the CDI has previously stated that paperless expense reductions should be reflected in the efficiency standard, we encourage adoption of a rating factor that benefits the individual consumer for paperless/electronic relationships, instead of socializing these cost savings across the entire policyholder base.		
2.6	PIFC is hopeful that the CDI will open the Proposed Regulations to a wider discussion than just the issues raised by SB 179. It has been a long time since the CDI updated the rating factor rules, and much has changed in the meantime. With the latitude afforded in an exempt rulemaking, the CDI has an opportunity to explore additional options for the	2632.5	This concluding comment summarizes and restates previous comments to which the Department has previously responded accordingly. Whether the Department can approve filings incorporating new technological developments without amending the class

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	Proposed Regulations that would benefit consumers, including the options outlined above. Or, if the CDI believes it can approve filings incorporating new technological developments without amending the class plan regulations, we would welcome that prospect as well.		plan regulations is beyond the scope of this rulemaking.
2.7	*[From public hearing transcript at page 13]* MR. FRAZER: Good morning. My name is Rex Frazier, F-R-A-Z-I-E-R. I'm President of the Personal Insurance Federation of California. I won't repeat the remarks of Sam as to the advisability of eliminating gender as an optional rating factor other than to say -- which we'll say in more detail in our submission today, that we think it's a long justified and widely accepted rating factor, particularly for younger people, and at this point we just would renew our comments we made at the workshop to not eliminate this optional rating factor.	2632.5/ 2632.11	Introductory remarks referencing the commenter's written comments does not require a response.
2.8	*[From public hearing transcript at page 13-14]* The -- that said, we are willing and -- and frankly appreciative in acknowledging that the comments we made at the workshop, as to how to eliminate the -- that the process by which the Department intends to eliminate this rating factor, we do want to acknowledge that you have taken into account our feedback from the workshop and endeavored to at least make the process more doable, given that this is going to trigger an industry-wide submission of class plans. It's a lot of work for you. It's a lot of work for each of these companies, and the timeframe, and the manner in which you've outlined the compliance, we are appreciative of -- of at	2632.11	This comment is generally supportive of the amendments to 2632.11 and does not require a response. The Department acknowledges commenter's general opposition to the amendments to 2632.5 and addresses commenter's concerns in responses to the commenter's more specific comments that follow.

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	least that part of it, although we still would urge you not to eliminate this rating factor.		
2.9	*[From public hearing transcript at pages 14-18]* As far as the Department's justification for elimination of the rating factor, in the Department's Notice of Proposed Action it states: "Eliminating gender from auto rating helps to bring about a regime in which auto insurance rates are based on factors within a driver's control rather than personal characteristics over which drivers have no control." And that's a fine justification, and if that's the basis for this, we would -- would urge the Department of Insurance to complement this effort with a broader look at optional rating factors and potentially the mandatory implementation of mandatory rating factors, because there are a lot of other opportunities to allow rating factors based upon driver behavior that the Department has not added. And it's been 20 years since the Department last added an optional rating factor. The last time the Department modified the class plan regs was simply the weight reordering portion, but it wasn't to consider new optional rating factors. And there's a lot of technology that has ensued in those 20 years that California consumers, they're deprived of the ability to take advantage of either the vehicle safety characters or opportunities for insurers to measure and encourage safer driver behavior. The worry is that if we keep the optional rating factors or really the class plan regs, as they are configured today static,	2632.11	Changes to existing and the addition of other rating factors could be addressed in a separate rulemaking. The narrow stated purpose of this rulemaking is to eliminate gender from private passenger automobile insurance rating. Any interested party may file a rulemaking petition proposing the addition of the rating factors suggested in this comment at any time. The limited purpose of this rulemaking aside, delaying the removal of a problematic rating factor that is outside a driver’s control to undertake the significant and time consuming task of considering the relative merits of other approved and unapproved factors is not efficient. The Department has identified problems with the use of gender as a rating factor and is taking appropriate expedient action to resolve them rather than delay for an unspecified amount of time to consider an unspecified universe of other rating factors. The mandatory rating factors are set by statute and would require legislative action to revise.

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	other than eliminating gender, at some point the weight reordering requirements are going to eliminate the ability of insurers to provide proper credit for the safety advances in automobile technology. Right now just having type of vehicle and vehicle performance capabilities and vehicle characteristics seems sufficient as of now for ensuring that the type of vehicle used by the driver, there can be adequate credit given to those vehicle characteristics for purposes of the appropriate weight that can be given to them. But at some point, as these cars become smarter, their -- their technology is going to be a bigger driver of safety. It's going to explain more of the variation in insured losses, and at some point the pumping and temporary rules are going to kick in and prevent the optional rating factors from being sufficiently robust to allow proper credit to vehicle technology. And so if the Department of Insurance is looking for ways to ensure people are rated based upon things within their control, well, one of those is selection of vehicle, and at some point it's -- it's just going to be -- I don't think it's good public policy to say we -- we know that safer cars are going to be on the road, but we're going to impose on them a static being set of rating factors that ultimately the weight is going to be capped out, and we're going to have to suppress a portion of the impact of vehicle technology. The same goes for the various usage-based insurance rating factors that are widely employed in other states that go directly to measuring driver decision making, and whether it's sudden lane change or fast acceleration or severity of breaking, all these things can now be measured, and suf- --		

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	deployed without consumer alarm in other states, we don't understand why the Department of Insurance would fail to act upon promoting that type of a change at the same time that the Department is saying it wants to encourage rating based on things within our control. This is an opportunity, if you're going to eliminate gender, to also have a more robust consideration of other optional rating factors that, even if it is just allowing consumers to opt in to those optional rating factors, at some point I think Californians deserve various product features in the insurance market that are widely available in virtually every other state. And we see commercials continuously that offer -- that offer these great services for customers, but then at the bottom we know it always says "Not available in California." And at some point this anywhere-but-California mentality, we hope we can break it down, and particularly when we offer options for improved rating based upon controllable driver decisions, we think those ought to be allowed to be incorporated into the regulations here in California. So we understand that this is likely to be a change that the Department's going to make. We would urge this change to be made in part of a larger conversation about ways to modernize the classifying regs, because 20 years, we hope you'll agree, is too long to keep things static. So thank you for the opportunity to talk today.		

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3	**American Insurance Association and Property Casualty Insurers Association of American**		**Department Response**
3.1	On behalf of the American Insurance Association (AIA) and the Property and Casualty Insurers Association of America (PCI) representing a variety of insurers offering automobile insurance in California, we are writing to express our concerns to the California Department of Insurance's (CDI) proposal to eliminate gender as an optional automobile insurance factor.	2632.5/ 2632.11	Introductory material; no response required.
3.2	As previously raised, Senate Bill 179 was designed to reduce barriers to existing name and gender change procedures. The bill was never intended, nor was it drafted, to affect established and demonstrated insurance rating factors such as gender. While we agree the CDI should be mindful of the treatment of nonbinary, we believe removing gender as an optional rating factor is unwarranted in consideration of the bill's substance and intent.	2632.5	The GRA is one of the ways in which California has extended legal recognition to persons with nonbinary identities, acknowledging that gender exists along a spectrum rather than a binary. Eliminating gender as a rating factor recognizes current societal values around gender and ensures that nonbinary individuals and people of all genders are treated fairly under Proposition 103's mandate to avoid unfairly discriminatory rates. Though the GRA served as a guidepost for the proposal to remove gender as a rating factor, it is not the sole driving reason for the proposal. As explained in the Initial Statement of Reasons, the logical and actuarial justification for the use of gender as a rating factor has become suspect, given, among other things, the wide geographical and company variation in experience.

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3.3	Furthermore, we are concerned with the practical implications of the proposed regulations. As noted by the CDI, gender rating has been in regulation for nearly 30 years in California. The use of gender as an optional rating factor has been based on actuarially sound principles as approved by CDI. There are general gender statistics as well; for instance, according to a 2016 Insurance Institute for Highway Safety Highway Loss Data Institute: "Men typically drive more miles than women and more often engage in risky driving practices including not using safety belts, driving while impaired by alcohol, and speeding.[1]" In the context of teenage of drivers, teenage male drivers generally present higher risks than teenage female drivers. With CDI's proposed regulations, such data will be disregarded, and if adopted, California will be one of handful of states that prohibit gender as a rating factor. [1] https://www.iihs.org/iihs/topics/t/general-statistics/fatalityfacts/gender	2632.5	Despite the length of time that gender has been an approved optional rating factor in California, gender's relationship to risk of loss no longer appears to be as substantial, given that company experience has come to vary widely, insurers routinely combine gender with other, more predictive factors like years driving experience, and gender's effect on risk appears to vary widely by location. The apparent differences in male and female driving behavior referenced in this comment are substantially captured by the first and second mandatory rating factors: Driving Safety Record and Miles Driven. As for the differences among teenage drivers, the Department has determined that the benefits of reducing unfair discrimination, increasing the amount of control drivers have over their insurance rates, and the other benefits evidenced in the rulemaking file outweigh the value of distinguishing between male and female youthful drivers for rating purposes.
3.4	Other questions raised by our membership include the following: • There are companies that have experienced significant business changes and have not filed a class plan in recent history. How can the use of outdated data to represent current business rate impact be justified? • What happens to someone who selects non-binary on 1/1/19. What rate do carriers provide? Some carriers may have filed revisions to their rules while others may not	2632.11	• Companies are responsible for updating their class plans as necessary to reflect current data. Nothing in this proposal prevents them from doing so at any time. • The proposed regulations do not address how companies should rate nonbinary drivers before they have revised their class plans. • The proposed regulations do not specify implementation dates for the revised class plans. • The proposed regulations apply to class plan

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	have. • Is implementation expected as soon as the plan is filed and approved, or will the CDI wait for everyone to file? • If a company already has rate filings pending, how should they proceed? How does the company prioritize the filings? • Can CDI absorb the new filing workload in an expeditious manner with existing resources?		applications. Nothing in the proposed regulations is intended to change how a company prioritizes its pending rate filings. The Department determined that the proposed revised class plan submission requirement is the most expeditious and efficient manner by which to achieve the goal of eliminating gender from automobile insurance rating. The Department does not expect that this will require any additional Department resources.
3.5	Also, CDI's Notice Proposed Action and Notice of Public Hearing include conclusory statements such as "[g]iven the small population size of nonbinary drivers, it is likely that there *will never be sufficiently credible data* upon which to base such a rate." (Emphasis Added.) While historical data can be a challenge, perhaps there is a mid-step approach for nonbinary drivers—take the average of male and female drivers-- rather than eliminating gender as an optional rating factor altogether.	2632.5	Allowing insurers to rate non-binary drivers based upon the average of male and female loss experience may not adequately address the problems with the use of gender as a rating factor that the Department identified in the Initial Statement of Reasons, such as unfair discrimination, waning actuarial and logical justification, and lack of driver control over the factor.
3.6	As we previously noted, the Oregon Division of Financial Regulation's implementation of the nonbinary designation has been measured and well thought out. In the alternative, we encourage the CDI to consider a similar approach- making that clear rating plans, rating systems and applications that do not allow applicants who designate their sex or gender as not-specified to obtain coverage will be considered unfairly discriminatory. The bulletin also sets out the parameters for companies in handling the nonbinary in short term and long	2632.5	Oregon's method as described by commenter for accommodating drivers that do not designate male or female on their driver's licenses continues to permit the use of gender in auto rating. Therefore, Oregon's method would not address the problems with the use of gender as a rating factor that the Department identified in the Initial Statement of Reasons, such as unfair discrimination, waning actuarial and logical justification, and lack of driver control over the factor.

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	term. It is available at https://dfr.oregon.gov/laws-rules/Documents/Bulletins/bulletin2018-03.pdf.		
3.7	AIA and PCI also share the view that if CDI is moving towards this proposal it might as well update the optional rating factors by seeking input from stakeholders about incorporating technologies that help tract driver safety factors such as braking, speeding, and distracted driving. In our view, this would be a more efficient way for regulators and insurers to address the broader issue of optional rating factors. The insurance industry supports CDI’s goals of protecting auto insurance consumers while encouraging insurance companies to offer a variety of products to consumers. However, we are concerned that this proposed change would limit carriers’ ability to price the insurance risk accurately, causing some consumers to have to start paying higher rates than they would otherwise.	2632.5	Changes to the other rating factors could be addressed in a separate rulemaking. The narrow stated purpose of this rulemaking is to eliminate gender from private passenger automobile insurance rating. Any interested party may file a rulemaking petition proposing the addition of the rating factors suggested in this comment at any time. The limited purpose of this rulemaking aside, delaying the removal of a problematic rating factor that is outside a driver’s control to undertake the significant and time consuming task of considering the relative merits of other approved and unapproved factors is not efficient. The Department has identified problems with the use of gender as a rating factor and is taking appropriate expedient action to resolve them rather than delay for an unspecified amount of time to consider an unspecified universe of other rating factors. Gender’s relationship to risk of loss no longer appears to be substantial, given that company experience has come to vary widely, insurers routinely combine gender with other, more predictive factors like years driving experience, and gender’s effect on risk appears to vary widely by location.
3.8	Finally, banning gender as an optional rating factor is unwarranted and would create a costly administrative burden for hundreds of insurance companies and the CDI. In the tight	2632.11	The proposed revised class plan application cost both to the Department and to insurers was considered in the Economic Impact Analysis. The Department respectfully disagrees that

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	timeframe set forth in the proposal, carriers would be required to develop and file complex revisions to class plans. In turn, the CDI would have to devote valuable resources to the review and approval of the filings. We believe removing gender entirely as a rating factor would be overbroad and would ask the CDI to reconsider the Oregon approach.		the contemplated revised class plan application will be "complex." The Department estimates that the application will take insurers approximately one week of actuarial and support staff time to prepare and approximately four work weeks of IT time to implement. The revised class plan application is narrowly tailored to minimize workload for both the Department and companies, and the Department expects to be able to absorb the additional work into existing workloads.
3.9	*[From public hearing transcript at page 10]* MR. SORICH: Good morning. I am Sam Sorich, S-O-R-I-C-H, and I represent the Property Casualty Insurers Association of America, PCI. PCI is opposed to the proposal to eliminate gender from the list of approved optional rating factors for private passenger automobile insurance. PCI recognizes that the Insurance Commissioner has broad discretion to adopt or eliminate an optional rating factor. PCI does not question the authority of the Commissioner to act. However, we urge the Department of Insurance to act in a more deliberate manner in its consideration of the proposed regulatory amendments.	2632.5/ 2632.11	Introductory remarks; no response required.
3.10	*[From public hearing transcript at pages 10-11]* Gender has been an approved optional rating factor in California for 30 years. The Department's intention to	2632.5/ 2632.11	The Department has complied with the legislature's assessment of a reasonable time for public notice and comment as expressed in the Administrative Procedures Act for rulemakings subject to Office of Administrative Law

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	eliminate gender from the list of optional factors was first confirmed just eight weeks ago. There is no compelling reason for expediting this regulatory process. We believe that this significant regulatory change deserves more consideration, more study, and more understanding by the insurance consumers who will be affected by the proposed change.		approval. The Department evaluated the potential impact on consumers of eliminating gender as a rating factor as described in the Initial Statement of Reasons. The Department determined based on this evaluation that the overall benefits in terms of the elimination of unfair discrimination and the increased significance of driver-controlled factors, among other things, outweigh the negative impact in terms of minimally higher rates for some consumers.
3.11	*[From public hearing transcript at page 11]* There is sound statistical evidence of a difference in driving behavior for females versus males, especially for young drivers. PCI believes that ignoring this evidence threatens to create insurance rates that are not fair. The Department's initial Statement of Reasons acknowledges that the elimination of gender as a rating factor will, on average, increase insurance premiums for young female drivers by an estimate of 6 percent. Before imposing this cost increase on these young drivers, the Department should slow down this process and give drivers, who face the prospect of higher insurance premiums, the opportunity to understand that fact and to give them a chance to express their views.	2632.5	The wide variation among company and geographical experience suggests that the gender rating factor may be capturing other, non-gender related factors. Again, the Department has complied with Administrative Procedures Act timelines as they relate to public notice and comment to allow the public to express its views. Fairness does not require every possible driver characteristic to be taken into consideration in automobile insurance rating. The Department is aware of the potential increase in insurance rates for some consumers as described in the Economic Impact Analysis. The Department has determined that the overall impact of +/- $1 is worth the benefits of eliminating this rating factor.
3.12	*[From public hearing transcript at pages 11-12]* The Gender Recognition Act is not a valid justification for eliminating gender entirely. Nothing in the text of the Act or	2632.5	The GRA need not evidence an intent by the legislature to eliminate gender from automobile insurance rating to serve as a guidepost regarding societal values related to gender. The myriad of other justifications for the proposed regulations

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	its legislative history evidences the legislature's direction that gender should not be a factor for rating auto insurance.		including the elimination of gender discrimination are sufficient reason for pursuing the proposed amendments.
3.13	*[From public hearing transcript at page 12]* The letter that will be submitted today by PCI and AIA points to the Oregon Division of Financial Regulation's bulletin as one way to immediately address the rating of the nonbinary drivers. Other immediate options are also available. PCI's position is that the Department should immediately address the Gender Recognition Act by adopting the Oregon approach or some other appropriate option without immediately eliminating gender as a rating factor. Then, before moving forward with the adoption of the proposed amendments, the Department should create a public forum to discuss this issue and provide California drivers with a clear explanation why there is a compelling need to eliminate gender as a rating factor. Thank you. I'd be happy to answer any questions.	2632.5	This comment is repetitive of commenter’s written comment number 3.6 and as the Department responded to comment 3.6, no response is required here. As explained above, the Department has complied with the Administrative Procedures Act timelines as they relate to public notice and comment for rulemakings that require Office of Administrative Law approval in order to allow the public to express its views and has articulated a clear explanation of why this proposal should be adopted in the Initial Statement of Reasons. The law does not require a compelling need to eliminate gender as an optional rating factor, as California Insurance Code section 1861.02 permits the Commissioner broad discretion in determining optional rating factors.
4	**Consumer Federation of California Education Foundation**		**Department Response**
4.1	Consumer Federation of California Education Foundation (CFCEF), a nonpartisan, nonprofit organization, submits these comments, which also reflect the views of Consumer Federation of America, in support of the proposed regulation to eliminate gender as a permissible auto rating factor and urges the Commissioner to adopt the regulations as proposed.	2632.5/ 2632.11	Introductory material; no response required.

No.	***Comment***	***10 CCR §***	***Department Response***
	It is our view – based on our experience reviewing California class plans, academic research, our own premium testing, research by other consumer organizations, and, generally, our commitment to ensuring a just and equitable insurance marketplace – that auto insurance premiums should not differ according to a driver's gender. Below we discuss several reasons why this is the case, including both public policy and actuarial considerations.		
4.2	Before we explain our support for the proposed rule, we want to respond to a suggestion that auto insurance companies presented in comments to the Department prior to the Notice of Public Hearing in this matter. According to several industry representatives, the Department should not address this concern without opening up a rulemaking concerning the entire set of optional rating factors allowed under Insurance Code Section 1861.02(a)(4). We vigorously disagree. The proposed rule to address the use of gender in auto insurance rating is distinctly related to the January 1, 2019 implementation of SB 179 (Atkins, 2017) related to gender and driving, namely the adoption of a non-binary gender option for California driver licenses. There are no rating factors currently authorized by the rating factor regulation (10 CCR §2632.5) other than gender (§2632.5 (d)(9)) that are impacted by or relate to the issues governed by SB 179. That the Department and advocates such as CFCEF and Consumer Federation of America have identified other reasons that eliminating the use of gender would be an appropriate action of the Commissioner enhances and further	2632.5	This comment appears to support the proposed amendments and makes no objections or recommendations to alter the proposed amendments.

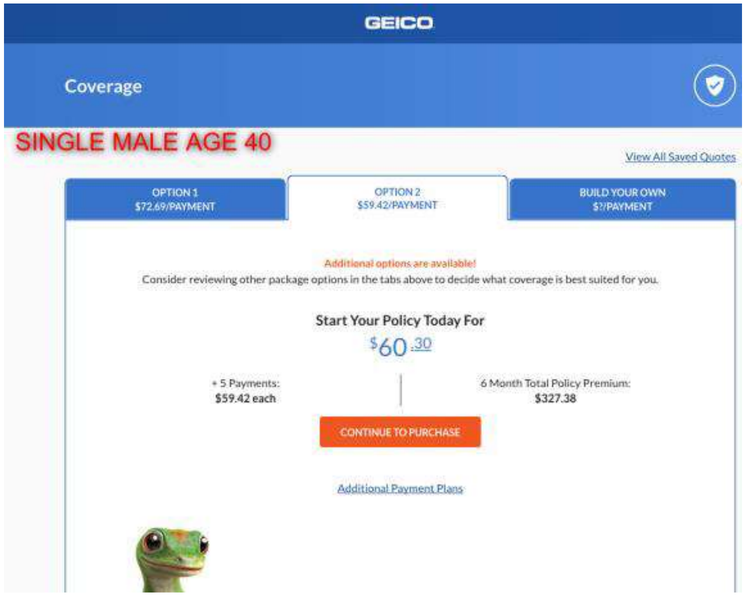
No.	***Comment***	***10 CCR §***	***Department Response***
	validates the proposed approach, but it does not suggest the Department should look at once at every rating factor or, for that matter, any other alleged imperfection in the code of regulations. Indeed, to open up the entire rating factor rules in conjunction with this discreet effort would unnecessarily burden drivers who need the issue of gender in pricing to be addressed in order to be fairly priced when they buy state-mandated auto insurance.		
4.3	**With new driver's licenses, the state has recognized that gender is non-binary and state insurance rules should follow suit** Under the Gender Recognition Act of 2017 (SB 179), transgender, nonbinary and intersex Californians will be allowed, beginning on January 1, 2019, to be identified by a gender marker other than female or male on their driver's license. As bill author Sen. Atkins (San Diego) explained, "[t]he Gender Recognition Act will eliminate unnecessary stress and anxiety for many Californians, and it exemplifies the leadership role that our state continues to take in LGBTQ civil rights."1 This progress must be extended to the auto insurance market, where insurers still rate drivers based on an antiquated idea of gender. SB 179's recognition of a non-binary gender is a recognition that gender itself is constructed socially and not accurately characterized by an "either/or" distinction. Whatever driving risk is imputed to a person based on a prior assumption of a binary world cannot be extended to this non-	2632.5	This comment appears to be supportive of the proposed amendments and makes no objections or recommendations to alter the proposed amendments.

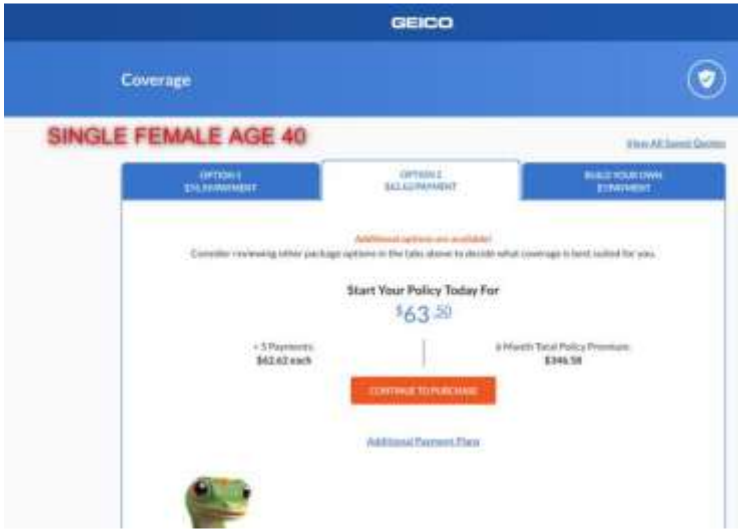
No.	***Comment***	***10 CCR §***	***Department Response***
	binary reality. Nor is it appropriate to simply attach a third category – "non-binary" – to the rating process as though every non-binary driver is somehow connected, by risk similarity, to others who identify as neither male nor female. When there is a characteristic with an imprecise spectrum for which there is not easily described and accepted demarcations, then that characteristic is not a useful auto insurance rating factor. This is the case with gender, and while it may have been misunderstood and ignored for a long time, it is now the stated law of California. As such, the gender-as-rating-factor construct is no longer viable. In order to ensure that rating of drivers is not unfairly discriminatory (and in violation of Insurance Code Section 1861.05(a)) as a result of mischaracterizing policyholders according to gender or charging different rates to similar risks as a result of a suspect classification, the simplest and best approach is the regulation change proposed by the Department. By removing the use of gender as an optional rating factor, no one is left out, no one is misidentified, and no one is arbitrarily grouped. 1 https://sd39.senate.ca.gov/news/20171016-governor-brown-signs-toni-atkins%E2%80%99-sb-179-creating-thirdgender-marker-state-ids		
4.4	**Gender should not be used as a rating characteristic for other reasons in addition to implementation of the Gender Recognition Act**	2632.5	This comment appears to be supportive of the proposed amendments and makes no objections or recommendations to alter the proposed amendments.

No.	***Comment***	***10 CCR §***	***Department Response***
	Gender is not an appropriate rating factor for reasons that go beyond the binary nature of its historic application. There are both actuarial and public policy reasons that gender should not be used, and it is worth noting that several states prohibit different auto insurance premiums based on gender, including Hawaii, Massachusetts, Michigan (with some exceptions), Montana, North Carolina, and Pennsylvania. Before discussing the additional reasons to eliminate gender as a rating factor, it is important to highlight the fact that while young female drivers pay less on average than young males, drivers rated as female, on average, pay more than male drivers (as the Department illustrates in its Statement of Reasons). That is, taken as a group, drivers currently rated as female will see lower rates as a result of the proposed regulation.		
4.5	**The impact of gender on auto insurance premiums is widely misunderstood** There is a distinct disconnect between the assumptions about the impact of gender on premiums – with the view that women pay less than men for auto insurance predominating – and the actual pricing of auto insurance – in which women pay more for coverage than men.2 Indeed, twice as many Americans think men pay higher premiums than think women pay more, according to a 2017 national survey conducted for Consumer Federation of America by ORC International.3 The survey, which asked respondents to exclude “teenagers and other young drivers” when thinking about who pays more in	2632.5	This comment appears to support the proposed amendments and makes no objections or recommendations to alter the proposed amendments.

No.	***Comment***	***10 CCR §***	***Department Response***
	order to eliminate the possibility that respondents were focused on young male drivers, found that 48 percent of Americans think auto insurers charge men more for coverage than women, while only 23 percent of Americans think women are charged more, and 17 percent think men and women are charged the same for coverage. It is not surprising that a plurality of Americans assumes women pay less for auto insurance; even insurance industry insiders maintain that assumption. In 2017, for example, Robert Hartwig, co-director of the Center for Risk and Uncertainty Management at the University of South Carolina and former President of the insurance industry's Insurance Information Institute told the Atlanta Journal Constitution: "Let me go way, way back to perhaps one of the first rating factors ever used — gender. No one doubts males are worse drivers than females in every respect."4 This is a common theme from insurance industry voices. Esurance: "When it comes to scoring the best car insurance rates, the battle of the sexes plays a role. We'll explain why the average gal, all else being equal, can expect to pay less than the average guy for auto insurance."5 Insurance Information Institute: "'Men traditionally have been paying more for decades, and while the cost gap closes somewhat after age 25, it never fully closes,' says Loretta Worters, Vice President of the Insurance Information Institute (III)."6		

No.	***Comment***	***10 CCR §***	***Department Response***
	While some insurers do charge women less than men and others do not rate on gender, on the whole women pay more. The insurance quote website The Zebra reports that across the country women pay slightly more than men – about one-half of one percent on average7 – but research by Consumer Federation of America (CFA) illustrates that companies sometimes charge significantly higher rates to women than men. CFA's 2017 report (attached as Exhibit A), which reviewed quotes from six major auto insurers in ten different states, revealed that 23% of the time women were charged at least $100 more per year than men. In 4% of its tests good drivers faced premiums at least $500 higher solely because they were female. In Los Angeles, CFA found that women are charged a higher rate more often (39% of tests) than men are charged the higher rate (33% of the time) and more often than rates are the same for both (28%). Auto insurance premium quotes provided by Geico.com corroborate the CFA findings and illustrate the current female surcharge that would be removed if the proposed regulations take effect. As shown in the screenshots below, two Los Angeles-area drivers who are the same in every way (driving record, age, type of car, residential address, marital status, etc.) were quoted different premiums based solely on their gender identification. The female driver, in this pair of quotes, is charged 5.9% more – about $38 per year – solely due to gender.8		

No.	*Comment*	*10 CCR §*	*Department Response*
			

No.	***Comment***	***10 CCR §***	***Department Response***
	 2 California Department of Insurance REG-2018-00020 Initial Statement of Reasons Table 1, p.14. Additional evidence provided below. 3 The telephone survey of 1,004 Americans was conducted between September 28, 2017 and October 1, 2017 and had a ±3.09% margin of error. See https://consumerfed.org/press_release/large-auto-insurers-charge-40-60-yearold-women-higher-rates-men-often-100-per-year/ 4 Teegardin, C., July 28, 2017. The Mysteries of Auto Insurance Pricing. Atlanta Journal Constitution, retrieved on November 21, 2018 from http://www.myajc.com/business/the-mysteries-auto-		

No.	Comment	10 CCR §	Department Response
	insurancepricing/RgMSfqHkdovMr4aaqUO30M/ 5 https://www.esurance.com/info/car/why-women-pay-less-for-car-insurance 6 http://www.insurancequotes.org/auto/why-men-pay-more-for-auto-insurance-than-women/ 7 https://www.thezebra.com/auto-insurance/male-vs-female-car-insurance-rates/ 8 The testing was conducted on November 28, 2018 by Douglas Heller, using the auto insurance quote tool offered by Geico.com. The only difference between the two drivers tested was the selected gender. Every other characteristic was held constant.		
4.6	**Gender is not a risk-related characteristic** Actuarial research has demonstrated that gender does not do a good job of predicting risk. In their paper on auto insurance risk factors, Lourens, Vissers, and Jessurun found that while age is significantly related to risk of loss across all classes of annual mileage, a driver's gender is not a predictor of loss when considered in light of differences related to annual mileage. In fact, they reported, "[t]he effect of the variable 'sex' disappears, when annual mileage is taken into account."9 The fact that gender does not have an inherent connection to risk shows up in a practical analysis of auto insurance pricing.	2632.5	This comment appears to support the proposed amendments and makes no objections or recommendations to alter the proposed amendments.

No.	***Comment***	***10 CCR §***	***Department Response***
	As noted above, CFA's research (Exhibit A) found that a 40-year old female driver in Baltimore would be charged 13% less than a male driver by one company, the same as a male driver by another company, and 17% more than a male driver by a third company. If gender actually predicted risk of loss, how could three major auto insurers with large books of business arrive at such different predictions of what that risk was? Looking across cities and states, the CFA report found that several companies use contradictory gender relativities in different markets. So, for example, Progressive charged a 40-year old female driver 19% less than a male driver in Houston, but it charged the same female driver 12% more than a male in Los Angeles. Similarly, Allstate charged 60-year old women 9% less in Atlanta, but 4% more in Los Angeles. Is gender a geographic-specific characteristic? (Of course, as the Baltimore example above reveals, there is nothing consistent about the gender impact by geography, either.) Rates are higher for a driver who caused an accident involving a bodily injury or was convicted of a DUI, no matter the city and no matter the insurer. There may be variation in the selected relativity for each of these rating factors, but the impact always points in the same direction, because those characteristics are firmly related to the risk of a future loss. Gender is inconsistently applied because, as the Lourens, et al research indicates, gender is not related to the risk of loss. These inconsistent patterns also illustrate that the use of gender as a risk classification runs afoul of a basic principle of		

No.	***Comment***	***10 CCR §***	***Department Response***
	Actuarial Standards Board Actuarial Standard of Practice No. 12 – Risk Classification (for All Practice Areas), which states the following: Reasonableness of Results: When establishing risk classes, the actuary should consider the reasonableness of the results that proceed from the intended use of the risk classes (for example, the consistency of the patterns of rates, values or factors among risk classes). [Section 3.3.4] Beyond the actuarial weakness of the use of gender, there is a strong public policy reason – in addition to those related to unfair discrimination discussed above – to eliminate the use of gender as a rating factor. Insurance pricing should incentivize safety and risk mitigation. Rating should afford drivers' the opportunity to reduce premiums over time by reducing risk. Providing discounts for safe driving (and surcharges for unsafe driving) sends a useful, socially beneficial signal to drivers. Similarly, lowering rates for driving fewer miles, gaining experience behind the wheel, and driving safer cars allows policyholders the opportunity to gain a benefit for their risk reduction and face consequences for riskiness. Premiums should reflect driving-related risk and allow drivers to improve rates as they lower their risk. Gender does not allow for that. Wherever one is on the gender spectrum – even if it has not always been recognized appropriately – this personal characteristic is not a driving-related characteristic that can be improved upon to reduce the risk of loss. By using gender as a rating factor, insurers diminish the impact of more appropriate rating factors, such as driver safety, miles driven, and driving		

No.	***Comment***	***10 CCR §***	***Department Response***
	experience. In addition to the fact that the actuarial evidence argues against the use of gender, the public policy benefit of incentivizing safer driving with lower premiums is undermined when people are punished for who they are rather than how they drive. 9 Lourens, P. F., Vissers, J. A., & Jessurun, M. (1999). Annual mileage, driving violations, and accident involvement in relation to drivers' sex, age, and level of education. Accident Analysis & Prevention, 31(5), 596.		
4.7	**The timeframe for implementation is generous to industry and allows Department staff the time to process insurers' revised plans** As soon as a non-binary-identified driver seeks an insurance quote or asks to renew their auto insurance policy, the proposed rules should apply, which suggests that the public interest would be best served if insurers adopted a gender-free rating methodology by January 1, 2019. However, that interest must be weighed against the need to ensure companies remove gender from their class plans in a manner that conforms to all aspects of California's prior approval requirements, including the requirement that no rate is excessive, inadequate, or unfairly discriminatory. The Department's proposed requirement that insurers file a revised, compliant plan by July 1, 2019 is generous to insurance companies. CFCEF believes that it would be appropriate to require that insurers file revised plans by March	2632.11	The July 1, 2019 deadline for submitting revised class plan applications allows insurers ample time to comply with the new regulations. It also allows the Department to continue to review other applications submitted in the ordinary course. A March 31, 2019 deadline could make it more difficult for the Department to review the revised class plan applications while still attending to its ordinary workload.

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	31, 2019 with the goal that all carriers would be compliant in the marketplace by July 1. We hope that many carriers will submit revised plans sooner than July 1, and we would oppose efforts to extend the compliance period beyond the timeframe set forth in the proposed regulation.		
4.8	**Conclusion** The Department of Insurance has proposed a change in regulation that responds to the Gender Recognition Act in a way that is consistent with actuarial research and principles and the twin public policy goals of reducing risk and eliminating unfair discrimination. The regulations should be amended as proposed.		Concluding remarks; no response required.
5	**Consumer Watchdog**		**Department Response**
5.1	On behalf of Consumer Watchdog ("CWD"), we write to offer comments in response to the above-docketed notice of rulemaking to amend Cal. Code Regs., tit. 10 ("10 CCR") §§ 2632.5 and 2632.11 to eliminate gender as an optional automobile insurance rating factor. Consumer Watchdog is a 501(c)(3) nonprofit, nonpartisan, public interest corporation organized to represent the interests of consumers and taxpayers. For 30 years, CWD has served as California's public watchdog with regard to Proposition 103 by, inter alia, reviewing and challenging rate filings made by	2632.5/ 2632.11	Introductory material; no response required.

No.	***Comment***	***10 CCR §***	***Department Response***
	insurers seeking excessive rates; participating in rulemaking and adjudicatory hearings before the California Department of Insurance (the "Department" or "CDI"); monitoring rollback settlements and the status of the rollback regulations; and educating the public concerning their rights under Proposition 103.		
5.2	CWD appreciated the opportunity to participate in the October 2, 2018 pre-notice public discussion regarding gender-based discrimination in automobile insurance. For the reasons set forth below, CWD supports CDI's proposed amendments to 10 CCR §§ 2632.5 and 2632.11. Furthermore, CWD urges this rulemaking remain limited to the matter of gender non-discrimination and cautions against considering additional amendments to the optional rating factors through this rulemaking as urged by the insurance industry. If insurance companies believe there are additional optional rating factors that meet the statutory requirement of having a substantial relationship to the risk of loss, they should submit a formal rulemaking petition for consideration by the Commissioner.	2632.5/ 2632.11	This comment appears to support the proposed amendments and makes no objections or recommendations regarding this rulemaking proceeding.
5.3	**Consumer Watchdog Supports the Department's Proposed Amendments Removing Gender as an Optional Rating Factor** Before the voters enacted Proposition 103, automobile insurance companies were free to set rates by whatever method they chose, often rating drivers and setting premiums based upon factors that were completely unrelated to how	2632.5	This comment appears to support the proposed amendments and makes no objections or recommendations to alter the proposed amendments.

No.	***Comment***	***10 CCR §***	***Department Response***
	safely the insured drove-such as the applicant's or insured's record of having or not having prior insurance, the ZIP code where the car was garaged, or personal characteristics beyond the control of the applicant or insured such as his or her age, gender, marital status, and occupation. Furthermore, insurers would apply such optional factors arbitrarily. 1 As a result, good drivers were unfairly overcharged due to factors that they could not control and many drivers were unable to afford or obtain coverage. Finding that "the existing laws inadequately protect[ed] consumers and allow[ed] insurance companies to charge excessive, unjustified and arbitrary rates" rendering insurance "both unaffordable and unavailable to millions of Californians" (see Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d 805, 812-813 [quoting Proposition 103's findings]), the voters enacted Proposition 103 in 1988. Its stated purpose is to ensure that "insurance is fair, available, and affordable for all Californians." (Jd. at 813.) Insurance Code section 1861.05(a) prohibits insurance companies from charging rates that are "excessive, inadequate, unfairly discriminatory, or otherwise in violation of this Chapter [Chapter 9 of Part 2 of Division 1 of the Insurance Code, i.e., Insurance Code§§ 1850.4 through 1870]." The prohibition against unfairly discriminatory rates is broad enough to encompass discrimination based on innate characteristics such as gender, race, and territory. (See King v. Meese (1987) 43 Cal.3d 1217, 1240 (Broussard, J. concurring) ["One can argue that it is unfairly discriminatory to use classifications which result in charging good drivers in some areas more than bad drivers in other		

No.	***Comment***	***10 CCR §***	***Department Response***
	parts of the state[.]"].) As to automobile insurance, this requirement was made explicit in section 1861.02. To specifically redress the fundamental unfairness of the way in which insurers were determining their automobile insurance rates, section 1861.02(a) transformed the determination of automobile insurance rates and premiums into one based primarily upon factors within a motorist's control-driving safety record, miles driven, and years of driving experience. Any additional rating factors must be adopted by the Commissioner by regulation and be substantially related to the risk of loss. (Ins. Code,§ 1861.02(a)(4).) Moreover, section 1861.03 explicitly makes the Unruh Civil Rights Act- which prohibits discrimination on the basis of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status - applicable to the business of insurance. In light of Proposition 103's mandates and the abuses discussed below, it is clear that the use of gender - an innate, personal characteristic outside the control of the applicant or insured- should be eliminated as an optional automobile rating factor to prevent unfair rate discrimination and unjustified premium surcharges that no California consumer or their families should be required to pay. <u>First</u>, the use of gender as an optional automobile insurance rating factor can lead to the very unfair and arbitrary rating practices that Proposition 103 was adopted by California voters to prevent. Recent studies demonstrate how gender is		

No.	***Comment***	***10 CCR §***	***Department Response***
	being abused by insurers to subject women to unfair discrimination. For example, testing by Consumer Federation of America has shown: • Insurers usually charge middle-aged and older women with perfect driving records more than men with identical driving records and other characteristics; • Good drivers faced higher premiums solely because they were women; • Charging higher premiums to younger women compared to younger men; and • Some insurers are granting a price break for female drivers while another company in the same market sees a need for a surcharge on those same drivers. (GEICO almost always treats women as higher risk, while State Farm almost never does. These disparate pricing examples illustrate how the same driver, with the same safety record, annual mileage, and years of driving experience, potentially faces drastically different automobile insurance rates depending upon his or her gender, not how well they drive. The Unruh Civil Rights Act made applicable to insurance under Proposition 103 prohibits discrimination on the basis of gender. The time has come "that society should view gender as it now views race: although gender-based calculations for insurance premiums and payments are actuarially sound, feasibility alone does not justify treating men and women		

No.	***Comment***	***10 CCR §***	***Department Response***
	differently for insurance purposes."3 Therefore, gender should not be used as a basis for calculating automobile insurance rates and premiums, because the insurance industry cannot satisfy its burden of justifying the disparate treatment, regardless of whether there is an actuarial relationship to the risk of loss. Eliminating gender as an optional rating factor will ensure that all California drivers, regardless of their gender, are treated fairly under Proposition 103's protections against unfairly discriminatory rates. Second, there is no compelling justification for basing automobile insurance rates on gender. As stated in the Department's Initial Statement of Reasons: Gender's relationship to risk of loss no longer appears to be substantial, and the logical justification for the statistical relationship to risk of loss has become suspect because: • Company experience has come to vary widely, with some companies finding females to be a higher risk while other companies find similarly situated males to be a higher risk. • Insurers routinely combine gender with other, more predictive factors like years driving experience. • Gender's effect on rates appears to vary widely by location.		

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	(Cal. Dept. of Insurance, Initial Statement of Reasons REG-2018-00020, Oct. 19, 2018.) Risk purportedly associated with gender is already covered by the mandatory rating factors under Proposition 103, as well as those optional factors that are actually under the control of the applicant or insured. For example, while the pricing gap between men and women may be influenced by (i) more expensive cars typically chosen by men, (ii) the frequency of accidents among women versus men, (iii) gender-based statistics on risky driving behavior, and/or (iv) the average number of miles driven by women vs. men,4 these risks may be captured already by the mandatory factors of an applicant's driving record, miles driven annually, number of year's driving experience, and/or other optional rating factors such as type or use of vehicle.5 1 See Lyn Hunstad, Robert Bernstein, and Jerry Turem, California Dep't oflnsurance, Impact Analysis of Weighing Auto Rating Factors to Comply With Proposition 103 (Dec. 1994). 2 See Press Release, Consumer Federation of America, Most Large Auto Insurers Charge 40 and 60-Year-Old Women Higher Rates Than Men, Often More Than $100 Per Year (Oct. 12, 2017), https:/Iconsumerfed. org/press_release/large-auto-insurers-charge-40-60-year-old- women-higher- rates-men-often-! 00-per-year/. 3 Robert H. Jerry II and Kyle B. Mansfield, Justifying Unisex Insurance: Another Perspective (1985), available at		

No.	***Comment***	***10 CCR §***	***Department Response***
	https:/Ischolarship.law .missouri.edu/cgi/viewcontent. cgi?referer=https ://www.google. com/&http sredir= 1&article= 1631&context=facpubs. 4 *See generally* How Gender Effects Auto Rates, available at https://www.dmv.org/insurance/how-gender-affects-auto-insurance-rates. php. 5 10 Cal. Code Regs. § 2632.5(d)(1), (3).		
5.4	**The Gender Non-Discrimination Rulemaking Process Should Not Be Used as an Opportunity to Request a Comprehensive Review of the Optional Rating Factors** During the October 2, 2018 pre-notice public discussion, as well as through subsequent written comments that have been submitted by the Personal Insurance Federation of California, it has been suggested that the Commissioner consider additional optional rating factors at this time. For the reasons below, Consumer Watchdog respectfully urges the Commissioner to resist such invitations. First, the Department's Invitation to Pre-Notice Public Discussion, Notice of Proposed Action and Notice of Public Hearing clearly provides that this rulemaking proceeding is specifically limited to the issue of gender non-discrimination. Moreover, the consideration of other factors through this rulemaking would unnecessarily delay amending an optional rating factor that the Department has already studied and determined is no longer an appropriate automobile rating factor. Second, to the extent a member of the public seeks the adoption of any additional optional factors, Proposition 103 and the APA		This comment appears to support the proposed amendments and makes no objections or recommendations to alter the proposed amendments.

No.	***Comment***	***10 CCR §***	***Department Response***
	provide a statutory framework for such a request and that framework must be followed.6 Government Code section 11340.6 provides that "[a]ny interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation ." Moreover, Insurance Code section 1861.10(a) specifically provides that "(a]ny person may initiate ... any proceeding permitted or established pursuant to this chapter [9], ... and enforce any provision of this article [10]." The requirements of Insurance Code section 1861.02 fall within Chapter 9, and enforcement of section 1861.02 falls within Article 10. Proposition 103 clearly contemplated the utilization of this framework where members of the public believe changes to the optional rating factors are necessary. 6 In participating in this rulemaking, CWD does not concede that the rating factor regulations or the proposed amendment to eliminate gender as a rating factor constitute regulations establishing or fixing rates under Gov. Code § 11340.9(g).		
5.5	For all these reasons, Consumer Watchdog supports the proposed amendment to 10 CCR §§ 2632.5 and 2632.11 to eliminate gender as an optional automobile rating factor.	2632.5/ 2632.11	Concluding remarks; no response required.
5.6	*[From public hearing transcript at pages 18-22]* MR. MATTOCH: Good morning. I'm Mike Mattoch, M-A-T-T-O-C-H, from Consumer Watchdog, counsel for Consumer Watchdog.	2632.5/ 2632.11	This comment appears to support the proposed amendments and makes no objections or recommendations to alter the proposed amendments.

No.	Comment	10 CCR §	Department Response
	First, let me say that Consumer Watchdog supports the Department's proposed amendments as the -- further removing the gender as an optional rating factor, and for the first time in my career, my wife and two daughters actually care about what I'm doing, so they agree also. The voters enacted Prop 103 in 1988 and its purpose to ensure that insurance is fair, available, and affordable to all Californians. The use of gender as an optional automobile insurance rating factor can lead to the very unfair and arbitrary rating practices that Prop 103 was specifically adopted to eliminate by California voters. Recent studies demonstrate -- as if we needed recent studies -- how gender is being abused by insurers who subject women to unfair discrimination. For example, testing by the Consumer Federation of America has shown that insurers usually charge middle-aged and older women, with perfect driving records, more than men with identical driving records and other characteristics, hence my wife's personal involvement here. Good drivers face higher premiums solely because they were women, my two teenage daughters, charging higher premiums to younger women compared to younger men. And some insurers are granting price [breaks] for female drivers, while other companies in the same market see the need to surcharge for those same drivers. For example, Geico, will -- almost always treats women as a higher risk, where State Farm almost never does. Same person, same place, same risk.		

No.	Comment	10 CCR §	Department Response
	The Unruh Civil Rights Act was made applicable to -- applicable to insurance under the Prop 103 and prohibits discrimination on the basis of gender. Gender, like race, should not be used as a basis for calculating automobile insurance rates' premiums, because the insurance industry cannot satisfy this burden of justifying the disparate treatment regardless of whether there's an actuarial relationship to it. Eliminating gender as an optional rating factor ensures that all California drivers, regardless of their gender, are treated fairly under Prop 103's protections against unfairly discriminatory rates. Second, there is no compelling justification for basing automobile insurance rates on gender. The Department's initial Statement of Reasons specifically noted that gender's relationship to risk of loss no longer appears to be substantial, and logical justification for this statistical relationship to the risk of loss has become suspect, because, one, company experience has come to vary widely, with some companies finding females to be a higher risk while other companies find similarly situated males to be a higher risk. Insurers routinely combine gender with other more predictive factors like years of driving experience. And gender's effect on rates appear to vary widely by location. So risk purportedly associated with gender are already covered by the mandatory rating factors under Prop 103 as well as those optional factors which are actually under the control of the applicant or the insurers. And the second point -- I will now close after this, not to be		

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	redundant with our very thorough written comments that are on their way to you -- is that we -- during the December 2nd Pre-notice Public Discussion, as well as through subsequent written comments submitted by the insurance industry, it has been suggested that the Commissioner consider additional optional rating factors, as in previous testimony. For the reasons that I'm going to articulate, the Department's Pre-notice Public Discussion, Notice of Proposed Action, Notice of Public Hearing clearly provide that this rule-making procedure, this specific rule-making procedure is specifically limited to the issues of gender nondiscrimination. Moreover, the consideration of other factors through the rule making would prove -- this rule making would unnecessarily delay amending an optional rating factor that the Department has already studied and determined is no longer an appropriate automobile rating factor. So if they would like to do it, they should follow the rules and submit one. Thank you very much for your time.		

EXHIBIT C

CONSUMER WATCHDOG
SUMMARY OF FEES AND EXPENSES

In the Matter of the Rulemaking Hearing re Amendments to Subchapters 2632.5 and 2632.11, Tit. 10, of the California Code of Regulations to Eliminate Gender as an Optional Automobile Insurance Rating Factor
File No. RH-06092874

ITEMS	COST
Attorneys/Advocates Fees	
Harvey Rosenfield @ $695 per hour, 0.6 hours	$417.00
Pamela Pressley @ $595 per hour, 19.7 hours	$11,721.50
Mike Mattoch @$595 per hour, 9.0 hours	$5,355.00
Daniel Sternberg @$200 per hour, 37.7 hours	$7,540.00
Total CWD Attorney and Advocate Fees:	**$25,033.50**
CWD Expenses	
CWD Attorney Travel to Attend Hearing (airfare, ground transportation, parking, meals).	$608.35
Total CWD Expenses	**$608.35**
TOTAL FEES AND EXPENSES:	**$25,641.85**

PROOF OF SERVICE
[BY OVERNIGHT OR U.S. MAIL, FAX TRANSMISSION, EMAIL TRANSMISSION AND/OR PERSONAL SERVICE]

State of California, City of Los Angeles, County of Los Angeles

I am employed in the City of Los Angeles and County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 6330 San Vicente Blvd., Suite 250, Los Angeles, California 90048, and I am employed in the city and county where this service is occurring.

On February 1, 2019, I caused service of true and correct copies of the documents entitled

CONSUMER WATCHDOG'S REQUEST FOR COMPENSATION

upon the persons named in the attached service list, in the following manner:

1. If marked HAND DELIVERED, by personally delivering copies to the person served at the listed address.

2. If marked EMAIL, by electronic mail transmission this date to the email address stated.

3. If marked U.S. MAIL or OVERNIGHT, by placing this date for collection for regular or overnight mailing true copies of the within document in sealed envelopes, addressed to each of the persons so listed. I am readily familiar with the regular practice of collection and processing of correspondence for mailing of U.S. Mail and for sending of Overnight mail. If mailed by U.S. Mail, these envelopes would be deposited this day in the ordinary course of business with the U.S. Postal Service. If mailed Overnight, these envelopes would be deposited this day in a box or other facility regularly maintained by the express service carrier or delivered this day to an authorized courier or driver authorized by the express service carrier to receive documents, in the ordinary course of business, fully prepaid.

4. If marked FAX SERVICE, by fax transmission this date to the FAX number stated to the person(s) named. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission which I printed out is attached.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 1, 2019 at Los Angeles, California.

Kaitlyn Gentile

Service List

Daniel Goodell
Emily Gallagher
Robert Binion
Rate Enforcement Bureau
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Tel. (415) 538-4111
Fax (415) 904-5490
Daniel.Goodell@insurance.ca.gov
Emily.Gallagher@insurance.ca.gov
Robert.Binion@insurance.ca.gov

☐ FAX
☐ U.S. MAIL
☐ OVERNIGHT MAIL
☐ HAND DELIVERED
☒ EMAIL

Edward Wu
Staff Counsel and Public Advisor
Office of the Public Advisor
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☐ FAX
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Attorneys and Advocate for CONSUMER WATCHDOG

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Rulemaking Hearing re: Amendments to Sections 2632.5 and 2632.11, Subchapter 4.7, Title 10, of the California Code of Regulations.

FILE NO.: REG-2018-00020

DECLARATION OF DANIEL STERNBERG IN SUPPORT OF CONSUMER WATCHDOG'S REQUEST FOR COMPENSATION

I, Daniel Sternberg, declare:

1. I am over eighteen years of age and an advocate for Intervenor in this proceeding, Consumer Watchdog. This declaration is submitted in support of Consumer Watchdog's Request for Compensation in the above-captioned proceeding. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would testify competently to the facts stated herein.

2. Consumer Watchdog is a non-profit, tax-exempt consumer research, education, litigation, and advocacy organization. Consumer Watchdog advocates on behalf of consumers before regulatory agencies, the Legislature and the courts.

Consumer Watchdog's Billed Hours Are Reasonable and in Compliance with the Regulations.

3. Attached as Exhibit 1 are true and correct printouts of detailed time billing reports showing the tasks performed and hours expended by each Consumer Watchdog attorney and advocate in this rulemaking proceeding.

4. As a non-profit, public interest organization, Consumer Watchdog conducts its education and advocacy efforts as a public interest service. Therefore, consistent with the decisions of the California Supreme Court and the United States Supreme Court and the intervenor regulations applicable to this proceeding (see 10 CCR § 2661.1(c)), Consumer Watchdog's policy is to seek prevailing market rates in all fee award applications. Consumer Watchdog has consistently been awarded prevailing market hourly rates in fee awards and negotiations.

5. I have reviewed Consumer Watchdog's time billing records and believe that the hours and fees listed were necessary and reasonable. In preparing their respective time records for this submission, Consumer Watchdog's attorneys and advocate exercised billing judgment. The time expended and work performed in the proceedings for which Consumer Watchdog seeks compensation, as reflected in the time records, was reasonable and appropriate, and the minimum required to achieve the results obtained.

6. Based upon Consumer Watchdog's time billing reports attached hereto as Exhibit 1, Consumer Watchdog attorneys and advocate have incurred 67 hours in this proceeding through January 25, 2019. The billing reports detail the tasks performed, are based on contemporaneous daily time records maintained by Consumer Watchdog staff and are billed in tenth-of-an-hour increments.

7. The hourly rates sought by Consumer Watchdog for its attorneys and advocate are $595 for Pamela Pressley, $695 for Harvey Rosenfield, $595 for Mike Mattoch, and $200 for Daniel Sternberg. The hourly rates for Consumer Watchdog attorneys and advocate who worked on this proceeding are consistent with the 2018 prevailing market rates for attorneys and advocates of similar experience, qualifications, and expertise in insurance regulatory law. Consumer Watchdog arrived at these hourly rates based on the experience and qualifications of its attorneys and advocate, information obtained from other attorneys working at several reputable law firms in Los Angeles and San Francisco, the opinion of attorneys' fees expert Richard M. Pearl, and historical rates awarded or paid for Consumer Watchdog attorneys' professional services in civil and administrative proceedings. Mr. Pearl is a recognized expert on attorneys' fees issues in the California market.[1] His attached declaration evidences the reasonableness of Consumer Watchdog's hourly rates. (See Ex. 2, Declaration of Richard M. Pearl in Support of Consumer Watchdog's Request for Compensation in *In the Matter of Rate Application of State Farm General* ["Pearl Declaration"], *passim*.) In his declaration, Mr. Pearl concludes that Consumer Watchdog's rates are "eminently reasonable in light of the information I have gathered as an attorneys' fees specialist" (*id.* at ¶8) and "well within the range of, but lower than many of, the non-contingent market rates charged by San Francisco Bay and Los Angeles area attorneys and law clerks of reasonably comparable experience, skill, and expertise for reasonably comparable services." (*Ibid.*) Mr. Pearl's declaration contains substantial details on attorneys' and paralegal fees and shows that Consumer Watchdog's 2018 rates are within the market rates charged by attorneys and paralegals with similar experience level and skill.

8. In this proceeding, Consumer Watchdog attorneys and advocate performed the following general tasks:

- Conferred regarding overall strategy and positions;
- Drafted, reviewed, and edited Consumer Watchdog's Petition to Participate and Notice of Intent to Seek Compensation;
- Reviewed proposed regulatory amendments;

[1] Richard M. Pearl is the author of the Continuing Education of the Bar's treatise on attorneys' fees in California.

- Participated in meetings and discussions with Department counsel regarding the proposed amendments;
- Drafted detailed written comments supporting the proposed amendments;
- Testified at the public hearing and responded to insurance industry arguments in opposition to the proposed regulations; and
- Drafted, reviewed, and edited Consumer Watchdog's Request for Compensation, including this supporting declaration and exhibits.

<u>Daniel Sternberg</u>

9. I am an attorney licensed to practice in New York with over 3 years of professional experience in litigation and advocacy. I have been a consumer advocate for Consumer Watchdog since September 2018. Since joining Consumer Watchdog, I have devoted a substantial amount of my time specifically to the enforcement of Proposition 103.

10. I am informed through the Pearl Declaration and conversations with attorneys in the Los Angeles and San Francisco Bay Areas discussing their billing rates that $200 per hour is a very reasonable rate in 2019 for the professional services of an attorney with experience and qualifications comparable to mine.

<u>Pamela Pressley</u>

11. Pamela Pressley is an attorney with over 23 years professional experience advocating on behalf of consumers. For over 16 years, Ms. Pressley served as Consumer Watchdog's Litigation Director and now serves as a Senior Staff Attorney. During this time, her legal work with Consumer Watchdog has focused primarily on insurance regulatory and litigation matters before the California Department of Insurance ("CDI") and the courts, and particularly on the enforcement and implementation of Proposition 103. Examples include:

a. *Mercury Casualty Company v. Jones* (2017) 8 Cal.App.5th 561, in which she served as lead counsel representing Consumer Watchdog as Intervenor to successfully defend against petitions for writ of mandate by Mercury and insurance trade associations seeking to vacate the Commissioner's decision ordering Mercury to lower its homeowner rates and challenging the Commissioner's application and interpretation of regulations relating to the standard and process for obtaining a confiscation variance and limiting the amount of institutional advertising that insurers may include in their premium calculations.

b. *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029, in which she served as lead counsel representing Consumer Watchdog as Intervenor to successfully defend against a petition for writ of mandate by insurance trade associations seeking to invalidate the Commissioner's amendments to the intervenor regulations clarifying the scope of a rate proceeding.

c. *Allstate Insurance Co. v. Poizner* (Super. Ct. S.F. County, 2008, No. CPF-08-50821), in which she served as lead counsel representing Consumer Watchdog as Intervenor to successfully defend against Allstate's petition for a stay of the Commissioner's order requiring Allstate to lower its private passenger auto insurance rates by 15.9%, and serving as supervising counsel in the rate proceeding that led to that rate decrease order, *In the Matter of the Rate Application of Allstate Insurance Co. and Allstate Indemnity Co.*, File No. 2007-00004 (Cal. Ins. Comm'r, Mar. 14, 2008).

d. *American Insurance Association v. Garamendi* and *California Farm Bureau Federation v. Garamendi* (Super. Ct. Sacramento County, 2007, Nos. 06AS03053 and 06AS03036 (consolidated)), in which she served as lead counsel representing Consumer Watchdog as Intervenor in a successful motion for summary judgment against insurer plaintiffs upholding the Insurance Commissioner's regulations (see paragraph (f), below) enforcing Insurance Code section 1861.02(a), which requires that automobile insurance premiums be based primarily on one's driving safety record, and not where one lives.

e. A successful writ of mandate action to invalidate an insurer-sponsored amendment to Proposition 103 that purported to allow a rating factor based on prior insurance with any carrier in violation of Insurance Code section 1861.02(c) (*The Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354). In that proceeding, she participated in overall strategy discussions, drafted and edited pleadings and the appellate brief, performed legal research, appeared at all court hearings, and argued the case before the Court of Appeal, among other tasks.

f. Class action and representative lawsuits to enforce Insurance Code section 1861.02(c)'s prohibition against surcharging motorists with an absence of prior insurance (*Proposition*

103 Enforcement Project v. GEICO, Case No. BC266220; *Proposition 103 Enforcement Project v. Interinsurance Exchange of the Automobile Club*, Case No. BC266218; *Landers v. Interinsurance Exchange of the Automobile Club*, Case No. JCCP No. 4438; and *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968), which resulted in a settlements that required the insurers to make refunds to affected auto policyholders.

g. The appeal in a writ of mandate challenge to a regulation promulgated by Insurance Commissioner Quackenbush, which authorized insurers to use ZIP code as the primary determinant of automobile insurance premiums in violation of Insurance Code section 1861.02(a). (*Spanish Speaking Citizens Foundation v. Low* (2000) 85 Cal.App.4th 1179.)

h. Two successful noncompliance proceedings, including *In the Matter of Mercury Insurance Company, Mercury Casualty Company, and California Automobile Insurance Company* (Cal. Ins. Comm'r, Feb. 6, 2015), in which she represented Consumer Watchdog as Intervenor, resulting in a $27.5 million penalty against Mercury for its illegal brokers fees charges; and *In the Matter of the Rates, Rating Plans, or Rating Systems of Farmers Insurance Exchange; Fire Insurance Exchange; and Mid-Century Insurance Company* (Cal. Ins. Comm'r, Aug. 8, 2007) in which she served as Consumer Watchdog's lead counsel, resulting in refunds to Farmers' policyholders totaling $1.4 million and a $2 million penalty.

i. Successful rate challenges before the CDI to insurers' earthquake and homeowners rate hikes in which she served as lead counsel for Consumer Watchdog, resulting in combined savings of over $790 million, including PA-04041210, PA-2007-00008, and PA-2007-00019, regarding the earthquake insurance rates of Safeco, GeoVera, and Fireman's Fund; and PA06093080, PA06093078, PA06092759/PA-2006-00016, PA-2006-00006, and PA-2007-00017, regarding the homeowners rates of Safeco, Fire Insurance Exchange, State Farm, Allstate, and Fireman's Fund.

j. Numerous other successful challenges to automobile, homeowners, and medical malpractice insurers' rate applications resulting in a combined savings to consumers since 2002 of over $3 billion, including *In the Matter of the Rate Application of Mercury Ins. Co.*, PA-2014-00010 (Ins. Comm'r 2015), resulting in a savings of $7 million in annual auto insurance premiums.

k. Several rulemaking proceedings implementing Proposition 103's prior approval and automobile rating factor requirements, including: (1) the Mileage Verification rulemaking matter (RH-06091489) implementing amendments to the Automobile Rating Factors regulations to provide requirements for verified mileage programs; (2) the Prior Approval rulemaking matter (RH-05042749) adopting, among other amendments, the generic determinations included in the prior approval ratemaking formula pertaining to profit and expense provisions; (3) the Automobile Rating Factors rulemaking matter (RH-03029826, Cal. Dept. of Ins., June 2, 2005) in which Consumer Watchdog and other groups successfully petitioned for and the Commissioner adopted amendments to section 2632.8 of Title 10 of the California Code of Regulations requiring that insurers base automobile insurance premiums primarily on how one drives and not on other optional factors, such as zip code and marital status, as required by Insurance Code section 1861.02(a); (4) the Persistency Rulemaking matter (*Persistency Rulemaking*, RH-402 (Cal. Dept. of Ins. April 18, 2003)); and (5) a rulemaking matter adopting regulations to prevent insurers from requiring that motorists show proof of prior insurance to verify their accident record in violation of Insurance Code section 1861.02(c) (*Accident Verification Rulemaking*, RH 01015532 (Cal. Dept. of Ins. September 3, 2003)), among others. In these proceedings, Ms. Pressley acted as Consumer Watchdog's lead counsel, participating in all strategy discussions and workshops and preparing and presenting written and oral testimony at hearings, among other tasks.

12. Ms. Pressley has also served as Consumer Watchdog's lead counsel in matters involving issues of first impression before the courts in which she was primarily responsible for litigating the matters through trial and on appeal.

13. Prior to her employment with Consumer Watchdog, Ms. Pressley served for two years as the California Public Interest Research Group ("CALPIRG")'s lead consumer attorney and for one year as a staff attorney for the Center for Law in the Public Interest in Los Angeles, litigating in the areas of civil rights, justice, and consumer issues. Ms. Pressley is a 1995 graduate of Pepperdine University School of Law and was admitted to the California State Bar in November 1995.

14. I am informed through the Pearl Declaration and conversations with attorneys in the Los Angeles and San Francisco Bay Areas discussing their billing rates that $595 per hour is a very

reasonable rate in 2019 for the professional services of an attorney with experience and qualifications comparable to Ms. Pressley's.

Harvey Rosenfield

15. Harvey Rosenfield is an attorney with over 39 years of experience in insurance regulatory and litigation matters, Counsel to and Founder of Consumer Watchdog, and the author and proponent of Proposition 103. He has participated in every major lawsuit to enforce the initiative's provisions, including *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, *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, *The Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354, and *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029, among others.

16. Mr. Rosenfield has also acted in the capacity of supervising attorney to provide his considerable expertise as the author and lead proponent of Proposition 103 in numerous other insurance matters before the courts and the CDI since the passage of the measure by the voters in 1988. These include:

a. *American Insurance Association, et al. v. Garamendi and California Farm Bureau Federation v. Garamendi* (Super. Ct. Sacramento County, 2007, Nos. 06AS03053 and 06AS03036 (consolidated)). In that proceeding, Mr. Rosenfield served as supervising attorney representing Consumer Watchdog as Intervenor in Intervenors' successful motion for summary judgment against insurer plaintiffs who challenged the Insurance Commissioner's regulations enforcing Insurance Code section 1861.02(a). That statute requires that automobile insurance premiums be based primarily on the policyholder's driving safety record, and not where one lives;

b. The Automobile Rating Factors rulemaking matter (RH-03029826, Cal. Dept. of Ins., June 2, 2005) in which Consumer Watchdog and other groups petitioned for and the Commissioner adopted amendments to section 2632.8 of title 10 of the California Code of Regulations requiring that insurers base automobile insurance premiums primarily on how one drives and not on other optional factors such as ZIP code or marital status, as required by Insurance Code section 1861.02(a);

c. The CDI rulemaking matter initiated by Consumer Watchdog to clarify the optional automobile rating factor of "persistency" to prevent insurers from applying that factor in a manner that violates Insurance Code section 1861.02(c)'s prohibition against using the absence of prior insurance as a rating factor. (Persistency Rulemaking, RH-402 (Cal. Dept. of Ins. April 18, 2003));

d. A class action lawsuit in which Consumer Watchdog appeared in an amicus curiae role to successfully prevent the approval of a settlement on the merits that would have allowed the insurer defendant to continue to violate Insurance Code section 1861.02(c). (*Mitchell v. Allstate Ins. Co*., Super. Ct. L.A. Cty., 2003, No. BC212492.);

e. A successful writ of mandate challenge by Consumer Watchdog and other groups to former Insurance Commissioner Quackenbush's approval of rating plans submitted by insurers that violated § 1861.05(c). (*Proposition 103 Enforcement Project v. Quackenbush*, Super. Ct. S.F. County, Feb. 10, 1997, No. 982646);

f. Class action and representative lawsuits to enforce Insurance Code section 1861.02(c)'s prohibition against surcharging motorists with an absence of prior insurance (*Proposition 103 Enforcement Project v. GEICO*, Case No. BC266220; *Proposition 103 Enforcement Project v. Interinsurance Exchange of the Automobile Club*, Case No. BC266218; and *Landers v. Interinsurance Exchange of the Automobile Club*, Case No. JCCP No. 4438), which resulted in settlements that required the insurers to make refunds to affected auto policyholders.

g. A writ of mandate challenge to a regulation promulgated by former Insurance Commissioner Quackenbush, which authorized insurers to use ZIP code as the primary determinant of automobile insurance premiums in violation of Insurance Code section 1861.02(a). (*Spanish Speaking Citizens Foundation v. Low* (2000) 85 Cal.App.4th 1179); and

h. Successful challenges to medical malpractice insurers' applications for a rate increase before the California Department of Insurance, including *In the Matter of the Rate Application of the Medical Protective Company*, File No. 05-1776 (Cal. Ins. Comm'r, 2005); *In the Matter of the Rate Application American Casualty Company*, File No. PA 04039736 (Cal. Ins. Comm'r, 2005); *In the Matter of the Rate Application of Medical Protective Company*, PA 04036735 (Cal. Ins. Comm'r, 2004); and *In the Matter of the Rate Application of American Healthcare Indemnity Co. and SCPIE Indemnity Co.*, PA-02025379 (Cal. Ins. Comm'r, 2003).

17. Mr. Rosenfield has acted as supervising attorney in numerous other administrative matters before the Department of Insurance, utilizing his substantial expertise in insurance rating and regulatory matters including, but not limited to: (a) REB-5184, regarding State Farm's rollback liability, (b) RH-318 and IH-93-3-REB, regarding regulations to implement Insurance Code section 1861.02's provisions on rating factors for personal automobile insurance; (c) RH-339 and RH-341, regarding procedural rules for rate hearings and for intervention; (d) PA-95-0057-00, regarding Safeco's Earthquake Rate Application; (e) consolidated hearing numbers PA-97-0078-00 and PA-97-007900, regarding State Farm, Allstate, and Farmers' automobile class plans; (f) PA-97-0072, regarding the California Earthquake Authority's rate application; (g) RH-346, regarding regulations governing Advisory Organization Manuals; (h) IH-97-0017-REB, regarding prior approval regulations, and IH-0017-TF, Prior Approval Task Force; (i) IH-97-0018-REB III; and (j) File No. PA-98-0099-00, regarding Allstate's Private Passenger Automobile Insurance Rate Application, among others.

18. Prior to founding Consumer Watchdog in 1985, Mr. Rosenfield served for three years as Program Director for CALPIRG and two years as a Staff Attorney and Legislative Advocate for Public Citizen's Congress Watch in Washington, D.C. He is a graduate of Georgetown University, from which he earned both a J.D. and a M.S.F.S. degree in 1979. Mr. Rosenfield is admitted to the Bar in Washington, D.C. and California.

19. I am informed through the Pearl Declaration and conversations with attorneys in the Los Angeles and San Francisco Bay Areas discussing their billing rates that $695 per hour is a very reasonable rate in 2019 for the professional services of an attorney with experience and qualifications comparable to Mr. Rosenfield's.

<u>Mike Mattoch</u>

20. Mike Mattoch is Counsel and Capitol Advocate at Consumer Watchdog. His work at Consumer Watchdog includes legislative and regulatory advocacy in support of Proposition 103, among other insurance and consumer rights issues.

21. Mr. Mattoch has over 25 years of professional experience in insurance legislative and regulatory matters. Prior to joining Consumer Watchdog, Mr. Mattoch provided counsel in the administrations of two Republican Governors and three Democratic Speakers of the California Assembly, was Chief Counsel to the Assembly Insurance Committee, and advised members of the Assembly and Senate on issues related to financial institutions, privacy, tort reform, workers' compensation, unemployment, life, health, and all areas of property and casualty insurance.

22. Mr. Mattoch is a 1993 graduate of Lincoln Law School. He was admitted to the California Bar in December 1993.

23. I am informed through the Pearl Declaration and conversations with attorneys in the Los Angeles and San Francisco Bay Areas discussing their billing rates that $595 per hour is a very reasonable rate in 2019 for the professional services of an attorney with experience and qualifications comparable to Mr. Mattoch's.

Consumer Watchdog's Fees and Expenses

24. In accordance with the well-established standards set forth by the California Supreme Court for private-attorney-general statutes, the "lodestar" is the product of each attorney's and advocate's reasonable hours, at that attorney's or advocate's prevailing market rate, plus expenses. Consumer Watchdog's attorneys and advocate are responsible for entering their contemporaneous time billing records into the organization's time billing software. The time billing software is then used to multiply each attorney's and advocate's billed hours by that individual's prevailing market rate. Consumer Watchdog has mechanisms to track all out-of-pocket expenses. The lodestar component of Consumer Watchdog's fees and expenses incurred in this proceeding totals $25,641.85 as follows:

Attorney/Advocate	Hours	Hourly Rate	Total
Pamela Pressley	19.7	$595.00	$11,721.50
Harvey Rosenfield	0.6	$695.00	$417.00
Daniel Sternberg	37.7	$200.00	$7,540
Mike Mattoch	9.0	$595.00	$5,355.00
Travel Expenses			$608.35
Total			$25,641.85

Facts Regarding the Rulemaking Proceedings and Consumer Watchdog's Substantial Contribution

25. The Insurance Commissioner issued an Invitation to Pre-Notice Public Discussion on Eliminating Gender as an Optional Automobile Insurance Rating Factor on September 18, 2018. The invitation provided draft amendments to 10 CCR §§ 2662.3 and 2662.5 and stated that these proposed changes were precipitated in part by the forthcoming implementation of SB 179, the Gender Recognition Act.

26. Consumer Watchdog's advocate and attorneys reviewed the proposed regulatory changes, researched how insurers have applied the gender rating factor and the Department's own analysis, and determined that the proposed amendments were necessary because gender's relationship to the risk of loss no longer appeared to be substantial, as required under the Insurance Code, section 1861.02(a)(4).

27. On October 2, 2018, CDI held a pre-notice public discussion regarding the contemplated regulatory changes. Consumer Watchdog advocate Daniel Sternberg attended and provided comments at this pre-notice public meeting at CDI's office in Sacramento.

28. On October 19, 2018, CDI issued an Initial Statement of Reasons, Notice of Proposed Action and Notice of Public Hearing to consider amending California Code of Regulations, Title 10, Chapter 5, Subchapter 4.7, Article 3, Sections 2632.5 and 2632.11 to eliminate the use of gender in private passenger automobile insurance rating in California. A rulemaking hearing was scheduled for December 3, 2018. Consumer Watchdog participated in that public hearing, presenting both written and oral comments that addressed the question of whether gender still had a substantial relationship to the risk of loss, issues raised by the insurers as to whether the elimination of gender was appropriate and whether amendments to other optional rating factors should also be considered through this rulemaking, the proposed amendments consistency with the Insurance Code and implementing regulations, and the necessity of the amendments.

29. On or about January 2, 2019, the Department issued the final regulations adopted by the Commissioner together with Final Statement of Reason. In the summary of public comments and responses, the Department noted that it concurred with all the comments of Consumer Watchdog in support of the proposed amendments. The regulations became effective on January 1, 2019.

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

Executed on January 25, 2019 at Los Angeles, California.

Danny Sternberg

Daniel Sternberg

EXHIBIT 1

LEGAL FEES BY ATTORNEY

Pamela Pressley

Date	Detail	Hours	Amount
9/21/18	review and reply to D Heller email re workshop, review notice and forward same;	0.5	$297.50
9/25/18	email Harvey Rosenfield re gender regs;	0.2	$119.00
9/27/18	conference with D Sternberg and C Balber re workshop (.2); email D Heller re same (.1); conference with J Flanagan and D Sternberg re workshop/comments (.2);	0.5	$297.50
10/1/18	review D Sternberg comments and conference with D Sternberg re same;	0.3	$178.50
10/1/18	review materials, conference with Harvey Rosenfield and J Flanagan re workshop, conference with D Sternberg re same;	0.5	$297.50
10/2/18	edit comments;	0.5	$297.50
10/5/18	review memo re workshop;	0.5	$297.50
10/19/18	review and forward notice of rulemaking;	0.2	$119.00
10/23/18	conference with Harvey Rosenfield and D Sternberg re next steps;	0.1	$59.50
10/26/18	conference with Harvey Rosenfield and D Sternberg re gender rule change hearing/comments, next steps;	0.3	$178.50
11/19/18	conference with D Sternberg re research, comments;	0.2	$119.00
11/20/18	review and reply to D Sternberg email re comments;	0.2	$119.00
11/26/18	review archives, conference with D Sternberg re background Prop 103 and ARF regs for comments;	1	$595.00
11/27/18	conference with D Sternberg re comments (.1); review and reply to D Sternberg email re comments (.1);	0.2	$119.00
11/28/18	review and edit comments (3.5); review Initial Statement, email Harvey Rosenfield re same (.5); review industry comments and email M Mattoch re same (1.3);	5.3	$3,153.50
11/29/18	review comments (.8); review Harvey Rosenfield email (.1); conference with D Sternberg re comments (.1);	1	$595.00
11/30/18	conference with D Sternberg and Harvey Rosenfield re comments (.1); review files and email D Sternberg and conference with D Sternberg and Harvey Rosenfield re comments (1.2); edit comments and conference with C Balber re same (.5);	1.8	$1,071.00
12/3/18	review final comments and conference with D Sternberg re same (.8); review emails (.1);	0.9	$535.50
1/2/19	conference with D Sternberg re call with CDI re status;	0.1	$59.50

Date	Detail	Hours	Amount
1/10/19	email D Sternberg re request for compensation;	0.2	$119.00
1/16/19	review and reply to D Sternberg email re request for compensation (.3);	0.3	$178.50
1/17/19	email to K Gentile re petition to participate, conference with K Gentile re same (.2); review D Sternberg email re same (.1);	0.3	$178.50
1/22/19	edit request for compensation;	1.8	$1,071.00
1/22/19	review and edit Petition to Participate; conference with C Balber and D Sternberg re same (1.3);	1.3	$773.50
1/24/19	edit Request for Compensation and D Sternberg declaration;	1.5	$892.50
		19.7	**$11,721.50**

Harvey Rosenfield

Date	Detail	Hours	Amount
11/28/18	Review D Sternberg email re PIF comments and reply (.1);	0.1	$69.50
11/30/18	Review draft testimony, edit and reply (.2);	0.2	$139.00
1/1/19	Review leg history SB 179 (.3);	0.3	$208.50
		0.6	**$417.00**

DannyS

Date	Detail	Hours	Amount
9/27/18	Meet w. P Pressley and C Balber re public workshop (.2); Meet w. P Pressley and J Flanagan re comments to regulation (.2);	0.4	$80.00
10/1/18	Draft comments for 10/2 CDI public meeting (1.5); meet w. P Pressley re draft comment (.3);	1.8	$360.00
10/2/18	Finalize comment for public meeting (.5); attend CDI public meeting (3);	4	$800.00
10/2/18	Draft memo RE October 2 public meeting at CDI;	1.3	$260.00
10/23/18	Meet w H Rosenfield and P Pressley re 10/2 public meeting;	0.1	$20.00
10/26/18	Meet w. H Rosenfield and P Pressley re next steps on comment and regulation;	0.3	$60.00
10/26/18	Phone call w. CDI (E. Gallagher) Re implementation of regulation and effect on pending plans;	0.2	$40.00
11/19/18	Meet w P Pressley re draft comment;	0.2	$40.00
11/21/18	Draft comment;	3.3	$660.00
11/26/18	Draft public comment;	1.5	$300.00
11/27/18	Draft public comment;	5.8	$1,160.00
11/29/18	Draft pubic comment;	1	$200.00
11/30/18	Draft comment to proposed regulation;	3.5	$700.00
12/3/18	Draft public comment;	1.8	$360.00
1/14/19	Draft request for compensation;	1.6	$320.00
1/15/19	draft RFC (.8);	0.8	$160.00
1/16/19	Draft RFC;	1.4	$280.00
1/17/19	Draft and edit RFC (2.7); draft Petition to Participate (.3);	3	$600.00
1/18/19	Draft decl. iso RFC (2.2); draft PTP (.6);	2.8	$560.00
1/23/19	Finalize draft RFC;	2.1	$420.00
1/24/19	Finalize petition to participate and request for compensation;	0.8	$160.00
		37.7	**$7,540.00**
		Legal Fee Subtotal:	**$19,678.50**

Subtotal	$19,678.50
Total due by Jan 25, 2019	**$19,678.50**

Mike Mattoch Billings

Date	Detail	Hours	Amount
11/28/18	Review CWD written comments and prepare for Dec. 3, 2018 public hearing	1.0	$595.00
11/29/18	Review CWD written comments and prepare for Dec. 3, 2018 public hearing	2.0	$1,190.00
11/30/18	Review CWD written comments and prepare for Dec. 3, 2018 public hearing	2.0	$1,190.00
12/1/18	Review CWD written comments and prepare for Dec. 3, 2018 public hearing	2.0	$1,190.00
12/2/18	Review CWD written comments and prepare for Dec. 3, 2018 public hearing	1.0	$595.00
12/3/18	Attend public hearing	1.0	$595.00
TOTALS:		**9.0 hours**	**$5,355.00**

EXHIBIT 2

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Attorneys for CONSUMER WATCHDOG

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of Rate Application of: State Farm General Insurance Company, Applicant.	File No.: PA-2015-00004 **DECLARATION OF RICHARD M. PEARL IN SUPPORT OF CONSUMER WATCHDOG'S REQUEST FOR COMPENSATION**

I, RICHARD M. PEARL, hereby declare the following:

1. I am a member in good standing of the California State Bar. I am in private practice as the principal of my own law firm, the Law Offices of Richard M. Pearl, in Berkeley, California. I specialize in issues related to court-awarded attorneys' fees, including the representation of parties in fee litigation and appeals, serving as an expert witness, and serving as a mediator and arbitrator in disputes concerning attorneys' fees and related issues. In this case, I have been asked by Consumer Watchdog, to render my opinion on the reasonableness of the attorneys' hourly rates requested in this matter. I make this Declaration in Support of Consumer Watchdog's Request for Compensation.

2. Briefly summarized, my background is as follows: I am a 1969 graduate of Boalt Hall (now Berkeley) School of Law, University of California, Berkeley, California. I took the California Bar Examination in August 1969 and passed it in November of that year, but because I was working as an attorney in Atlanta, Georgia for the Legal Aid Society of Atlanta (LASA), I was not admitted to the California Bar until January 1970. I worked for LASA until the summer of 1971, when I then went to work in California's Central Valley for California Rural Legal Assistance, Inc. (CRLA), a statewide legal services program. From 1977 to 1982, I was CRLA's Director of Litigation, supervising more than fifty attorneys. In 1982, I went into private practice, first in a small law firm, then as a sole practitioner. Martindale Hubbell rates my law firm "AV." I also have been selected as a Northern California "Super Lawyer" in Appellate Law for 2005, 2006, 2007, 2008, 2010, 2011, 2012, 2013, 2014, 2015, and 2016. A copy of my Resume is attached hereto as **Exhibit A**.

3. Since 1982, my practice has been a general civil litigation and appellate practice, with an emphasis on cases and appeals involving court-awarded attorneys' fees. I have lectured and written extensively on court-awarded attorneys' fees. I have been a member of the California State Bar's Attorneys' Fees Task Force and have testified before the State Bar Board of Governors and the California Legislature on attorneys' fee issues. I am the author of California Attorney Fee Awards (3d ed Cal. CEB 2010) and its 2011, 2012, 2013, 2014, 2015,

and 2016 Supplements. I also was the author of California Attorney Fee Awards, 2d Ed. (Calif. Cont. Ed. of Bar 1994), and its 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2008 Supplements. This treatise has been cited by the California appellate courts on more than 35 occasions. *See, e.g., Graham v. DaimlerChrylser Corp.*(2004) 34 Cal.4th 553, 576, 584; *Lolley v. Campbell* (2002) 28 Cal.4th 367, 373; *Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1259; *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 698, 700. I also authored the 1984, 1985, 1987, 1988, 1990, 1991, 1992, and 1993 Supplements to its predecessor, CEB's California Attorney's Fees Award Practice. In addition, I authored a federal manual on attorneys' fees entitled Attorneys' Fees: A Legal Services Practice Manual, published by the Legal Services Corporation. I also co-authored the chapter on "Attorney Fees" in Volume 2 of CEB's Wrongful Employment Termination Practice, 2d Ed. (1997).

4. More than 90% of my practice is devoted to issues involving court-awarded attorney's fees. I have been counsel in over 190 attorneys' fee applications in state and federal courts, primarily representing other attorneys. I also have briefed and argued more than 40 appeals, at least 30 of which have involved attorneys' fees issues. In the past several years, I have successfully handled four cases in the California Supreme Court involving court-awarded attorneys' fees: 1) *Delaney v. Baker* (1999) 20 Cal.4th 23, which held that heightened remedies, including attorneys' fees, are available in suits against nursing homes under California's Elder Abuse Act; 2) *Ketchum v. Moses* (2001) 24 Cal.4th 1122, which held, *inter alia*, that contingent risk multipliers remain available under California attorney fee law, despite the United States Supreme Court's contrary ruling on federal law (note that in *Ketchum*, I was primary appellate counsel in the Court of Appeal and "second chair" in the Supreme Court); 3) *Flannery v. Prentice* (2001) 26 Cal.4th 572, which held that in the absence of an agreement to the contrary, statutory attorneys' fees belong to the attorney whose services they are based upon; and 4) *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, which I handled, along with trial counsel, in both the Court of Appeal and Supreme Court. I also successfully represented the plaintiffs in a previous attorneys' fee decision in the California Supreme Court, *Maria P. v. Riles* (1987) 43 Cal.3d 1281. I also represented and argued on behalf of *amicus curiae* in

Conservatorship of McQueen (2014) 59 Cal.4th 602, and, along with Richard Rothschild, filed an *amicus curiae* brief in *Vasquez v. State of California* (2009) 45 Cal.4th 243. I also have handled numerous other appeals, including: *Davis v. City & County of San Francisco* (9th Cir. 1992) 976 F.2d 1536; *Mangold v. CPUC* (9th Cir. 1995) 67 F.3d 1470; *Velez v. Wynne* (9th Cir. 2007) 2007 U.S.App.LEXIS 2194; *Camacho v. Bridgeport Financial, Inc.* (9th Cir. 2008) 523 F.3d 973; *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866; and *Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection et al* (2010) 190 Cal.App.4th 217. For an expanded list of my appellate decisions, *see* **Exhibit A**.

5. I also have been retained by various governmental entities, including the California Attorney General's office, at my then current rates to consult with them regarding their affirmative attorney fee claims.

6. I am frequently called upon to opine about the reasonableness of attorneys' fees, and my declarations on that issue have been cited favorably by numerous federal and state courts. These include the following California appellate courts: *Kerkeles v. City of San Jose* (2015) 243 Cal.App.4th 88; *Habitat and Watershed Caretakers v. City of Santa Cruz* (2015) 2015 Cal.App.Unpub. LEXIS 7156; *In re Tobacco Cases I* (2013) 216 Cal.App.4th 570; *Heritage Pacific Financial LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009; *Children's Hospital & Medical Center v. Bonta* (2002) 97 Cal.App.4th 740 (challenge to government decision); *Wilkinson v. South City Ford (*2010) 2010 Cal.App.Unpub. LEXIS 8680. My declaration also has been cited favorably by the following federal courts: *Prison Legal News v. Schwarzenegger* (9th Cir. 2010) 608 F.3d 446, 455, in which the expert declaration referred to in that opinion is mine); *Antoninetti v. Chipotle Mexican Grill, Inc.*(9th Cir. 2012) Order filed Dec. 26, 2012; *State Compensation Insurance Fund v. Kahn,* Case No. SACV 12-01072-CJC (JCGx), Order Granting in Part and Denying in Part the Zaks Defendants' Motion for Attorneys' Fees, filed July 6, 2016 (Dkt. No. 408); *Carnes v. Atria Senior Living,* Case No. 3-14-cv-02727-VC, Order Granting Motion for Attorneys' Fees, Costs, and Service Award, filed July 12, 2016 (Dkt. No. 115); *In re Cathode Ray Tube Antitrust Litigation,* (N.D. Cal. 2016) 2016 U.S. Dist. LEXIS 24951,

modified on other grounds at 2016 U.S.Dist.LEXIS 88665; *Gutierrez v. Wells Fargo Bank* (N.D. Cal. 2015) 2015 U.S.Dist.LEXIS 67298; *Holman et al v. Experian Information Solutions, Inc.* (N.D. Cal. 2014) 2014 U.S.Dist.LEXIS 173698; *Walsh v. Kindred* (N.D. Cal. 2013) 2013 U.S.Dist.LEXIS 176319; *In re TFT-LCD (Flat Panel) Antitrust Litigation* (N.D.Cal. 2013) No. M 07-1827 SI, MDL, No. 1827, Report and Recommendation of Special Master re Motions for Attorneys' Fees etc., filed Nov. 9, 2012, adopted in relevant part, 2013 U.S.Dist.LEXIS 49885; *Rosenfeld v. United States Dept. of Justice* (N.D. Cal. 2012) 904 F.Supp.2d 988; *Stonebrae v. Toll Bros.*(N.D. Cal. 2011) 2011 U.S.Dist.LEXIS 39832, at *9 (thorough discussion), *aff'd* (9th Cir. 2013) 2013 U.S.App.LEXIS 6369; *Hajro v. United States Citizenship & Immigration Service* (N.D.Cal 2012) 900 F.Supp.2d 1034, 1054; *Armstrong v. Brown* (N.D. Cal. 2011) 2011 U.S.Dist.LEXIS 87428; *Californians for Disability Rights, Inc. v. California Dept. of Transportation* (N.D. Cal. 2010) 2010 U.S.Dist.LEXIS 141030; *Prison Legal News v. Schwarzenegger* (N.D. Cal. 2008) 561 F.Supp.2d 1095 (an earlier motion); *Oberfelder v. City of Petaluma* (N.D. Cal. 2002) 2002 U.S.Dist. LEXIS 8635 (an individual police misconduct action), *aff'd* (9th Cir. 2003) 2003 U.S.App.LEXIS 11371; *Bancroft v. Trizechahn Corp.,* C.D. Cal. No. CV 02-2373 SVW (FMOx), Order Granting Reasonable Attorneys' Fees etc., filed Aug. 14, 2006; *Willoughby v. DT Credit Corp.,* C.D. Cal. No. CV 05-05907 MMM (Cwx), Order Awarding Reasonable Attorneys' Fees After Remand, filed July 17, 2006*; A.D. v. California Highway Patrol* (N.D.Cal. 2009) 2009 U.S.Dist.LEXIS 110743 (police misconduct action), *rev's'd on other grounds* (9th Cir. 2013) 636 F.3d 955; *National Federation of the Blind v. Target Corp.* (N.D.Cal. 2009) 2009 U.S.Dist.LEXIS 67139; *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628 (anti-SLAPP case).

7. Through my writing and practice, I have become familiar with the attorneys' fees charged by attorneys in California and elsewhere. I have obtained this familiarity in several ways: (1) by handling attorneys' fee litigation; (2) by discussing fees with other attorneys; (3) by obtaining declarations regarding prevailing market rates in cases in which I represent attorneys seeking fees; and (4) by reviewing attorneys' fee applications and awards in other cases, as well as surveys and articles on attorney's fees in the legal newspapers and treatises.

COUNSEL'S HOURLY RATES ARE REASONABLE

8. As noted, I have reviewed the billing rates claimed by counsel for Consumer Watchdog in this proceeding. The attorneys who represented Consumer Watchdog in this proceeding are seeking compensation at 2016 rates as follows:

- Harvey Rosenfield, admitted to the District of Columbia Bar in 1979 and the California Bar in 1986 (37 years professional experience): $675;
- Pamela Pressley, admitted to the California Bar in 1995 (21 years professional experience): $575;
- Jonathan Phenix, admitted to the California Bar in 2015:
  - law clerk rate prior to California Bar admission: $150;
  - attorney rate post California Bar admission: $300;
- Daniel Zohar, admitted to the California Bar in 1993 (23 years professional experience): $600;
- Todd Foreman, admitted to the California Bar in 2003 (13 years professional experience): $500.

The 2016 rates being sought by Consumer Watchdog's counsel are eminently reasonable in light of the information I have gathered as an attorneys' fees specialist (see ¶¶9-12 below). In my opinion, the information about hourly rates I have gathered, some of which is summarized below, shows that the rates requested by Consumer Watchdog's counsel in this matter are well within the range of, but lower than many of, the non-contingent market rates charged by San Francisco Bay and Los Angeles area attorneys of reasonably comparable experience, skill, and expertise for reasonably comparable services. I base that opinion in large part on the following data:

a. Harvey Rosenfield. A rate of $675 per hour for an attorney with Mr. Rosenfield's 37 years of experience is quite reasonable. Indeed, the rate requested here is well *below* the rate Mr. Rosenfield has been compensated for in civil litigation. (See, e.g., *Doe v. United Healthcare Insurance Co., et al.*, C.D. Cal. No. SACV 13-0864 DOC (JPRx), ¶9(7) *infra* [court approved hourly rate of $925].) Mr. Rosenfield's requested rate for this proceeding is also well below the rates routinely charged by other highly accomplished attorneys with comparable experience, as set forth below. For example, in 2016, O'Melveny & Meyers charged $1,175/hour for attorneys with 31 years of experience; Milbank, Tweed, Handley & McCloy LLP charged $1,025/hour for attorneys with 33 years experience; and Rosen, Bien, Galvan & Grunfeld LLP charged $900/hour for attorneys with 36 years of experience. In *2015*, Gibson Dunn & Crutcher LLP charged $1,125/hour for attorneys with 37 years experience; Covington Burling LLP charged $805/hour for attorneys with 30 years of experience; and McKenna Long & Aldridge LLP charged $775/hour for attorneys with 31 years of experience.

b. Pamela Pressley. A rate of $575 per hour for an attorney with Ms. Pressley's 21 years of experience is quite reasonable. For example, in 2016, Morrison Foerster LLP charged $975/hour for attorneys with 17 years of experience; Paul Hastings LLP charged $895/hour for attorneys with 19 years of experience; and Rosen, Bien, Galvan & Grunfeld LLP charged $740/hour for attorneys with 19 years of experience. In *2015*, Hadsell, Stormer, Richardson & Renick charged $750/hour for attorneys with 20 years of experience; Gibson Dunn & Crutcher LLP charged $955/hour for attorneys with 23 years of experience; and McKenna Long & Aldridge LLP charged $650/hour for attorneys with 14 years of experience.

c. Jonathan Phenix.

- A rate of $150 per hour for a law clerk is quite reasonable. For example, in 2015, Rosen, Bien, Galvan & Grunfeld LLP charged $275/hour for law clerks and Hadsell, Stormer, Richardson & Renick charged $225/hour for law clerks. In *2014*, Lieff Cabraser Heimann & Bernstein, LLP charged $305 for law clerks; Kaye, McLane, Bednarski & Litt charged $250 for law clerks; Alexander, Krakow & Glick charged $200/hour for law clerks.
- A rate of $300 per hour for an attorney with Mr. Phenix's 1 year of experience is also quite reasonable. Indeed, this is below the hourly rate some firms charge for

law clerks. For example, in 2016, Proskauer Rose LLP charged $440/hour for attorneys with 1 years of experience, Jones Day charged $450/hour for attorneys with 2 years of experience, and Latham & Watkins charged $395/hour for its lowest level associates. In *2015*, Jones Day charged $400/hour for attorneys with 1 year of experience and Covington Burling LLP charged $410/hour for attorneys with 2 years of experience.

d. Daniel Y. Zohar. A rate of $600 per hour for an attorney with over 23 years of extensive litigation experience is quite reasonable. For example, as detailed in ¶8b, *supra*, in 2016, Morrison Foerster LLP charged $975/hour for attorneys with 17 years of experience; Paul Hastings LLP charged $895/hour for attorneys with 19 years of experience; and Rosen, Bien, Galvan & Grunfeld LLP charged $740/hour for attorneys with 19 years of experience. In 2015, Hadsell, Stormer, Richardson & Renick charged $750/hour for attorneys with 20 years of experience; Gibson Dunn & Crutcher LLP charged $955/hour for attorneys with 23 years of experience; and McKenna Long & Aldridge LLP charged $650/hour for attorneys with 14 years of experience. Mr. Zohar's rates are also *below* the *2014* market rates for attorneys with 17-19 years experience ranging from $695-$770 per hour in the examples set forth in ¶8b, *supra*.

e. Todd M. Foreman. A rate of $500 per hour for an attorney with Mr. Foreman's over 13 years of experience is quite reasonable. For example, in 2016, O'Melveny & Meyers charged $895/hour for attorneys with 12 years of experience. In *2015*, Hadsell, Stormer, Richardson & Renick charged $600/hour for attorneys with 13 years of experience and McKenna Long & Aldridge LLP charged $650/hour for attorneys with 10 years of experience. In *2014*, McKenna Long & Aldridge LLP charged $650/hour for attorneys with 9 years of experience.

<u>Rates found reasonable in other cases.</u>

9. The following hourly rates have been found reasonable by various local courts for reasonably comparable services:

(1) *The Kennedy Commission v. City of Huntington Beach*, Los Angeles County Superior Court No. 30-2015-00801675, Order Granting Petitioners' Motion for Attorneys' Fees Pursuant to California Code of Civil Procedure § 1021.5, filed July 13, 2016, a writ of mandate action challenging a land use amendment adopted by the City of Huntington Beach, in which the court found the following hourly rates reasonable (prior to application of a 1.4 multiplier):

2016 Rates:	**Bar Admission Year**	**Rates**
	2001	$900
	2014	450
2015 Rates:	**Bar Admission Year**	**Rates**
	2001	875
	2014	400

(2) *Willits et al v. City of Los Angeles*, No. CV 10-5782 CCBM (RZx) (C.D. Cal.), Order Granting Motion for Attorneys' Fees and Costs, filed August 25, 2016 (Dkt. No. 418), a class action challenge to the City of Los Angeles by persons with mobility disabilities based on the inaccessibility of the City's sidewalks under the Americans with Disabilities Act and the Rehabilitation Act of 1973, in which the court found the following 2015 hourly rates reasonable:

Law School Graduation Date	**Rates**
1976	$1,115.60
1977 (Associate)	700
1981	795
1987	680-775
1993	750
1999	644-695
2001	625
2003	550
2006	525 – 550
2007	450
2008	473
2009	450
2010	350-400

2011	300-385
2012	300
2013	300-325
Paralegals and Law Clerks	110-250
Case Assistants	220-230
Docket Clerk	230

(3) *State Compensation Insurance Fund v. Khan et al*, Case No. SACV 12-01072-CJC(JCGx) (C.D. Cal.), Order Granting in Part and Denying in Part the Zaks Defendants' Motion for Attorneys' Fees, filed July 6, 2016 (Dkt. No. 408), a multi-defendant RICO action, in which the court found the following hourly rates reasonable:

Years of Experience	**Rates**
22	$890
20	840
5	670
4	560
Paralegals	325-340
Case Assistants	220-230
Docket Clerk	230

(4) *Perfect 10, Inc. v. Giganews, Inc.*, 2015 U.S. Dist. LEXIS 54063 (C.D. Cal. 2015), filed March 24, 2015, a copyright infringement action, in which the court found the following hourly rates reasonable:

Years of Experience	**2015 Rate**
29	$825-930
18	750
17	705-750
12	610-640
11	660-690
10	670
9	660-690
8	470-525
7	640
5	375-560
4	350-410
3	505

2	450
1	360-370
Paralegals	240-345
Discovery Support Staff	245-290

(5) *Anderson v. County of Ventura*, No. CV 13-03517 SJO (VBKx) (C.D. Cal.), Fee Order filed March 5, 2015, a multi-plaintiff Fair Labor Standards Act case, in which the court found the following hourly rates reasonable:

Years of Experience	**Rate**
19	$690
15	590
12	590
2	330
Paralegals	140-190

(6) *Rodriguez v. County of Los Angeles*, No. 2:10-cv-06342-CBM-AJW (C.D. Cal.), Order Granting Plaintiffs' Motion for Attorneys' Fees, filed December 29, 2014, a civil rights action on behalf of five county jail prisoners, in which the court found the following hourly rates reasonable, plus a 2.0 lodestar multiplier for merits work performed on the plaintiffs' California cause of action:

Years of Experience	**Rate**
45	$975
28	700-775
26	775
10	600
6	500
Senior Paralegal	295
Other Paralegals	175-235
Law Clerk	250

(7) *Doe v. United Healthcare Insurance Co., et al.*, No. SACV13-0864 DOC(JPRx) (C.D. Cal.), Order Granting Attorney's Fees and Costs, filed October 15, 2014, a

multi-Plaintiff consumer action, in which the court found the following hourly rates reasonable:

Whatley Kallas

Years of Experience	**Rate**
36	$950
27	900
32	800
33	750
21	700
10	600
4	400
2	375
Paralegal	225

Consumer Watchdog

Years of Experience	**Rate**
35	$925
19	650
4	425

(8) *Carpio v. California Department of Social Services, Los Angeles County Superior Court*, No. BS 135127, Order Granting Plaintiff's Motion for Attorney's Fees, filed July 24, 2014, a government benefits writ of mandate, in which the court found the following hourly rates reasonable:

Years of Experience	**Rate**
39	$750
35	730
13	500

8	460
6	440

(9) *Laffitte v. Robert Half International Inc.*, Los Angeles Superior Court No. BC321317, affirmed (2016) 1 Cal.5th 480, a wage and hour class action, in which the trial court approved, over a class member's objection, a 33% common fund fee award, cross-checked against a lodestar based on the following hourly rates (prior to application of a 2.13 multiplier):

Years Since Bar Admission	**Rate**
25-27	$750
14-16	600
12	500

(10) *Hao v. United States of America*, No. CV 01-01758 CBM (Ex) (C.D. Cal.), Order Granting Motion for Attorneys' Fees, filed January 26, 2015, a damages action against the United States requesting fees under the Equal Access to Justice Act (28 U.S.C. §2412(b)) for the government's "bad faith", in which the court found the following hourly rates reasonable:

Years of Experience	**Rate**
28	$725
23	660
15	575
3	375
Paralegal	125

(11) *Pierce v. County of Orange*, 905 F. Supp. 2d 1017 (C.D. Cal. 2012), a civil rights class action brought by pre-trial detainees, in which the court approved a lodestar based on the following 2011 rates:

Years of Experience	**Rate**

42	$850
32	825
23	625
18	625
Law Clerks	250
Paralegals	250

<u>Rate Information from Surveys</u>

10. I also base my opinion on several credible surveys of legal rates, including the following:

- In December 2015, Thomson Reuters published its "Legal Billing Report," which surveys the rates approved for various law firms by the bankruptcy courts. (Under bankruptcy law, the rates sought must be the firm's ordinary commercial rates.) A true and correct copy of an excerpt for the data listed for the California and West Regions is attached hereto as **Exhibit B**. It shows that Counsel for Consumer Watchdog's rates are well within the range of the rates awarded to other law firms.
- On January 5, 2015, the National Law Journal published an article about its most recent rate survey entitled "Billing Rates Rise, Discounts Abound." A true and correct copy of that article is attached hereto as **Exhibit C**. It contains the rates charged by numerous Los Angeles area law firms handling comparably complex litigation. Counsel for Consumer Watchdog's attorneys' rates are well in line with those rates.
- On January 13, 2014, the National Law Journal published an article about its most recent rate survey. That article included a chart listing the billing rates of the 50 firms that charge the highest average hourly rates for partners. A true and correct copy of that article is attached hereto as **Exhibit D**. Of the 50 firms listed, several

have offices in the Los Angeles Area and many others have significant litigation experience in this area. And, although the rates counsel for Consumer Watchdog requests here are *lower* than many of the rates charged by the listed firms, the NLJ chart does show the *range* of rates charged for similar services, which is the applicable standard. *See CHMC,* 97 Cal.App.4th at 783.

- The 2015 Real Rate Report Snapshot published by Ty Metrix/Legal Analytics summarizes the 2014 "real rates" for partners and associates in various cities. A copy of the relevant pages is attached hereto as **Exhibit E**. It shows that for the Los Angeles area law firms surveyed (1,392 partners, 1,947 associates), the Third Quartile partner rate in 2014 was **$823.53** per hour and the Third Quartile Associate rate in 2014 was **$574.84** per hour. Moreover, since 2014, most firms have raised their rates by at least 5%.
- In an article entitled "On Sale: The $1,150-Per Hour Lawyer," written by Jennifer Smith and published in the Wall Street Journal on April 9, 2013, the author describes the rapidly growing number of lawyers billing at **$1,150** or more revealed in public filings and major surveys. A true and correct copy of that article is attached hereto as **Exhibit F**. The article also notes that in the first quarter of 2013, the 50 top-grossing law firms billed their partners at an *average* rate between $879 and $882 per hour.

Hourly Rates Charged by Other Law Firms

11. Consumer Watchdog's counsels' rates also are supported by the standard hourly non-contingent rates for comparable civil litigation stated in court filings, depositions, surveys, or other reliable sources by numerous California law firms that have offices in or regularly practice in the Los Angeles area.[1] These rates include, in alphabetical order:

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[1] Although some of these firms are based in Northern California, the fact is that hourly rates charged in the Los Angeles area are generally higher than Northern California rates. Accordingly, if rates are reasonable by Northern California standards, they also are reasonable as Los Angeles area rates.

Alexander, Krakow & Glick		
2014 Rates:	**Years of Experience**	**Rates**
	36	$750
	27	750
	13	625
	Law Clerks	200

Altshuler Berzon LLP		
2015 Rates:	**Years of Experience/Level**	**Rates**
	32	$895
	Junior Partners	825-630
	Associates	450-340
	Paralegals	250
2014 Rates:	**Years of Experience**	**Rates**
	38	$895
2012 Rates:	**Years of Experience**	**Rates**
	34	$850
	26	785
	21	750
	18	700
	14	625
	12	570
	11	550
	10	520
	6	410
	5	385

	4	335
	Law Clerks	250
	Paralegals	215
2011 Rates:	**Years of Experience**	**Rates**
	43	$825
	17	675
	12	575
	10	520
	Law Clerks	225
	Paralegals	215

Arnold Porter LLP		
2015 Rates:	**Level**	**Rates**
	Partners	Up to $1,085
	Associates	Up to $710
2014 Rates:	**Years of Experience**	**Rates**
	49	$995
	45	720
	39	655
2013 Rates:	**Level**	**Rates**
	Average Partner	$815
	Highest Partner	950
	Lowest Partner	670
	Average Associate	500
	Highest Associate	610
	Lowest Associate	345

The Arns Law Firm LLP		
2014 Rates:	**Years of Experience**	**Rates**
	37	$950
	Law Clerks	165

Bingham McCutchen (now Morgan, Lewis & Bockius)		
2013 Rates:	**Level**	**Rates**
	Average Partner	$795
	Highest Partner	1,080
	Lowest Partner	220
	Average Associate	450
	Highest Associate	605
	Lowest Associate	185
2011 Rates:	**Years of Experience**	**Rates**
	30	$780
2010 Rates:	**Years of Experience**	**Rates**
	13	$655
	4	480
	2	400
Burson & Fisher		
2013 Rates:	**Years of Experience/Level**	**Rates**
	16	$680-850
	11	680
	4	400
	3	390
	2	375
	1	300

	Law Clerks	225
	Litigation Support Specialists	180

<u>Cooley LLP</u>				
2012-2014 Rates:	**Years of Experience**	**2012**	**2013**	**2014**
	31	$975	$1,035	$1,095
	17	670	710	770
	9	550	645	685

<u>Covington & Burling</u>		
2015 Rates:	**Years of Experience**	**Rates**
	30	$805
	2	410
2014 Rates:	**Level**	**Rates**
	Average Partner	$780
	Highest Partner	890
	Lowest Partner	605
	Average Associate	415
	Highest Associate	565
	Lowest Associate	320
2013 Rates:	**Years of Experience**	**Rates**
	28	$750
	16	670
	14	670
	7	510
	2	375
	5	490

	Litigation Support	110-355
2012 Rates:	**Years of Experience**	**Rates**
	27	$730
	15	632-650
	13	650

Fenwick & West		
2014 Rates:	**Years of Experience/Level**	**Rates**
	29	$825-930
	17-18	715-750
	9-11	660-690
	5	375-560
	3	505
	Paralegal	240-345
	Staff Support	290
2013 Rates:	**Years of Experience**	**Rates**
	18	$755
	11	595
	2	425
2012 Rates:	**Years of Experience**	**Rates**
	40	865
	17	755
	10	595

Gibson Dunn & Crutcher LLP		
2015 Rates:	**Years of Experience**	**Rates**
	37	$1,125

	23	955
	3	575
2014 Rates:	**Years of Experience**	**Rates**
	48	1,800
	36	1,080
	22	910
	11	860
	9 (Of Counsel)	740
	8	740
	6	690
	2	485
2013 Rates:	**Years of Experience/Level**	**Rates**
	47	1,800
	35	1,040
	26	1,040
	15	925
	10	795
	7	695
	5	625
	1	425
	Paralegals	245-345

Hadsell, Stormer, Richardson & Renick		
2015 Rates:	**Years of Experience/Level**	**Rate**
	42	$1,050
	20	750

	26	700
	16	650
	13	600
	5	425
	4	375
	Law Clerks	225
	Paralegals	175-250
2012 Rates:	**Years of Experience**	**Rates**
	38	$825
	33	775
	22-23	625
	17	600
	12	525
	10	425
	4	275
	3	250
2010 Rates:	**Years of Experience**	**Rates**
	36	$800
	31	750
	20-21	600
	15	575
	10	475-500
	8	425
	4	325
	2	275
	1	250

Irell & Manella		
2013 Rates:	**Level**	**Rates**
	Average Partner	$890
	Highest Partner	975
	Lowest Partner	800
	Average Associate	535
	Highest Associate	750
	Lowest Associate	395

Jones Day		
2016 Rates:	**Bar Admission Year**	**Rates**
	2001	$900
	2014	450
2015 Rates:	**Bar Admission Year**	
	2001	875
	2014	400
2013 Rates:	**Level**	**Rates**
	Average Partner	$745
	Highest Partner	975
	Lowest Partner	445
	Average Associate	435
	Highest Associate	775
	Lowest Associate	205

Kaye, McLane, Bednarski & Litt		
2014 Rates:	**Years of Experience**	**Rates**

	45	$975
	28	700-775
	26	775
	10	600
	6	500
	Senior Paralegal	295
	Other Paralegal	175-235
	Law Clerk	250

Kirkland & Ellis		
2013 Rates:	**Level**	**Rates**
	Average Partner	$825
	Highest Partner	995
	Lowest Partner	590
	Average Associate	540
	Highest Associate	715
	Lowest Associate	235

Latham & Watkins		
2016 Rates:		
	Average Partner	$1,185.83
	Highest Partner	1,595
	Lowest Partner	915
	Average Associate	754.62
	Highest Associate	1,205
	Lowest Associate	395

Lieff Cabraser Heimann & Bernstein, LLP		
2015 Rates:	**Year of Bar Admission**	**Rates**
	1972	$975
	1989	850
	2001	625
	2006	435
	2009	435
2014 Rates:	**Year of Bar Admission**	**Rates**
	1998	$825
	2001	600
	2006	435
	2009	415
	2013	325
	Paralegal/Clerk	305
2013 Rates:	**Year of Bar Admission**	**Rates**
	1975	925
	1998	800
	2001	525
	2003	490
	2006	415
	2009	395
	2013	320
	Paralegal/Clerk	285

Milbank, Tweed, Handley & McCloy LLP		
2016 Rates:	**Bar Admission Date**	**Rates**
	1983	$1,025

	1984	1,350
	1992	1,350
	2002 (associate)	915

Morrison Foerster LLP		
2016 Rates:	**Bar Admission Date**	**Rates**
	1975	$1,025
	1999	975
	1993	975
2013 Rates:	**Level**	**Rates**
	Average Partner	$ 865
	Highest Partner	1,195
	Lowest Partner	595
	Average Associate	525
	Highest Associate	725
	Lowest Associate	230
2011 Rates:	**Years of Experience**	**Rates**
	22	$775
	11	625
	10	620
	1	335

O'Melveny & Myers		
2016 Rates:	**Bar Admission Date**	**Rates**
	1985	$1,175
	2004	895
	2005	780

	2007	775
	2010	725
	2011	700
	2012	655
	2013	585
	2014	515
	2015	435
2013 Rates:	**Level**	**Rates**
	Average Partner	$715
	Highest Partner	950
	Lowest Partner	615
2012 Rates:	**Years of Experience**	**Rates**
	12	$695
	4	495

<u>Orrick Herrington & Sutcliffe</u>		
2014 Rates:	**Level**	**Rates**
	Average Partner	$845
	Highest Partner	1,095
	Lowest Partner	715
	Average Associate	560
	Highest Associate	710
	Lowest Associate	375

<u>Paul Hastings LLP</u>		
2016 Rates:	**Bar Admission Date**	**Rates**

	1973	$1,175
	1997	895
	1990	750
2014 Rates:	**Level**	**Rate**
	Average Partner	$815
	Highest Partner	900
	Lowest Partner	750
	Average Associate	540
	Highest Associate	755
	Lowest Associate	350

<u>Pillsbury Winthrop Shaw Pittman LLP</u>		
2013 Rates:	**Level**	**Rates**
	Average Partner	$865
	Highest Partner	1,070
	Lowest Partner	615
	Average Associate	520
	Highest Associate	860
	Lowest Associate	375
2010 Rates:	**Level**	**Rates**
	Partners	595-965
	Associates	320-650
	Paralegals/Support Staff	85-380

<u>Proskauer Rose LLP</u>		
2016 Rates:	**Bar Admission Date**	**Rates**
	1974	$1,475

	1983	1,025
	1979	950
	2007	850
	2013	495
	2015	440-445

Quinn Emanuel Urquhart & Sullivan		
2013 Rates:	**Level**	**Rates**
	Average Partner	$915
	Highest Partner	1,075
	Lowest Partner	810
	Average Associate	410
	Highest Associate	675
	Lowest Associate	320

Reed Smith LLP		
2014 Rates:	**Years of Experience**	**Rates**
	37	$830
	18	695
	15	585
	6	485
	5	435
2013 Rates:	**Years of Experience**	**Rates**
	Partner	
	36	$830
	30	805
	17	610-615

	14	570
	Associates	
	8	450-535
	6	495

Ropes & Gray		
2016 Rates:	**Level**	**Rates**
	Partner	$880-1,450
	Counsel	605-1,425
	Associate	460-1050
	Paralegals	160-415

Rosen, Bien, Galvan & Grunfeld LLP		
2016 Rates:	**Class**	**Rates**
	1962	$995
	1980	900
	1985	800
	1997	740
	2008	545
	2009	490
	Certified Law Student	275
	Paralegal	275
2015 Rates:	**Years of Experience**	**Rates**
	Partners	
	53	$930
	35	840
	33	775

	31	710
	18	690
	9	525
	Of Counsel	590-610
	Associates 9	 490
	8	480
	7	470
	6	440
	5	420
	4	400
	3	380
	Paralegals	250-295
	Litigation Support/Paralegal Clks	200-220
	Law Students	275
	Word Processing	85
2014 Rates:	**Years of Experience**	**Rates**
	Partners	
	52	$900
	34	800
	30	675
	17	650
	Of Counsel	580
	Associates	350-550
	Paralegals	230-290
	Litig. Support/Paralegal Clks	180-215
	Law Students	260

	Word Processing	80
2013 Rates:	**Years of Experience**	**Rates**
	Partners	
	51	$875
	33	780
	29	660
	16	630
	Of Counsel	
	30	580
	Associates	
	20	550
	10	480
	9	465
	8	445-450
	7	440
	6	435
	5	405
	4	375
	3	355
	Paralegals	220-280
	Litigation Support/ Paralegal clerk	170
	Law Clerk/Students	250
	Word Processing	80
2012 Rates:	**Years of Experience**	**Rates**
	Partners 50	 $860
	32	760

	28	640
	15	610
	Of Counsel	
	29	570
	Associates	
	19	540
	10	470
	9	460
	7	400
	6	400
	5	380
	4	360
	3	340
	Paralegals	215-280
	Litigation Support/ Paralegal clerk	150
	Law Clerk/Students	240
	Word Processing	80
Schneider Wallace Cottrell Brayton Konecky LLP		
2015 Rates:	**2011 Rates**	**Rates**
	14-23	$750
	Associates	350-700
	Law Clerks/Paralegals	135-300
2014 Rates:	**Level**	**Rates**
	Partners	
	13-22	$750
	Associates/Of Counsel	
	20	750

	37	700
	10-16	650
	0-3	135-475
	Paralegals/Law Clerks	135-300

Schonbrun, DeSimone, Seplow, Harris & Hoffman		
2014 Rates:	**Years of Experience**	**Rates**
	29	$750
	24	700
2012 Rates:	**Years of Experience**	**Rates**
	27	$695
	22	630

Sheppard, Mullin, Richter & Hampton		
2014 Rates:	**Level**	**Rates**
	Highest Partner	$875
	Lowest Partner	490
	Average Partner	685
	Highest Associate	535
	Lowest Associate	275
	Average Associate	415
2010 Rates:	**Level**	**Rates**
	Partners	$495-820
	Associates	270-620

Skadden, Arps, Slate, Meagher & Flom		
2013 Rates:	**Level**	**Rates**

	Average Partner	$1,035
	Highest Partner	1,150
	Lowest Partner	845
	Average Associate	620
	Highest Associate	845
	Lowest Associate	340

Law Office of Carol Sobel		
2015 Rates:	**Years of Experience:**	**Rates**
	37	$875

12. The hourly rates set forth above are those charged where full payment is expected promptly upon the rendition of the billing and without consideration of factors other than hours and rates. If any substantial part of the payment were to be contingent or deferred for any substantial period of time, for example, the fee arrangement would be adjusted accordingly to compensate the attorneys for those factors.

13. The foregoing data shows that the hourly rates charged by Consumer Watchdog attorneys for their work in this particular proceeding are well within, and sometimes significantly below, the range of hourly rates charged by comparably qualified attorneys for reasonably similar work.

14. Moreover, I am aware that it is Consumer Watchdog's practice when seeking fees related to administrative proceedings to select hourly rates that may be substantially lower than the reasonable market rate for the work that they perform. This provides additional support for my conclusion that the hourly rates requested by Consumer Watchdog are reasonable.

15. In my experience, fee awards are almost always determined based on current rates, *i.e.*, the attorney's rate at the time a motion for fees is made, rather than the historical rate

at the time the work was performed. This is a common and accepted practice to compensate attorneys for the delay in being paid.

If called as a witness, I could and would competently testify from my personal knowledge to the facts stated herein. I declare under penalty of perjury that the foregoing is true and correct. Executed this 31 st day of October, 2016 in Berkeley, California.

RICHARD M. PEARL

EXHIBIT A

RESUME OF RICHARD M. PEARL

RICHARD M. PEARL
LAW OFFICES OF RICHARD M. PEARL
1816 Fifth Street
Berkeley, CA 94710
(510) 649-0810
(510) 548-5074 (facsimile)
rpearl@interx.net (e-mail)

EDUCATION

University of California, Berkeley, B.A., Economics (June 1966)
Boalt Hall School of Law, Berkeley, J.D. (June 1969)

BAR MEMBERSHIP

Member, State Bar of California (admitted January 1970)
Member, State Bar of Georgia (admitted June 1970) (inactive)
Admitted to practice before all California State Courts; the United States Supreme Court; the United States Court of Appeals for the District of Columbia and Ninth Circuits; the United States District Courts for the Northern, Central, Eastern, and Southern Districts of California, for the District of Arizona, and for the Northern District of Georgia; and the Georgia Civil and Superior Courts and Court of Appeals.

EMPLOYMENT

LAW OFFICES OF RICHARD M. PEARL (April 1987 to Present): Civil litigation practice (AAV@ rating), with emphasis on court-awarded attorney=s fees, class actions, and appellate practice. Selected Northern California "Super Lawyer" in Appellate Law for 2005, 2006, 2007, 2008, 2010, 2011, 2012, and 2013.

QUALIFIED APPELLATE MEDIATOR, APPELLATE MEDIATION PROGRAM, Court of Appeal, First Appellate District (October 2000 to Present).

ADJUNCT PROFESSOR, HASTINGS COLLEGE OF THE LAW (January 1988 to Present): Teach APublic Interest Law Practice,@ a 2-unit course that focuses on the history, strategies, and issues involved in the practice of public interest law.

PEARL, McNEILL & GILLESPIE, Partner (May 1982 to March 1987): General civil litigation practice, as described above.

CALIFORNIA RURAL LEGAL ASSISTANCE, INC. (July 1971 to September 1983) (part-time May 1982 to September 1983):

Director of Litigation (July 1977 to July 1982)
Responsibilities: Oversaw and supervised litigation of more than 50 attorneys in CRLA=s 15 field offices; administered and supervised staff of 4-6 Regional Counsel; promulgated litigation policies and procedures for program; participated in complex civil litigation.

Regional Counsel (July 1982 to September 1983 part-time) Responsibilities: Served as co-counsel to CRLA field attorneys on complex projects; provided technical assistance and training to CRLA field offices; oversaw CRLA attorney=s fee cases; served as counsel on major litigation.

Directing Attorney, Cooperative Legal Services Center (February 1974 to July 1977) (Staff Attorney February 1974 to October 1975)
Responsibilities: Served as co-counsel on major litigation with legal services attorneys in small legal services offices throughout California; supervised and administered staff of four senior legal services attorneys and support staff.

Directing Attorney, CRLA McFarland Office (July 1971 to February 1974) (Staff Attorney July 1971 to February 1972)
Responsibilities: Provided legal representation to low income persons and groups in Kern, King, and Tulare Counties; supervised all litigation and administered staff of ten.

HASTINGS COLLEGE OF THE LAW, Instructor, Legal Writing and Research Program (August 1974 to June 1978)
Responsibilities: Instructed 20 to 25 first year students in legal writing and research.

CALIFORNIA AGRICULTURAL LABOR RELATIONS BOARD, Staff Attorney, General Counsel=s Office (November 1975 to January 1976, while on leave from CRLA)
Responsibilities: Prosecuted unfair labor practice charges before Administrative Law Judges and the A.L.R.B. and represented the A.L.R.B. in state court proceedings.

ATLANTA LEGAL AID SOCIETY, Staff Attorney (October 1969 to June 1971)
Responsibilities: Represented low income persons and groups as part of 36-lawyer legal services program located in Atlanta, Georgia.

PUBLICATIONS

Pearl, *California Attorney Fee Awards, Third Edition* (Cal. Cont. Ed. Bar 2010) and February 2011, 2012, and 2013 Supplements

Pearl, *California Attorney Fee Awards, Second Edition* (Cal. Cont. Ed. Bar 1994), and 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2008 Supplements

Graham v. DaimlerChrysler Corp. and *Tipton-Whittingham v. City of Los Angeles*, Civil Litigation Reporter (Cal. Cont. Ed. Bar Feb. 2005)

Current Issues in Attorneys= Fee Litigation, California Labor and Employment Law Quarterly (September 2002 and November 2002)

Flannery v. Prentice: Shifting Attitudes Toward Fee Agreements and Fee-Shifting Statutes, Civil Litigation Reporter (Cal. Cont. Ed. Bar Nov. 2001)

A Practical Introduction to Attorney=s Fees, Environmental Law News (Summer 1995)

Wrongful Employment Termination Practice, Second Edition (Cal. Cont. Ed. Bar 1997) (co-authored chapter on "Attorney Fees")

California Attorney=s Fees Award Practice (Cal. Cont. Ed. Bar 1982) (edited), and 1984 through 1993 Supplements

Program materials on attorney fees, prepared as panelist for CEB program on AAttorneys= Fees: Practical and Ethical Considerations in Determining, Billing, and Collecting@ (October 1992)

Program materials on AAttorney=s Fees in Administrative Proceedings@ California Continuing Education of the Bar, prepared as panelist for CEB program on AEffective Representation Before California Administrative Agencies@ (October 1986)

Program materials on AAttorney=s Fees in Administrative Proceedings@ California Continuing Education of the Bar, prepared as panelist for CEB program on AAttorneys= Fees: Practical and Ethical Considerations@ (March 1984)

Settlors Beware/The Dangers of Negotiating Statutory Fee Cases, (September 1985) Los Angeles Lawyer

Program Materials on ARemedies Training@ (Class Actions), Sponsored by Legal Services Section, California State Bar, San Francisco (May 1983)

Attorneys= Fees: A Legal Services Practice Manual (Legal Services Corporation 1981)

PUBLIC SERVICE

Member, Attorneys= Fee Task Force, California State Bar

President, Board of Directors, California Rural Legal Assistance Foundation

REPRESENTATIVE REPORTED CASES

Boren v. California Department of Employment
(1976) 59 Cal.App.3d 250

Cabrera v. Martin
(9th Cir. 1992) 973 F.2d 735

Camacho v. Bridgeport Financial, Inc.
(9th Cir. 2008) 523 F.3d 973

Campos v. E.D.D.
(1982) 132 Cal.App.3d 961

Center for Biological Diversity v. County of San Bernardino
(2010) 185 Cal.App.4th 866

Committee to Defend Reproductive Rights v. A Free Pregnancy Center
(1991) 229 Cal.App.3d 633

David C. v. Leavitt
(D. Utah 1995) 900 F.Supp. 1547

Delaney v. Baker
(1999) 10 Cal.4th 23

Employment Development Dept. v. Superior Court (Boren)
(1981) 30 Cal.3d 256

Environmental Protection Information Center, Inc. v. Pacific Lumber Co.
(N.D. Cal. 2002) 229 F. Supp.2d 993*, aff=d* (9th Cir. 2004) 103 Fed. Appx. 627

Flannery v Prentice
(2001) 26 Cal. 4th 572

Representative Reported Cases (cont.)

Graham v. DaimlerChrysler Corp.
(2004) 34 Cal. 4th 553

Horsford v. Board of Trustees of Univ. of Calif.
(2005) 132 Cal.App.4th 359

Ketchum v. Moses
(2001) 24 Cal.4th 1122

Kievlan v. Dahlberg Electronics
(1978) 78 Cal.App.3d 951, *cert. denied* (1979)
440 U.S. 951

Lealao v. Beneficial California, Inc.
(2000) 82 Cal.App.4th 19

Lewis v. California Unemployment Insurance Appeals Board
(1976) 56 Cal.App.3d 729

Local 3-98 etc. v. Donovan
(N.D. Cal. 1984) 580 F.Supp. 714,
aff=d (9th Cir. 1986) 792 F.2d 762

Mangold v. California Public Utilities Commission
(9th Cir. 1995) 67 F.3d 1470

Maria P. v. Riles
(1987) 43 Cal.3d 1281

Martinez v. Dunlop
(N.D. Cal. 1976) 411 F.Supp. 5
aff=d (9th Cir. 1977) 573 F.2d 555

McSomebodies v. Burlingame Elementary School Dist.
(9th Cir. 1990) 897 F.2d 974

McSomebodies v. San Mateo City School Dist.
(9th Cir. 1990) 897 F.2d 975

Moore v. Bank of America
(9th Cir. 2007) 2007 U.S. App. LEXIS 19597

Representative Reported Cases (cont.)

Moore v. Bank of America
(S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 904

Mora v. Chem-Tronics, Inc.
(S.D. Cal. 1999) 1999 U.S. Dist. LEXIS 10752,
5 Wage & Hour Cas. 2d (BNA) 1122

Pena v. Superior Court of Kern County
(1975) 50 Cal.App.3d 694

Ponce v. Tulare County Housing Authority
(E.D. Cal 1975) 389 F.Supp. 635

Ramirez v. Runyon
(N.D. Cal. 1999) 1999 U.S. Dist. LEXIS 20544

Rubio v. Superior Court
(1979) 24 Cal.3d 93 (amicus)

Sokolow v. County of San Mateo
(1989) 213 Cal. App. 3d. 231

S.P. Growers v. Rodriguez
(1976) 17 Cal.3d 719 (amicus)

Tongol v. Usery
(9th Cir. 1979) 601 F.2d 1091,
on remand (N.D. Cal. 1983) 575 F.Supp. 409,
revs=d (9th Cir. 1985) 762 F.2d 727

Tripp v. Swoap
(1976) 17 Cal.3d 671 (amicus)

United States (Davis) v. City and County of San Francisco
(N.D. Cal. 1990) 748 F.Supp. 1416, *aff=d in part and revs=d in part sub nom Davis v. City and County of San Francisco* (9th Cir. 1992) 976 F.2d 1536,
modified on rehearing (9th Cir. 1993) 984 F.2d 345

United States v. City of San Diego
(S.D.Cal. 1998) 18 F.Supp.2d 1090

Representative Reported Cases (cont.)

Vasquez v. State of California
(2008) 45 Cal.4th 243 (amicus)

Velez v. Wynne
(9th Cir. 2007) 2007 U.S. App. LEXIS 2194

REFERENCES

Furnished upon request.

May 2013

EXHIBIT B

Billing Rates at the Country's Priciest Law Firms

Here are the 50 firms that charge the highest average hourly rates for partners.

FIRM NAME	LARGEST U.S. OFFICE*	AVERAGE FULL-TIME EQUIVALENT ATTORNEYS*	PARTNER HOURLY RATES			ASSOCIATE HOURLY RATES		
			AVERAGE	HIGH	LOW	AVERAGE	HIGH	LOW
Debevoise & Plimpton	New York	615	$1,055	$1,075	$955	$490	$760	$120
Paul, Weiss, Rifkind, Wharton & Garrison	New York	803	$1,040	$1,120	$760	$600	$760	$250
Skadden, Arps, Slate, Meagher & Flom	New York	1,735	$1,035	$1,150	$845	$620	$845	$340
Fried, Frank, Harris, Shriver & Jacobson	New York	476	$1,000	$1,100	$930	$595	$760	$375
Latham & Watkins	New York	2,033	$990	$1,110	$895	$605	$725	$465
Gibson, Dunn & Crutcher	New York	1,086	$980	$1,800	$765	$590	$930	$175
Davis Polk & Wardwell	New York	787	$975	$985	$850	$615	$975	$130
Willkie Farr & Gallagher	New York	540	$950	$1,090	$790	$580	$790	$350
Cadwalader, Wickersham & Taft	New York	435	$930	$1,050	$800	$605	$750	$395
Weil, Gotshal & Manges	New York	1,201	$930	$1,075	$625	$600	$790	$300
Quinn Emanuel Urquhart & Sullivan	New York	697	$915	$1,075	$810	$410	$675	$320
Wilmer Cutler Pickering Hale and Dorr	Washington	961	$905	$1,250	$735	$290	$695	$75
Dechert	New York	803	$900	$1,095	$670	$530	$735	$395
Andrews Kurth	Houston	348	$890	$1,090	$745	$528	$785	$265
Hughes Hubbard & Reed	New York	344	$890	$995	$725	$555	$675	$365
Irell & Manella	Los Angeles	164	$890	$975	$800	$535	$750	$395
Proskauer Rose	New York	746	$880	$950	$725	$465	$675	$295
White & Case	New York	1,900	$875	$1,050	$700	$525	$1,050	$220
Morrison & Foerster	San Francisco	1,010	$865	$1,195	$595	$525	$725	$230
Pillsbury Winthrop Shaw Pittman	Washington	609	$865	$1,070	$615	$520	$860	$375
Kaye Scholer	New York	414	$860	$1,080	$715	$510	$680	$320
Kramer Levin Naftalis & Frankel	New York	320	$845	$1,025	$740	$590	$750	$400
Hogan Lovells	Washington	2,280	$835	$1,000	$705	–	–	–
Kasowitz, Benson, Torres & Friedman	New York	365	$835	$1,195	$600	$340	$625	$200
Kirkland & Ellis	Chicago	1,517	$825	$995	$590	$540	$715	$235
Cooley	Palo Alto	632	$820	$990	$660	$525	$630	$160
Arnold & Porter	Washington	748	$815	$950	$670	$500	$610	$345
Paul Hastings	New York	899	$815	$900	$750	$540	$755	$335
Curtis, Mallet-Prevost, Colt & Mosle	New York	322	$800	$860	$730	$480	$785	$345
Winston & Strawn	Chicago	842	$800	$995	$650	$520	$590	$425
Bingham McCutchen	Boston	900	$795	$1,080	$220	$450	$605	$185
Akin Gump Strauss Hauer & Feld	Washington	806	$785	$1,220	$615	$525	$660	$365
Covington & Burling	Washington	738	$780	$890	$605	$415	$565	$320
King & Spalding	Atlanta	838	$775	$995	$545	$460	$735	$125
Norton Rose Fulbright	N/A**	N/A**	$775	$900	$525	$400	$515	$300
DLA Piper	New York	4,036	$765	$1,025	$450	$510	$750	$250
Bracewell & Giuliani	Houston	432	$760	$1,125	$575	$440	$700	$275
Baker & McKenzie	Chicago	4,004	$755	$1,130	$260	$395	$925	$100
Dickstein Shapiro	Washington	308	$750	$1,250	$590	$475	$585	$310
Jenner & Block	Chicago	432	$745	$925	$565	$465	$550	$380
Jones Day	New York	2,363	$745	$975	$445	$435	$775	$205
Manatt, Phelps & Phillips	Los Angeles	325	$740	$795	$640	–	–	–
Seward & Kissel	New York	152	$735	$850	$625	$400	$600	$290
O'Melveny & Myers	Los Angeles	738	$715	$950	$615	–	–	–
McDermott Will & Emery	Chicago	1,024	$710	$835	$525	–	–	–
Reed Smith	Pittsburgh	1,468	$710	$945	$545	$420	$530	$295
Dentons	N/A**	N/A**	$700	$1,050	$345	$425	$685	$210
Jeffer Mangels Butler & Mitchell	Los Angeles	126	$690	$875	$560	–	–	–
Sheppard, Mullin, Richter & Hampton	Los Angeles	521	$685	$875	$490	$415	$535	$275
Alston & Bird	Atlanta	805	$675	$875	$495	$425	$575	$280

* Full-time equivalent attorney numbers and the largest U.S. office are from the NLJ 350 published in April 2013. For complete numbers, please see NLJ.com. ** Firm did not exist in this form for the entire year.

EXHIBIT C

1 of 12

Eiji Toyoda, Driver of Global Expansion, Dies at 100

2 of 12

EA Taps Insider Andrew Wilson as CEO

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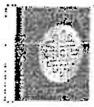
'The Circle' Takes Vengeance on Google, Facebook

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New Touch for iPhone

LAW | April 9, 2013, 4:46 p.m. ET

On Sale: The $1,150-Per-Hour Lawyer

Lawyer Fees Keep Growing, But Don't Believe Them. Clients Are Demanding, and Getting, Discounts

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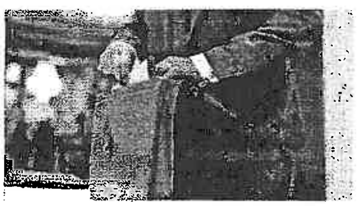
By JENNIFER SMITH

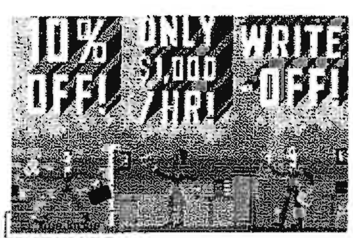
Top partners at leading U.S. law firms are charging more than ever before, yet those hourly rates aren't all they appear to be.


Top partners at leading U.S. law firms are charging more than ever – routinely $1,150 or more an hour – but after discounts and write-offs the nosebleed rates aren't all they appear to be. Jennifer Smith reports. Photo: Getty Images.

Having blown past the once-shocking price tag of $1,000 an hour, some sought-after deal, tax and trial lawyers are commanding hourly fees of $1,150 or more, according to an analysis of billing rates compiled from public filings.

But, as law firms boost their standard rates, many are softening the blow with widespread discounts and write-offs, meaning fewer clients are paying full freight. As a result, law firms on average are actually collecting fewer cents on the dollar, compared with their standard, or "rack," rates, than they have in years.

Think of hourly fees "as the equivalent of a sticker on the car at a dealership," said legal consultant Ward Bower, a principal at Altman Weil Inc. "It's the beginning of a negotiation....Law firms think they are setting the rates, but clients are the ones determining what they're going to pay."



James Kaczman

Star lawyers still can fetch a premium, and some of them won't budge on price. The number of partners billing $1,150-plus an hour has more than doubled since this time last year, according to Valeo Partners, a consulting firm that maintains a database of legal rates pulled from court filings and other publicly disclosed information. More than 320 lawyers in the firm's database billed at that level in the first quarter of 2013, up from 158 a year earlier.

Don't Miss [7]


Mossberg on Apple's New iPhones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Five False Assumptions About The Rich

More in Law

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Popular Now What's This?

1 Where Job Growth Is Coming


That gilded circle includes tax experts such as Christopher Roman of King & Spalding LLP and Todd Maynes of Kirkland & Ellis LLP, intellectual-property partner Nader A. Mousavi of Sullivan & Cromwell LLP, and deal lawyers such as Kenneth M. Schneider of Paul, Weiss, Rifkind, Wharton & Garrison LLP.

Those lawyers and their firms either declined to comment or didn't reply to requests for comment.

When corporate legal departments need a trusted hand to fend off a hostile takeover or win a critical court battle, few general counsels will nitpick over whether a key lawyer is charging $900 an hour or $1,150 an hour. But for legal matters where their future isn't on the line, companies are pushing for—and winning—significant price breaks.

"We almost always negotiate rates down from the rack rates," said Randal S. Milch, general counsel for phone giant Verizon Communications Inc. VZ +0.29% The result, he said, is a "not-insignificant discount."

For the bread-and-butter work that many big law firms rely on, haggling has become the norm. Many clients grew accustomed to pushing back on price during the recession and continue to demand discounts.

Some companies insist on budgets for their legal work. If a firm billing by the hour exceeds a set cap, lawyers may have to write off some of that time.

Other clients refuse to work with firms who don't discount, lopping anywhere from 10% to 30% off their standard rates. Some may grant rate increases to individual partners or associates they deem worthy. Another tactic: locking in prices with tailored multiyear agreements with formulas governing whether clients grant or refuse a requested rate increase.

In practical terms, that means the gap between law firms' sticker prices and the amount of money they actually bill and collect from their clients is wider than it has been in years.

According to data collected by Thomson Reuters Peer Monitor, big law firms raised their average standard rate by about 9.3% over the past three years. But they weren't able to keep up on the collection side, where the increase over the same period was just 6%. Firms that used to collect on average about 92 cents for every dollar of standard time their lawyers worked in 2007, before the economic downturn, now are getting less than 85 cents. "That's a historic low," said James Jones, a senior fellow at the Center for the Study of the Legal Profession at Georgetown Law.

To be sure, things have certainly picked up some since the recession, when some clients flat-out refused to pay rate increases.

In the first quarter of 2013, the 50 top-grossing U.S. law firms boosted their partner rates by as much as 5.7%, billing on average between $879 and $882 an hour, according to Valeo Partners. Rates for junior lawyers, whose labors have long been a profit engine for major law firms, jumped even more.

While some clients resisted using associate lawyers during the downturn, refusing to pay hundreds of dollars an hour for inexperienced first- or second-year attorneys, the largest U.S. law firms have managed to send the needle back up again. This year, for the first time, the average rate for associates with one to four years of experience rose to $500 an hour, according to Valeo.

The increases continue the upward trend of 2012, when legal fees in general rose 4.8% and associate billing rates rose by 7.4%, according to a coming report by TyMetrix Legal Analytics, a unit of Wolters Kluwer, WKL.AE +0.95% and CEB, a research and advisory-services company. Those numbers are based on legal-spending data from more than 17,000 law firms.

More than a dozen leaders at major law firms declined to discuss rate increases on the record, though some said privately that the increase in associate rates could be caused in part by step increases as junior lawyers gain in seniority.

Joe Sims, an antitrust partner at Jones Day and former member of the firm's partnership committee, said clients don't mind paying for associates, as long as they feel they are getting their money's worth.

Sophisticated clients, he said, tend to focus on the overall price tag for legal work, not on individual rates. "They are more concerned about how many people are working on the project and the total cost of the project," Mr. Sims said. "Clients want value no matter who is on the job."

While a handful of elite lawyers have successfully staked out the high end—the deal teams at Wachtell, Lipton, Rosen & Katz, for example—legal experts say that client pressure to control legal spending means most law firms must be considerably more flexible on price.

"There will always be some 'bet the company' problem where a client will not quibble about rates," said Mr. Jones, the Georgetown fellow. "Unfortunately, from the law firms' standpoint, that represents a small percentage of the work."

Write to Jennifer Smith at jennifer.smith@wsj.com

EXHIBIT D

The Firms

April 16, 2012 5:20 PM

When It Comes to Billing, Latest Rate Report Shows the Rich Keep Getting Richer

Posted by Sara Randazzo

Hourly rates just keep rising—and the best-paid lawyers are raising their rates faster than everyone else.

Those are two of the key findings contained in the 2012 Real Rate Report, an analysis of $7.6 billion in legal bills paid by corporations over a five-year period ending in December 2011. The report, released Monday, is the second such collaboration between TyMetrix, a company that manages and audits legal bills for corporate legal departments, and the Corporate Executive Board.

Many of the new rate report's findings echo those contained in the 2010 study, including the fact that rates keep going up, almost across the board, and that the cost of a given matter can vary dramatically depending on a law firm's size and location and its relationship with a particular client.

At the same time, this year's study shows that the legal sector is becoming increasingly bifurcated, with top firms raising rates faster than those at the bottom of the market and large firms charging a premium price based purely on their size.

"What it's really showing is that there's an increased premium being paid for experience and expertise," says Julie Peck, vice president of strategy and market development at TyMetrix. "Some parts of the lawyer market are able to raise rates much more quickly, and are more impervious to economic forces then others."

To compile the current rate report, TyMetrix received permission from its clients to examine legal fees billed to 62 companies across 17 industries including energy, finance, retail, technology, insurance, and health care. The bills, which represent the amount actually paid by the companies in question rather than the amount initially charged, came from more than 4,000 firms in 84 metropolitan areas around the country. Every firm on the 2011 Am Law 100 is represented in the data.

The report's key data points include:

A Widening Gap: Hourly rates charged by lawyers in the legal sector's upper echelon grew faster between 2009 and 2011 than those charged by lawyers toiling on the lower rungs. Particularly striking was the jump in associate rates billed by those falling in the report's top quartile: 18 percent on average, to just over $600 per hour. Rates billed by top quartile partners, meanwhile, rose 8 percent, to just under $900 per hour. In the bottom quartile, associate rates rose 4 percent and partner rates rose 3 percent during the same period.

The Recession's (Minor) Toll: Even amid the economic downturn, the cost of an hour of a lawyer's time continued to rise faster than key measures of inflation. That said, the legal industry wasn't completely immune to the broader economy's slowdown. After rising 8.2 percent between 2007 and 2008, hourly rates rose just 2.3 percent in 2009. Law firms bounced back a bit last year, with rates climbing 5.1 percent, to an average of $530 an hour.

Location Counts: Not surprisingly, lawyers working in major metropolitan areas—where, as the rate report notes, rents are typically higher—are the priciest. An address in Boston, Chicago, Los Angeles, San Francisco, or Washington, D.C., alone adds about $161 to the hourly rate charged by an individual lawyer. Those six cities and Baltimore, Houston, Philadelphia, and San Jose are the ten U.S. markets with the highest hourly rates. With an average partner rate topping $700 per hour and average associate rate of more than $450 per hour, New York is the most expensive market in the country. The least expensive? Riverside, California, where the average partner bills at under $250 per hour and associates bill at just over $300 an hour.

In the Minority: A small group of lawyers—12 percent—bucked the trend toward higher fees and actually lowered rates between 2009 to 2011—and 3 percent trimmed rates by $50 or more per hour. (Most of those in the rate-cutting camp were based outside the big six markets identified above.) At the other end of the spectrum, 52 percent of lawyers increased rates by between $25 and $200 or more per hour. Another 18 percent increased rates by less than $25 per hour, and the final 18 percent held rates steady.

First-Year Blues: Even before the recession hit, clients balked at paying for what they considered on-the-job training for first-year associates. The latest rate report is likely to reinforce that reluctance, given its finding that using entry-level lawyers adds as much as 20 percent to the cost of a legal matter. The report offers evidence that firms may be accommodating clients on this front: The percentage of bills attributed to entry-level associates dropped from 7 percent in 2009 to 2.9 percent last year.

Ties That Bind: The more work one firm handles for a client—and the longer the client relationship extends—the higher the average rate the firm charges. For companies that paid one firm $10 million or more in a single year, the average hourly rate paid was $553 in 2011. By comparison, clients that limited their spending on an individual firm to $500,000 paid that firm an average of $319 per hour.

Four-Digit Frontier: Data has consistently shown that many lawyers hesitate to charge more than $1,000 an hour, and in 2011 just under 3 percent of the lawyers covered by the rate report had broken that barrier. Of those, the vast majority were working in the six main legal markets identified above and 60 percent of the time, they billed in increments of one hour or less.

Playing Favorites: Across all practice areas, 90 percent of lawyers charged different clients different rates for similar types of work. (The figure for mergers and acquisitions lawyers was 100 percent.) The differences from client to client can be extreme, and were even more pronounced in the current report than in the 2010 edition. Rates charged by intellectual property specialists, for instance, had a median variance of 23.1 percent, while lawyers doing commercial and contract work showed a 18.7 percent median difference.

Who's Doing What? A closer look at law firm bills for work performed on litigation and intellectual property assignments shows that the kind of timekeeper billing on a matter varies by practice type. On patent matters, the report shows, 47 percent of hours billed on average are attributed to paralegals, and 37 percent by partners. By comparison, paralegals account for just 8 percent of the work done on labor and employment litigation hours, while partners handle 45 percent.

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The Big Law law firm is a dinosaur - a dieing species. This kind of self-interested greed will ultimately kill the beast.

EXHIBIT E

Real Rate Report Snapshot

The Industry's Leading Analysis of Law Firm Rates, Trends, and Practices

CEB

WHAT THE BEST COMPANIES DO

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A Letter to Our Readers

Welcome to the 2015 Real Rate Report® Snapshot, our latest update to The Real Rate Report®, the industry's l driven benchmark report for lawyer rates and matter costs.

The past year was characterized by challenging economic growth, corporate legal departments with diminisl to allocate precious company dollars to costly, long-term litigation and avoidable legal matters, and an i competitive legal services marketplace where corporate clients rewarded law firm productivity. In this er where there are more choices available—to corporate counsel and law firms alike—to perform high-quality differently than ever before, both buyers and sellers of legal services must ground their decisions in relevant, (information.

In an ongoing effort to provide this transparency, CEB and ELM Solutions once again analyzed more than $9 legal spending data from corporations' and law firms' e-billing and time management solutions, as well as oth sources. The result is this year's Real Rate Report Snapshot: a refresh of the robust data appendices published Real Rate Report that includes an additional year of rate data.

As in the 2014 Real Rate Report, we have included lawyer and paralegal rate data filtered by specific practic practice areas, metropolitan areas, and types of matters to give legal departments and law firms greater ability areas of opportunity. Our hope remains that the information and analysis provided in this Snapshot will not c legal departments about hourly rates and total costs but also empower them to make better and more confiden that create substantial cost savings and greater satisfaction with the law firms they use.

We strive to make The Real Rate Report and Real Rate Report Snapshot valuable and actionable reference toc departments and law firms. As always, we welcome your comments and suggestions on what information woulc publication more valuable to you. We thank you and look forward to continuing the conversation on how legal de and law firms can collaborate with better clarity and trust.

Warm regards,

Aaron Kotok
Practice Leader
CEB

Glenn Paredes
EVP and General Manager
ELM Solutions

How to Use This Snapshot

The Real Rate Report and this 2015 Real Rate Report Snapshot examine law firm rates over time and identify rates by location, experience, firm size, areas of expertise, industry, and timekeeper role (i.e., partner, associate, and paralegal). All analyses included in the study are derived from the actual rates charged by law firm professionals as recorded on invoices submitted and approved for payment.

Examining real, approved rate information—along with the ranges of those rates and their changes over time—highlights the roles these variables play in driving aggregate legal cost and income. The analyses can energize questions for both corporate clients and law firm principals. Clients might ask whether they are paying the right amount for different types of legal services, while law firm principals might ask whether they are charging the right amount for legal services and whether they could generate additional income if they modified their approach.

Affirmatively or intuitively, company purchasers of law firm services usually evaluate law firm rates based on five classic value propositions:[1]

- Quality (whether good, poor, or acceptable results are routinely achieved)
- Cost (the price, or rate, paid to achieve results)
- Service (the level of responsiveness and compliance with required processes)
- Speed (how quickly matters or tasks are resolved)
- Innovation (the application of novel solutions to issues or matters)

These value propositions are more or less impor varying practice areas, and this study clearly de their relative values. Delivering fast and excellen complicated financial matters is appropriately value more highly (with resulting higher rates) than is excellent results in routine workers' compensation o matters. The information in this 2015 update—as analyses included in the full-length 2014 Real Ra can help law firms consider whether they are prop their services and further inform the profitability of business models. This 2015 Real Rate Report Snaps 2014 Real Rate Report can help companies align th future paid rates with the value propositions that greatest value by practice area.

[1] Dave Ulrich, Jack Zenger, and Norm Smallwood, *Results-Based Leadership*, Boston: Harvard Business Press, 1999.

A Note on Comparability of Data

The data used for this 2015 Real Rate Report Snapshot include more than $9.8 billion in fees billed for legal services in the United States during the three-year period from 2012 to 2014. The data comprise fees paid by 96 companies to more than 4,500 law firms and more than 151,000 timekeepers. Table 1 provides a summary description of the US dataset.

In addition, we used a smaller subset of data to provide several analyses on non–United States legal fees. These data include approximately $812 million in fees, more than 26,000 timekeepers, and 25 countries being represented in the final report.

The information is not based on surveys, sampling, or reviews of other published information, but on anonymized data showing the actual hours and fees law firm personnel billed. Companies participating in this 2015 Real Rate Report Snapshot analysis provided written consent for the use of their data. The data used to create this snapshot exclude identifying information of participant companies and of the matters, timekee firms billing on those companies' invoices. (For more on the data methodology, see the Appendix.)

This dataset is large enough to provide valuable g represents a statistically useful portion of the $ annual US legal services business.[2] Am Law 100 had 2014 revenues of roughly $92.7 billion.[3] This d 106,882 partners and associates—spread across m US metropolitan areas.

Again, this sample is large enough to have usef power, but it certainly does not come close to cov lawyers in the United States who work for corporate United States Bureau of Labor Statistics estimates th than 603,000 lawyers practicing in the United St lawyers in the New York City area alone and anoth the Washington, DC, area.[4]

[2] Bureau of Economic Analysis, "Gross Output by Industry," 2013.

[3] Aric Press, "2015 Global 100: Top-Grossing Law Firms in the World," The American Lawyer, 28 September 2015, http://www.americanlawyer.com/id=120247180960 100-TopGrossing-Law-Firms-in-the-World-.

[4] Bureau of Labor Statistics, "Occupational Employment and Wages, May 2014," May 2014, http://www.bls.gov/oes/current/oes231011.htm.

Partners and Associates

By City (Continued)

City	Role	n	First Quartile	Median	Third Quartile	2014 Mean	2013 Mean	2012 Mean
Kansas City, MO	Partner	234	$300.56	$375.16	$454.00	$386.16	$377.81	$367.10
	Associate	194	$221.00	$250.00	$288.73	$264.30	$247.12	$242.05
Knoxville, TN	Partner	32	$195.00	$230.00	$280.00	$250.40	$231.47	$250.25
	Associate	24	$175.00	$195.00	$200.00	$185.57	$183.80	$181.62
Lansing, MI	Partner	20	$297.25	$395.00	$455.14	$385.20	$353.68	$317.56
	Associate	n/a	n/a	n/a	n/a	n/a	$198.48	$191.18
Las Vegas, NV	Partner	112	$231.67	$348.50	$464.62	$359.19	$354.18	$316.87
	Associate	93	$200.00	$230.00	$275.00	$239.91	$231.96	$225.03
Lexington, KY	Partner	49	$285.21	$320.00	$365.00	$312.80	$309.86	$299.64
	Associate	25	$180.00	$210.00	$230.00	$206.51	$177.14	$192.66
Little Rock, AR	Partner	48	$225.00	$292.50	$312.50	$276.49	$251.24	$249.90
	Associate	24	$170.00	$180.00	$190.00	$185.40	$169.67	$167.65
Los Angeles, CA	Partner	1,392	$375.00	$585.00	$823.63	$608.01	$589.28	$594.18
	Associate	1,947	$286.70	$425.00	$574.84	$438.13	$417.20	$414.38
Louisville, KY	Partner	92	$247.50	$307.07	$376.95	$310.29	$314.97	$310.93
	Associate	64	$172.94	$180.00	$199.12	$187.86	$189.42	$189.74
Madison, WI	Partner	40	$222.50	$336.50	$355.00	$316.00	$289.51	$320.62
	Associate	28	$169.16	$205.00	$280.00	$244.14	$234.12	$201.60
Memphis, TN	Partner	82	$260.00	$300.75	$385.77	$311.01	$296.67	$287.91
	Associate	49	$188.92	$195.00	$225.00	$207.60	$199.77	$205.13
Miami, FL	Partner	459	$293.79	$395.00	$505.07	$409.83	$399.85	$400.31
	Associate	367	$185.00	$240.00	$305.00	$264.31	$270.83	$260.21
Milwaukee, WI	Partner	198	$275.00	$350.10	$430.03	$369.21	$367.23	$354.02
	Associate	140	$200.00	$250.00	$280.00	$246.57	$236.17	$238.51
Minneapolis, MN	Partner	422	$255.00	$385.00	$490.00	$395.16	$387.60	$382.57
	Associate	415	$215.00	$251.69	$305.00	$264.41	$266.93	$256.24
Montgomery, AL	Partner	20	$253.18	$290.00	$325.00	$289.84	$284.84	$264.73
	Associate	n/a	n/a	n/a	n/a	n/a	$162.60	$159.65
Nashville, TN	Partner	127	$275.20	$350.00	$410.00	$347.03	$338.21	$319.60
	Associate	133	$175.00	$200.00	$234.00	$206.42	$205.61	$204.75
New Haven, CT	Partner	34	$316.39	$358.67	$420.00	$369.27	$338.71	$357.67
	Associate	30	$231.75	$250.00	$274.90	$288.79	$290.56	$253.37
New Orleans, LA	Partner	150	$204.59	$275.00	$325.00	$280.76	$280.26	$274.77
	Associate	128	$160.00	$205.46	$229.82	$210.98	$202.07	$196.34
New York, NY	Partner	3,597	$511.65	$764.00	$977.00	$745.45	$725.95	$723.59
	Associate	5,282	$335.00	$470.00	$630.00	$486.74	$473.00	$465.91
Oklahoma City, OK	Partner	71	$200.00	$265.00	$320.00	$264.87	$271.70	$255.10
	Associate	45	$150.00	$175.00	$190.00	$176.49	$186.82	$174.34

PROOF OF SERVICE

Re: ***In the Matter of Rate Application of State Farm General Insurance Company,*** **File No. PA-2015-00004**

I am employed in the County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 601 S. Figueroa Street, Suite 2675, Los Angeles, CA 90017.

On November 23, 2016, I served the foregoing document(s) described as: **DECLARATION OF RICHARD M. PEARL IN SUPPORT OF CONSUMER WATCHDOG'S REQUEST FOR COMPENSATION** on the interested parties in this action by placing a true copy thereof, in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

___ MAIL- as follows: I am "readily familiar" with the practice of Zohar Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service and that correspondence placed in the outgoing mail tray in my office for collection would be deposited in the United States Mail that same day in the course of business.

___ PERSONAL SERVICE- I caused such sealed envelope to be delivered by hand to the office(s) of the addressee(s) set forth above.

___ FACSIMILE- I caused a true and complete copy of the document(s) described above to be transmitted by facsimile transmission to the telephone number(s) of the person(s) at the address(es) set forth above.

_X__ BY ELECTRONIC MAIL/E-MAIL- I caused a true and complete copy of the document(s) described above to be transmitted by e-mail transmission to the e-mail address(es) of the person(s) set forth above.

___ FEDEX/OVERNIGHT COURIER- I caused such sealed envelope to be deposited in a collection box for the next day delivery to the person(s) at the address(es) set forth above.

_X_ (State) I declare under penalty of perjury that the foregoing is true and correct.

___(Federal) I declare under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 23, 2016, at Los Angeles, California.

Jeanette Eun

SERVICE LIST

Re: ***In the Matter of Rate Application of State Farm General Insurance Company,***
File No. PA-2015-00004

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PROOF OF SERVICE
[BY OVERNIGHT OR U.S. MAIL, FAX TRANSMISSION, EMAIL TRANSMISSION AND/OR PERSONAL SERVICE]

State of California, City of Los Angeles, County of Los Angeles

I am employed in the City of Los Angeles and County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 6330 San Vicente Blvd., Suite 250, Los Angeles, California 90048, and I am employed in the city and county where this service is occurring.

On February 1, 2019, I caused service of true and correct copies of the documents entitled

DECLARATION OF DANIEL STERNBERG IN SUPPORT OF CONSUMER WATCHDOG'S REQUEST FOR COMPENSATION

upon the persons named in the attached service list, in the following manner:

1. If marked HAND DELIVERED, by personally delivering copies to the person served at the listed address.

2. If marked EMAIL, by electronic mail transmission this date to the email address stated.

3. If marked U.S. MAIL or OVERNIGHT, by placing this date for collection for regular or overnight mailing true copies of the within document in sealed envelopes, addressed to each of the persons so listed. I am readily familiar with the regular practice of collection and processing of correspondence for mailing of U.S. Mail and for sending of Overnight mail. If mailed by U.S. Mail, these envelopes would be deposited this day in the ordinary course of business with the U.S. Postal Service. If mailed Overnight, these envelopes would be deposited this day in a box or other facility regularly maintained by the express service carrier or delivered this day to an authorized courier or driver authorized by the express service carrier to receive documents, in the ordinary course of business, fully prepaid.

4. If marked FAX SERVICE, by fax transmission this date to the FAX number stated to the person(s) named. Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission which I printed out is attached.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 1, 2019 at Los Angeles, California.

Katt M. Gt

Kaitlyn Gentile

Service List

Daniel Goodell
Emily Gallagher
Robert Binion
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☐ FAX
☐ U.S. MAIL
☐ OVERNIGHT MAIL
☐ HAND DELIVERED
☒ EMAIL

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