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BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Rulemaking Hearing re: Catastrophe Modeling and Ratemaking.	File No.: REG-2023-00010 **CONSUMER WATCHDOG'S REQUEST FOR COMPENSATION**

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I. INTRODUCTION

Consumer Watchdog submits this Request for Compensation ("Request") pursuant to Insurance Code section 1861.10, subdivision (b), and the intervenor regulations, California Code of Regulations, title 10 ("10 CCR"), § 2661.1 et seq. in the above-captioned rulemaking proceeding before the California Department of Insurance ("CDI" or "Department").

Driven by climate change, wildfires have decimated a number of communities across California in recent years. And the insurance industry's reaction—seeking substantial rate increases, refusing to sell insurance in parts of the state, and blaming Proposition 103 for the economic instability that has ensued—has only exacerbated the problem and left millions of Californians to reckon with the consequences. The importance of the public policy issues at stake, directly impacting the pocketbooks of millions of California homeowners, renters, and commercial property owners, made these proceedings a priority for Consumer Watchdog, which focused its analysis and comments on advocating that any final adopted regulations contain strong protections to uphold Proposition 103's prohibition against excessive and unfairly discriminatory rates, require public disclosure of all information necessary to determine the reliability of catastrophe models ("cat models") used to calculate rates, and critically, ensure that in exchange for being allowed to use cat models, insurers' commitments to expand coverage into areas at higher risk of wildfires would be plainly stated and enforceable.

Consumer Watchdog participated in each phase of this rulemaking proceeding conducted over the course of two and a half years, including the initial workshop held in July 2023, three additional workshops held in September 2023, April 2024, and June 2024, and the formal rulemaking hearing held in September 2024, which resulted in the adoption of the final regulations in December 2024. At each stage of the proceeding, Consumer Watchdog was one of only a few participants providing oral testimony and detailed written comments on behalf of consumers and policyholders, based on its unique experience in reviewing hundreds of rate applications and participating in over 150 rate proceedings over the last two decades. Through the oral testimony and written comments submitted by its advocates and experts—an estimated 89 pages—Consumer Watchdog presented legal and actuarial issues, evidence, and arguments regarding the proposed regulations that were separate and distinct from

those raised by the other participants, especially the insurance industry representatives that attended and participated. Consequently, the Commissioner had all this information provided by Consumer Watchdog when making his decision to adopt the final regulations that would not have been available had Consumer Watchdog not participated. As a result, Consumer Watchdog substantially contributed to the Commissioner's adoption of the final regulations.

This Request for Compensation ("Request") seeks compensation in the amount of $232,091.00[1] for the substantial contribution made by Consumer Watchdog to the final regulations adopted by the Commissioner, including time spent preparing this request, through February 27, 2025. This Request is based on the facts and circumstances of this matter as summarized in Section III *post* and in the supporting exhibits, the record in this matter, and the accompanying Declaration of Pamela Pressley ("Pressley Decl."). In light of its substantial contribution and the time necessary to meaningfully participate in the proceedings, as discussed further *post*, the compensation sought by Consumer Watchdog is unquestionably reasonable.

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

The intervenor regulations provide, in part:

> A petitioner, intervenor or participant whose Petition to Intervene or Participate has been granted and who has been found eligible to seek compensation may submit to the Public Advisor, 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 at the requesting petitioner's, intervenor's or participant's option, within 30 days after the conclusion of the entire proceeding, a request for an award of compensation.

(10 CCR § 2662.3(a).) Consumer Watchdog is a longtime participant and intervenor in Department proceedings and a nationally recognized consumer advocacy organization with particular expertise in the interpretation and implementation of Proposition 103. The Insurance Commissioner has found Consumer Watchdog eligible to seek compensation in departmental proceedings, pursuant to 10 CCR § 2662.2, for over thirty years—most recently on August 2, 2024. This determination is valid as of July 12, 2024 in proceedings commenced within two years and succeeded the prior determinations to

[1] Consumer Watchdog seeks advocacy fees and expenses in the amount of $217,808.50 for the work of Consumer Watchdog's counsel, advocate, actuary, and paralegal, and seeks $14,282.50 in fees billed by its consulting actuary and expert witness, Allan I. Schwartz. (See Exh. A (attached) for a summary of the fees and expenses requested.)

the same effect issued by the Commissioner.[2] The Commissioner granted Consumer Watchdog's Petition to Participate in this rulemaking proceeding on November 11, 2024. (Order Granting Consumer Watchdog's Petition to Participate, Nov. 11, 2024, at p. 5; Exh. C hereto.) Thus, Consumer Watchdog is eligible to seek compensation in this matter.

Pursuant to 10 CCR § 2662.3(a), 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." The regulation adopted in this proceeding was approved by the Office of Administrative Law ("OAL") and filed with the Secretary of State on December 12, 2024, and became effective on that date. (Pressley Decl., ¶ 71, Exh. 20.) On January 7, 2025, Consumer Watchdog contacted the Public Advisor to request an extension of 30 days until February 12, 2025, to submit this Request. The extension was granted by the Public Advisor the following day. (Pressley Decl., ¶ 73; Exh. D hereto.) Consumer Watchdog subsequently requested and was granted by the Public Advisor an additional extension to February 28, 2025. (Pressley Decl., ¶ 74; Exh. E hereto.) Therefore, this Request is timely pursuant to 10 CCR § 2662.3 and the granted extensions.

III. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Climate-driven weather events have undoubtedly increased, and models used in the right way can help insurance companies better gauge changing climate risks. Yet because models are notoriously inaccurate and inconsistent, can lead to excessive premiums, and can contain biases that threaten to restore redlining and other notorious discriminatory practices, Consumer Watchdog has consistently advocated that the Commissioner must mandate transparency into how models impact prices, impose rules of the road requiring review and approval of their design and use, and require that insurance companies use them to provide consumers and communities with actionable information about their own climate risk. Without these protections, models will be used as tools by insurers to charge higher rates without any commitments to provide more coverage in high-risk areas, particularly to individuals

[2] Consumer Watchdog's current Finding of Eligibility succeeded prior determinations issued on July 26, 2022, effective as of July 12, 2022; August 25, 2020, effective as of July 12, 2020; July 12, 2018; July 14, 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.

who take costly steps to harden their homes against wildfires and other risks driven by climate change. Consumer Watchdog's participation and advocacy throughout these proceedings was aimed at ensuring that the regulations adopted by the Commissioner are consistent with Proposition 103's statutory requirements and underlying goals. Specifically, Consumer Watchdog's testimony and comments were focused on ensuring that homeowners policyholders are charged rates and premiums that comply with Insurance Code section 1861.05(a)'s requirement that "no rate shall be approved or remain in effect which is excessive, inadequate, [or] unfairly discriminatory or otherwise in violation of this chapter," and that any adopted regulations are also consistent with Prop 103's "ultimate goal[, which] is the guaranty that 'insurance is fair, available, and affordable for all Californians.'" (*20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 300.) Consumer Watchdog actively participated and provided oral testimony and comments in all four workshops responding to specific questions raised by the Department and the proposed draft regulation text, participated and provided testimony and comments on the proposed regulation text in connection with the formal rulemaking hearing, and provided comments on the Department's subsequent amended regulation text.

July 13, 2023 Workshop

On June 7, 2023, the Commissioner issued an "Invitation to Workshop Examining Catastrophe Modeling and Insurance" ("Invitation") to be held on July 13, 2023, seeking to provide "interested and affected persons an opportunity to present statements or comments regarding contemplated future regulations." (Pressley Decl., ¶ 31, Exh. 5, p. 1.) The Invitation presented questions for discussion, focusing primarily on how the use of catastrophe models could be incorporated into ratemaking and comply with the public disclosure requirements of Insurance Code section 1861.07, and exploring how other states review models. In preparation for the workshop, Consumer Watchdog reviewed the Invitation questions and consulted with its actuaries in developing its testimony. (*Ibid*.)

Consumer Watchdog's Executive Director Carmen Balber actively participated and provided oral comments at the July 13, 2023 workshop on behalf of Consumer Watchdog. (Pressley Decl., ¶ 32.)[3]

[3] A video link to the workshop is available at https://www.youtube.com/watch?v=bm_8ZlXUE4U. Consumer Watchdog's testimony begins at 3:10:10 (three hours, ten minutes, ten seconds).

Consumer Watchdog submitted its written comments to the Department that same day. (Pressley Decl., ¶ 33, Exh. 6.) These 14 pages of comments, with 24 linked source citations and documents, focused on answering the Invitation's questions by providing a detailed discussion of: 1) the purpose and legal requirements of Proposition 103 that require transparency, particularly Insurance Code section 1861.07 and the court cases that have upheld that requirement; 2) the opacity of black-box private models; 3) how maintaining private catastrophe models' secrecy would derail the ability of regulators and the public to review rates and confirm they are justified; and 4) examples of private models' inconsistency and bias across financial industries. (*Ibid*.) The written comments also included a list of 12 questions that should be asked by regulators and the public in determining whether a model is producing rates that are excessive, inadequate, or unfairly discriminatory. (*Ibid*.) These comments were available to the Commissioner in developing the proposed regulations, as stated in the Invitation: "the Commissioner will consider public comments received in these prenotice public discussions as he contemplates any additional regulatory changes that may be proposed in a Notice of Proposed Action." (Pressley Decl., Exh. 5, p. 4.)

These comments became part of the public record, as stated in the Invitation: "under the California Public Records Act (Government Code Section 6250, et seq.), your written and oral comments . . . will become part of the public record and can be released to the public upon request" and later became part of the rulemaking record when they were submitted to the Department during the formal hearing and public comment stage on September 17, 2024. (Pressley Decl., ¶ 34; Exh. 5, p. 1.)

Consumer Watchdog was one of only four consumer groups that participated in the July 13, 2023 workshop by providing oral testimony, and one of only two consumer groups that submitted written comments. (Pressley Decl., ¶ 35.)

September 28, 2023 Workshop

On August 30, 2023, CDI issued an "Invitation to Second Workshop Examining Catastrophe Modeling and Insurance" ("Second Invitation") to be held September 28, 2023. (Pressley Decl., ¶ 36, Exh. 7.) As stated in the Second Invitation, the focus of this workshop was "on understanding how the use of catastrophe modeling in the rate approval process to develop an aggregate catastrophe adjustment and aggregate losses will impact insurance availability and affordability over time and how

the Department can ensure the integrity of model projections upon implementation." (Exh. 7, p. 3.) The Second Invitation contained a set of questions focusing primarily on three areas: (1) the impact of cat models on the marketplace, including insurance availability and affordability and models' incorporation of mitigation and risk-reduction strategies; (2) model review; and (3) model implementation. (Exh. 7, pp. 4–5.)

In preparation for the second workshop, Consumer Watchdog reviewed the questions for discussion in the Second Invitation, consulted its actuaries, and drafted its written comments. (Pressley Decl., ¶ 37.)

Consumer Watchdog's Executive Director Carmen Balber actively participated and provided oral testimony at the September 28, 2023 workshop on behalf of Consumer Watchdog. (Pressley Decl., ¶ 38.)[4]

Consumer Watchdog submitted its written comments to the Department that same day. (Pressley Decl., ¶ 39, Exh. 8.) These comments focused on emphasizing the issues with models that must be addressed by the Department in any proposed regulations, including conflicts of interest, accuracy, fairness, and transparency, and specifically responded to eleven questions posed by the Second Invitation, including: (1) how consumers can be fully represented in a ratemaking process allowing models; (2) what safeguards should be implemented if cat models are allowed for loss prediction; (3) what benefits and expertise consumer representatives bring to the process of reviewing cat models; (4) what difficulties consumer groups might experience in the model review process; (5) how Proposition 103's mandate for public disclosure should apply to model review; (6) what information regarding models should be made public; and (7) how insurance companies could be encouraged to increase coverage for properties in high risk areas. (*Ibid.*) These comments were available to the Commissioner in developing the proposed regulations, as stated in the Second Invitation: "the Commissioner will consider public comments received in these prenotice public discussions as he contemplates any additional regulatory changes that may be proposed in a Notice of Proposed Action." (Pressley Decl., Exh. 7, p. 5.)

[4] A video link to the workshop is available at https://www.youtube.com/watch?v=uQe5Dtu0laA. Consumer Watchdog's testimony begins at 1:24:30 (one hour, twenty-four minutes, thirty seconds).

These comments became part of the public record, as stated in the Second Invitation: "under the California Public Records Act (Government Code Section 6250, et seq.), your written and oral comments . . . will become part of the public record and can be released to the public upon request" and later became part of the rulemaking record when they were submitted to the Department during the formal hearing and public comment stage on September 17, 2024. (Pressley Decl., ¶ 40; Exh. 7, p. 1.)

Consumer Watchdog was one of only five consumer groups that participated in the rulemaking hearing by providing oral testimony, and the only consumer group that submitted written comments. (Pressley Decl., ¶ 41.)

March 14, 2024 Regulation Text and April 23, 2024 Workshop

On March 14, 2024, CDI issued an "Invitation to Workshop Regarding Catastrophe Modeling and Ratemaking" ("Third Invitation") to be held April 23, 2024. (Pressley Decl., ¶ 42, Exh. 9.) The Third Invitation was accompanied by a draft of the text of the proposed regulatory changes, which proposed changes to sections 2644.4, 2644.5, 2644.8, 2644.27, and 2651.1 of Title 10 of the California Code of Regulations, and proposed adoption of section 2644.4.5 regarding use of catastrophe models and section 2651.10 regarding the Pre-Application Required Information Determination ("PRID") Procedure ("March 14, 2024 Draft Regulation Text"). (*Ibid.*) As stated in the Third Invitation: "the purpose of this discussion [was] to provide interested and affected persons an opportunity to present statements or comments regarding the contemplated regulations." (*Ibid.*)

In preparation for the third workshop, Consumer Watchdog reviewed the Third Invitation and March 14, 2024 Draft Regulation Text; consulted with its actuaries; and drafted its written comments. (Pressley Decl., ¶ 43.)

Consumer Watchdog's Executive Director Carmen Balber actively participated and provided oral testimony at the April 23, 2024 workshop on behalf of Consumer Watchdog. (Pressley Decl., ¶ 44.)[5]

Consumer Watchdog submitted its written comments to the Department that same day. (Pressley Decl., ¶ 45, Exh. 10.) These 18 pages of comments with linked source citations and

[5] A video link to the workshop is available at https://www.youtube.com/watch?v=shtmqCCJH04. Consumer Watchdog's testimony begins at 1:01:50 (one hour, one minute, fifty seconds).

documents focused on Consumer Watchdog's overarching concerns, as well as comments on specific proposed sections of the March 14, 2024 Draft Regulation Text. (*Ibid*.) Consumer Watchdog explained in its comments how regulations with robust consumer protections would:

- Be fully transparent in accordance with Proposition 103's requirement for public disclosure of catastrophe models;
- Mandate a substantive review and approval of models;
- Identify uniform standards against which a model's reliability and its rate impact would be evaluated;
- Enable regulators and the public to access a model to test both its design and its impact on a specific insurance company's rate;
- Require all companies disclose the same information for consistent results;
- Require diverse and independent academic and scientific input; and
- Preserve participants' due process rights under the APA.

Consumer Watchdog explained how some of the proposed provisions of the March 14, 2024 Draft Regulation Text would conflict with these consumer protections and offered specific suggestions as to how the regulations could be strengthened. Its comments further explained how Florida requires review and approval of private and public catastrophe models with 174 pages of specific standards and advocated that such standards be adopted in California to ensure that the public can be confident that the models are fair. (*Ibid.*)

Consumer Watchdog's expert actuarial witness, Allan I. Schwartz, also submitted written comments on behalf of Consumer Watchdog that day. (Pressley Decl., ¶ 46, Exh. 11.) Mr. Schwartz's comments focused particularly on the more technical ratemaking and model provisions of the draft text, including proposed sections 2644.4.5 (Use of Catastrophe Models), 2644.5 (Catastrophe Adjustment), and 2651.1 ("PRID" Procedure). His comments were aimed at pointing out provisions that lacked clarity from an actuarial perspective and offered suggestions for improving the draft text and explanations of why such changes were necessary. (*Ibid*.) Mr. Schwartz was the only actuary to provide testimony on behalf of a consumer group. (*Ibid.*)

These April 23, 2024 comments by Consumer Watchdog and Mr. Schwartz were available to the Commissioner in developing the proposed regulations, as stated in the Third Invitation: "the Commissioner will consider public comments received in this workshop discussion when contemplating regulatory changes that may be proposed in a Notice of Proposed Action." (Pressley Decl., ¶ 47, Exh. 9, p. 3.)

These comments became part of the public record, as stated in the Third Invitation: "under the California Public Records Act (Government Code Section 6250, et seq.), your written and oral comments . . . become part of the public record and can be released to the public upon request" and later became part of the rulemaking record when they were submitted to the Department during the formal hearing and public comment stage on September 17, 2024. (Pressley Decl., ¶ 48; Exh. 9, p. 1.)

Consumer Watchdog was one of only three consumer groups that participated in the April 23, 2024 workshop by providing oral testimony, and one of only three consumer groups that submitted written comments. (Pressley Decl., ¶ 49.)

June 12, 2024 Regulation Text and June 26, 2024 Workshop

On June 12, 2024, CDI issued an "Invitation to Workshop Regarding Catastrophe Modeling and Ratemaking: Insurer Commitments to Increase Writing of Policies in High-Risk Wildfire Areas" ("Fourth Invitation") to be held June 26, 2024. (Pressley Decl., ¶ 50, Exh. 12.) The Fourth Invitation stated that "[t]he purpose of this discussion [was] to provide interested and affected persons an opportunity to present statements or comments regarding the contemplated regulations." (*Ibid*.) The Fourth Invitation was accompanied by a draft of the text of the proposed regulatory addition, to section 2644.4.8 of Title 10 of the California Code of Regulations, regarding distressed areas and insurer commitments ("June 12, 2024 Regulation Text"). (*Ibid.*) The Fourth Invitation also included a Preliminary List of Distressed Counties for Insurer Qualifying Residential Property Insurance Commitments, a Preliminary List of Undermarketed Zip Codes for Insurer Qualifying Commercial Property Insurance Commitments, and a Preliminary List of Undermarketed Zip Codes for Insurer Qualifying Commercial Property Insurance Commitments. (*Ibid.*)

In preparation for the fourth workshop, Consumer Watchdog reviewed the Third Invitation, June 12, 2024 Regulation Text, and additional documents; consulted with its actuaries; and drafted its written comments. (Pressley Decl., ¶ 51.)

Consumer Watchdog's Executive Director Carmen Balber actively participated and provided oral comments at the June 26, 2024 workshop on behalf of Consumer Watchdog. (Pressley Decl., ¶ 52.)[6]

Consumer Watchdog submitted its written comments regarding the June 12, 2024 Regulation Text that same day. (Pressley Decl., ¶ 53, Exh. 13.) These comments focused on pointing out issues with the June 12, 2024 Regulation Text that would be necessary to fix in order to meet the Department's stated goals of securing insurers' "commitment to write homeowners and commercial policies in wildfire areas" and "ensur[ing] a competitive and sustainable insurance market while protecting consumers" (Exh. 13, p. 1). Some of the issues Consumer Watchdog pointed out with the June 12, 2024 Regulation Text were that it: (1) did not contain any express language explicitly specifying that the policies insurance companies are committing to sell must provide standard, full-benefit insurance coverage that will make sure people can fully rebuild their property and replace their possessions if they experience a loss; (2) did not require that insurance companies expand their share of sales of policies in distressed areas to at least 85% of their statewide market share; (3) allowed companies to evade the 85% commitment or 5% increase commitment with a standardless "alternative commitment"; (4) did not provide requirements or deadlines for future reporting or compliance; and (5) did not contain any penalties for companies failing to meet their commitments or provisions for publicly proving that they met their commitments. Consumer Watchdog also urged the Commissioner to make the data used by the Commissioner to make the determinations of "distressed areas" public, to endorse a public model, and to mandate that companies sell to consumers who take the necessary steps to protect their homes against wildfire risk. (*Ibid.*)

Consumer Watchdog's June 26, 2024 comments were available to the Commissioner in developing the proposed regulations, as stated in the Fourth Invitation: "the Commissioner will

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[6] A video link to the workshop is available at https://www.youtube.com/watch?v=jIZVfDJj9Qk. Consumer Watchdog's testimony begins at 50:40 (fifty minutes, forty seconds).

consider public comments received in this workshop discussion when contemplating regulatory changes that may be proposed in a Notice of Proposed Action." (Pressley Decl., ¶ 54, Exh. 12, p. 3.)

These comments became part of the public record, as stated in the Fourth Invitation: "under the California Public Records Act (Government Code Section 6250, et seq.), your written and oral comments . . . become part of the public record and can be released to the public upon request" and later became part of the rulemaking record when they were submitted to the Department during the formal hearing and public comment stage on September 17, 2024. (Pressley Decl., ¶ 55; Exh. 12, p. 1.)

Consumer Watchdog was one of only three consumer groups that participated in the workshop and the only consumer group that submitted written comments. (Pressley Decl., ¶ 56.)

August 16, 2024 Regulation Text and September 17, 2024 Public Hearing

On August 16, 2024, CDI issued a Notice of Proposed Action and Notice of Public Hearing regarding Catastrophe Modeling and Ratemaking ("Notice"), noticing a public hearing for September 17, 2024. (Pressley Decl., ¶ 57; Exh. 14.) The Notice was accompanied by an Initial Statement of Reasons and proposed text of the regulation ("August 16, 2024 Regulation Text"). (*Ibid.*) The Notice stated that the purpose of the public hearing was "to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, concerning these regulations." (Exh. 14, p. 1.)

In preparation for the public hearing, Consumer Watchdog reviewed the Notice, Initial Statement of Reasons, and proposed regulation text; consulted with its actuaries; and drafted its written comments. (Pressley Decl., ¶ 58.)

Consumer Watchdog's Executive Director Carmen Balber actively participated and provided oral comments at the September 17, 2024 public hearing on behalf of Consumer Watchdog. (Pressley Decl., ¶ 59.)[7]

Consumer Watchdog submitted its written comments regarding the August 16, 2024 Regulation Text that same day. (Pressley Decl., ¶ 60, Exh. 15.) These 30-page comments with citations and links to referenced source documents explained in detail Consumer Watchdog's concerns with the insurer

[7] A video link to the hearing is available at https://www.youtube.com/watch?v=cB0zdluq8SA. Consumer Watchdog's testimony begins at 1:37:35 (one hour, thirty-seven minutes, thirty-five seconds).

commitment and PRID procedure sections of the August 16, 2024 Regulation Text, with the goal of ensuring that the final regulations adopted by the Commissioner: (1) require that companies would have to sell comprehensive policies to meet their commitments to sell in distressed areas; (2) contain enforceable metrics for meeting their 85% and 5% commitments; (3) require public transparency in proving insurer commitments and in the PRID procedure; (4) require accountability and efficiency with clear substantive standards for the review of catastrophe models; (5) emphasize the importance of testing models; (6) provide for due process in the PRID procedure; and (7) eliminate conflicts with other regulations. (*Ibid*.)

Consumer Watchdog's expert actuarial witness, Allan I. Schwartz, also submitted written comments on behalf of Consumer Watchdog that day, particularly focusing on the issues with the technical ratemaking and model provisions of the draft regulation text, including proposed sections 2644.4.5 (Use of Catastrophe Models), 2644.5 (Catastrophe Adjustment), and 2651.1 ("PRID" Procedure), with specific provision-by-provision suggestions for amendments to these sections. (Pressley Decl., ¶ 61, Exh. 16.)

Consumer Watchdog's September 17, 2024 comments became part of the public rulemaking record, as stated in the Notice: "under the California Public Records Act (Government Code Section 6250, et seq.), any written and oral comments . . . become part of the public record and can be released to the public upon request." (Pressley Decl., ¶ 62; Exh. 14 at p. 2.)

Consumer Watchdog was one of only four consumer groups that participated in the September 17, 2024 rulemaking hearing, and one of only two consumer groups that submitted written comments. (Pressley Decl., ¶ 63.) Consumer Watchdog was the only consumer group to provide separate comments by an actuary. (*Ibid.*)

On September 27, 2024, Consumer Watchdog submitted its Petition to Participate. (Pressley Decl., ¶ 64, Consumer Watchdog's Petition to Participate and Notice of Intent to Seek Compensation, Sept. 27, 2024, Exh. B hereto.)

October 2, 2024 Amended Regulation Text

On October 2, 2024, CDI issued a Notice of Availability of Amended Text ("Amended Text Notice"), inviting public comment through October 17, 2024. (Pressley Decl., ¶ 65; Exh. 17.) The

Amended Text Notice was accompanied by amended proposed text of the regulation ("October 2, 2024 Amended Regulation Text"). (*Ibid.*)

On October 17, 2024, Consumer Watchdog submitted its written comments on the October 2, 2024 Amended Regulation Text. (Pressley Decl., ¶ 66; Exh. 18.) These comments discussed how some of the proposed amendments erected new barriers to public participation in the PRID procedure and criticized the proposed amendments for failing to "mandate wildfire mitigation be considered in sales decisions or rate segmentation." (*Ibid.*)

These comments became part of the public rulemaking record, as stated in the Notice: "under the California Public Records Act (Government Code Section 6250, et seq.), your written and oral comments . . . become part of the public record and can be released to the public upon request" and were ultimately included in the final rulemaking file that was transmitted to OAL. (Pressley Decl., ¶ 67; Exh. 17 at p. 2.)

On November 11, 2024, the Commissioner granted Consumer Watchdog's Petition to Participate in this rulemaking. (Pressley Decl., ¶ 68; Order Granting Consumer Watchdog's Petition to Participate, Nov. 11, 2024, p. 5; Exh. C hereto.)

Final Regulation

On November 13, 2024, CDI submitted the final regulation and supporting rulemaking file, including the Final Statement of Reasons incorporating the Department's Summary of and Response to Comments, to OAL. (Pressley Decl., ¶ 69, Exh. 19.)[8]

In its Summary of and Response to Comments, the Department summarized and responded to each of Consumer Watchdog's comments, including comments pointing out issues with the regulatory text and comments suggesting ways to amend the regulations to be clearer and in compliance with Proposition 103. (Pressley Decl., ¶ 70, Exh. 19, pp. 26–27, 37–79, 779–780, 838–839, 865–867.)

On December 12, 2024, the final regulation text and rulemaking record was filed by OAL with the Secretary of State with an effective date of December 12, 2024. (Pressley Decl., ¶ 71, Exh. 20.)

[8] This document is over 1,000 pages and has not been reproduced in its entirety due to its size. The pages cited are included in the exhibit and the full document is available upon request.

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

A. Consumer Watchdog Made a Substantial Contribution to the Commissioner's Final Decision.

To encourage full public participation in insurance proceedings before the Department and the courts, 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.

(Emphasis added.) As the emphasized language makes clear, when the statutory criteria are met, an award of reasonable advocacy fees and expenses is mandatory. This provision affords insurance consumers the ability to have their interests represented on an equal basis with the interests of insurers and promotes consumer participation in the enforcement of Proposition 103. (See *Econ. Empowerment Found. v. Quackenbush* ("*EEF*") (1997) 57 Cal.App.4th 677, 686 [the purpose of intervenor fees is to encourage consumer participation].) Per the voters' instruction, the mandate of section 1861.10(b), like all of the provisions of Proposition 103, must be "liberally construed and applied in order to fully promote its underlying purposes." (Prop. 103, § 8.) Thus, the courts have held that section 1861.10(b) should be applied in a manner "which best facilitates compensation." (*EEF*, *supra*, 57 Cal.App.4th at p. 686.)

As the Court of Appeal held in *State Farm General Insurance Company v. Lara* ("*SFG*") (2021) 71 Cal.App.5th 197, a party's entitlement to fees under section 1861.10(a) "requires a significant, distinct contribution, but not more" (*id*. at p. 214), as Proposition 103's fee statute "was intended to encourage consumer participation more broadly" than other fee schemes (*id*. at p. 216).

Regulations promulgated by the Commissioner provide guidance for determining whether consumer representatives made a "substantial contribution" in departmental proceedings. The regulation provides as follows:

> "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 relevant, 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.*** A substantial contribution may be demonstrated without regard to whether a petition for hearing is granted or denied.

(10 CCR § 2661.1(k), emphasis added.)

The detailed summary of this proceeding presented in Section III *ante*, the accompanying Pressley Declaration, and the record in this proceeding make clear that Consumer Watchdog has met the substantial contribution requirement. Consumer Watchdog's counsel are veterans of over 150 administrative proceedings concerning Proposition 103 since the law's passage, including rate, rulemaking, noncompliance, and primary jurisdiction proceedings to enforce its provisions. They have also litigated challenges to Proposition 103 in the civil courts and participated in all the cases that led to landmark judicial decisions.

Consumer Watchdog's substantial contribution in this rulemaking proceeding, as detailed in Section III *ante* and in the accompanying Pressley Declaration, and as further evidenced by the record in this matter, is demonstrated by at least the following:

- Participating in and providing testimony at the Department's July 13, 2023, September 28, 2023, April 23, 2024, and June 26, 2024 workshops from Consumer Watchdog's unique perspective as an intervenor in over 150 administrative proceedings concerning Proposition 103 since the law's passage, including rate, rulemaking, noncompliance, and primary jurisdiction proceedings to enforce its provisions;
- Submitting detailed written comments on the Department's March 14, 2024, June 12, 2024, and August 16, 2024 Regulation Text (Pressley Decl., Exhs. 10, 13, and 15);
- Participating in and providing testimony at the September 17, 2024 public hearing regarding the CDI's proposed regulations; Consumer Watchdog was one of only four consumer groups that participated in the rulemaking hearing and one of only two consumer groups that provided written comments; and
- Submitting detailed written comments on the Department's October 2, 2024 Amended Regulation Text. (Pressley Decl., Exh. 18.)

In sum, Consumer Watchdog's separate and distinct presentation of relevant issues, evidence, and arguments provided in the written and oral comments of its advocates and experts resulted in more relevant, credible, and non-frivolous information being available to the Commissioner in making his final decision adopting the final regulations than if Consumer Watchdog had not participated. In contrast to the insurance industry's comments, Consumer Watchdog provided comments to strengthen the regulations' public participation and transparency requirements and to provide clear standards to enforce insurers' commitments to sell in distressed areas. Regardless of whether the CDI or the Commissioner agreed with or adopted Consumer Watchdog's positions and proposed changes, the Commissioner had this information available, in counterbalance to the insurance industry's and the model companies' comments, in determining to adopt the final text of the regulations. Thus, Consumer Watchdog clearly meets the "substantial contribution" requirement as set forth in Insurance Code section 1861.10(b) and the regulations.

B. Consumer Watchdog's Requested Fees Are Reasonable.

When a consumer representative makes a "substantial contribution," as here, Insurance Code section 1861.10(b) requires payment of all of a consumer representative's "reasonable advocacy and witness fees and expenses." As *SFG* held, "section 1861.10(b) requires only that advocacy fees be 'reasonable,' within the usual meaning of the term in the fees context: fair and appropriate under the circumstances." (*Supra*, 71 Cal.App.5th at p. 218.) That means, in general, parties "who qualify for a fee should recover compensation for all the hours reasonably spent." (*Ibid*., quotations omitted.) Indeed, *SFG* recognizes that "California law requires that attorney fee awards be 'fully compensatory'" (*ibid*., quoting *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133), and that permitting "recovery of all reasonable fees" under section 1861.10(b) supports Proposition 103's consumer participation purposes "by encouraging intervention in the first place and ensuring intervenors can vigorously represent consumers once involved" (*id.* at p. 219).

For its substantial contribution, Consumer Watchdog requests reasonable advocacy fees in the amount of $217,808.50 for the work of its attorneys Harvey Rosenfield, Pamela Pressley, and Ryan Mellino, advocate Carmen Balber (Executive Director), actuary Ben Armstrong, and paralegal Kaitlyn Gentile. The requested fees, including the total hours of work performed, and the hourly rates of each

Consumer Watchdog attorney are summarized in the attached Exhibit A, "Summary of Fees." Consumer Watchdog staff divided the workload among its staff who participated in these proceedings, with Mr. Rosenfield and Ms. Balber primarily working on testimony and comments in the initial workshops posing questions for discussion in the development of regulations. In the later workshops and the rulemaking hearing, Ms. Balber primarily drafted the comments on the insurer commitment sections of the proposed regulations, and Mr. Mellino and Ms. Pressley primarily drafted comments related to the PRID section and other ratemaking sections of the proposed regulations in consultation with Mr. Armstrong and Mr. Schwartz. (Pressley Decl., ¶ 70.) The procedural history of this matter set forth in Section III *ante*, and supported by the Pressley Declaration and accompanying time records, demonstrates the reasonableness of the compensation requested in light of the amount of work performed.

As required by the regulations, the specific tasks performed by Consumer Watchdog's attorneys, advocate, actuary, and paralegal are set forth in its detailed time records attached as Exhibit 1a to the Pressley Declaration. (See Pressley Decl., ¶ 3 & Exh. 1a.) These time records were maintained contemporaneously and reflect the actual time spent and actual work performed, billed to the tenth of an hour, by all Consumer Watchdog staff who worked on this matter. (Pressley Decl., ¶ 6.) In preparing their respective time records for this request, Consumer Watchdog's staff exercised billing judgment and eliminated time entries where appropriate. (Pressley Decl., ¶ 5.) Consumer Watchdog submits that the time expended and work performed in the proceeding, as reflected in the time records, was reasonable and appropriate, and was necessary to represent the interests of consumers in this proceeding. (*Ibid.*)

The 2025 hourly rates of Consumer Watchdog's counsel, advocate, actuaries, and paralegal set forth in Exhibit A are not only eminently reasonable, they are actually substantially lower than prevailing market rates. The intervenor regulations specify: "[t]he compensation awarded ***shall equal*** the market rate of the services provided." (10 CCR § 2662.6(b), emphasis added.) "Market rate" is defined 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 for attorney***

advocates, non-attorney advocates, or experts with similar experience, skill and ability." (10 CCR § 2661.1(c)(1), emphasis added.)

The qualifications and experience of Consumer Watchdog's attorneys Harvey Rosenfield, Pamela Pressley, and Ryan Mellino, advocate Carmen Balber (Executive Director), actuary Ben Armstrong, and paralegal Kaitlyn Gentile who performed work in this matter are summarized in the Pressley Declaration. (Pressley Decl., ¶¶ 9–27.) The Declaration of Richard M. Pearl ("Pearl Decl."), attached as Exhibit 2 to the Pressley Declaration, confirms that the requested rates for Consumer Watchdog's counsel are consistent with, if not below, prevailing market rates.[9] Mr. Pearl is a recognized expert on attorneys' fees issues under California law. (See Pressley Decl., Exh. 2 [Pearl Decl.], ¶¶ 3–9.) The Pearl Declaration shows that Consumer Watchdog counsel's 2025 rates are well within, if not below, the range of non-contingent rates charged by California attorneys in the Los Angeles area of equivalent experience, skill, and expertise for comparable services. (See *id.*, ¶¶ 10–19.) The Commissioner has also approved fee awards for Consumer Watchdog based on the same hourly rates that Consumer Watchdog's legal staff is currently using in 2025 for work done in 2017–2024. (Pressley Decl., ¶ 7.)

The Commissioner found that Mr. Armstrong's rate of $425 per hour was reasonable in several decisions awarding compensation to Consumer Watchdog, including Decision Awarding Compensation, Feb. 14, 2025, *In the Matter of United Services Automobile Association*, PA-2023-00023, pp. 6–7; Decision Awarding Compensation, Jan. 29, 2025, *In the Matter of Liberty Insurance Corporation*, p. 8; Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate Application of State Farm General Insurance Company*, File No. PA-2023-00007, pp. 8–9; Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate Application of Allstate Northbrook Indemnity Company*, File No. PA-2023-00014, pp. 8–9; and Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate Application of State Farm Mutual Automobile Insurance Company*, File

[9] The Pearl Declaration was filed on April 15, 2022 in connection with a State Farm writ matter arising out of a rate proceeding and is equally applicable to this proceeding, given that Consumer Watchdog's 2022 rates are within the range of rates considered reasonable for attorneys with comparable experience at that time.

No. PA-2023-00012, pp. 8–9; Decision Awarding Compensation, Oct. 18, 2024, *In the Matter of the Rate Applications of Farmers Insurance Exchange, Mid-Century Insurance Company, and Truck Insurance Exchange*, File No. PA-2023-00022, pp. 14–15. (Pressley Decl., Exh. 22.)[10]

Finally, this Request also includes the time expended 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 intervenor to perform a comprehensive review of the record, review the regulations, cite to the record in this proceeding, review billing and expense records, and prepare the Request and supporting documents.

C. Consumer Watchdog's Expert Fees Are Reasonable.

Consumer Watchdog incurred reasonable expert fees of $14,282.50 for the actuarial consulting services of Allan I. Schwartz. (See Schwartz Decl., Exh. 7.) The specific tasks performed by Mr. Schwartz are set forth in the detailed billing records of AIS Risk Consultants, Inc. (*Ibid.*) These time records were maintained contemporaneously and reflect the actual time spent and actual work performed by Mr. Schwartz. (Schwartz Decl., ¶ 14; Pressley Decl., ¶ 30.) Pursuant to 10 CCR sections 2662.6(b) and 2661.1(c)(1), the expert fees billed for the actuarial consulting services of Mr. Schwartz reflect his current 2025 market rates for such services. (Schwartz Decl., ¶¶ 3–10; Pressley Decl., ¶ 30.)

The Commissioner has awarded Consumer Watchdog compensation for Mr. Schwartz's services based on his 2024 hourly rate of $955 in prior proceedings, including Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate Application of State Farm General Insurance Company*, File No. PA-2023-00007, p. 9; Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate Application of Allstate Northbrook Indemnity Company*, File No. PA-2023-00014, p. 9; Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate Application of State Farm*

[10] The Declaration of Allan I. Schwartz ("Schwartz Decl."), filed concurrently herewith, also confirms that the requested rate for Consumer Watchdog's staff actuary, Ben Armstrong, is consistent with prevailing market rates that have been awarded to Consumer Watchdog's outside actuaries in past proceedings. (See Schwartz Decl., ¶ 8 and Exh. 4: Decision Awarding Compensation, July 12, 2023, *In the Matter of the Rate Applications of Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company*, File No. PA-2022-00007, pp. 11, 16 [awarding hourly rates of $415 and $365 for actuarial associates of AIS Risk Consultants, Inc. who have not completed the requirements for the FCAS designation as has Mr. Armstrong].)

Mutual Automobile Insurance Company, File No. PA-2023-00012, p. 9; and Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate Application of Pacific Specialty Insurance Company*, File No. PA-2020-00009, p. 10. (*Ibid.*; Schwartz Decl., ¶ 8.) Mr. Schwartz's 2025 rate of $985 per hour is an increase of 3.14% from his 2024 rate of $955 per hour. (*Ibid*.)

Mr. Schwartz's over 40 years of professional actuarial experience includes being President of AIS Risk Consultants, Assistant Commissioner of the New Jersey Department of Insurance, and Chief Actuary of the North Carolina Department of Insurance. His resume is attached to the accompanying Schwartz Declaration. (Schwartz Decl., ¶ 10, Exh. 5.) Mr. Schwartz was the only actuary whose views were presented by a consumer representative in these proceedings. His guidance to attorneys for Consumer Watchdog throughout this proceeding was invaluable. Consumer Watchdog submits that the time expended and work performed by Mr. Schwartz, as reflected in his time records, was reasonable and appropriate and was necessary to achieve the result obtained. (Pressley Decl., ¶¶ 29–30; Schwartz Decl., ¶ 14, Exh. 7.)

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 February 27, 2025 in the amount of $232,091.00.

DATED: February 28, 2025

Respectfully submitted,
Harvey Rosenfield
Pamela Pressley

CONSUMER WATCHDOG

By: Pamela Pressley
Pamela Pressley
Attorneys CONSUMER WATCHDOG

VERIFICATION OF PAMELA PRESSLEY

1. I am Senior 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 28, 2025 at Los Angeles, California.

Pamela Pressley

Pamela Pressley

EXHIBIT A

EXHIBIT A

SUMMARY OF FEES AND EXPENSES

File No. REG-2023-00010

ITEMS	**COST**
1. **Consumer Watchdog's Fees**	
(Detailed in billing records attached as Exhibit 1a to Pressley Decl.)	
Harvey Rosenfield @ $695 per hour, 73.6 hours	$51,152.00
Pamela Pressley @ $595 per hour, 114.4 hours	$68,068.00
Ryan Mellino @ $250 per hour, 50.6 hours	$12,650.00
Ben Armstrong @ $425 per hour, 70.5 hours	$29,962.50
Carmen Balber @ $320 per hour, 152.8 hours	$48,896.00
Kaitlyn Gentile @ $200 per hour, 35.4 hours	$7,080.00
Subtotal of Consumer Watchdog's Fees	**$217,808.50**
2. **Expert Witness Fees – AIS Risk Consultants, Inc.**	
(Detailed in Exh. 8 to Schwartz Decl.)	
Allan I. Schwartz @ $985 per hour, 14.5 hours	$14,282.50
Subtotal of AIS Risk Consultants, Inc. Fees	**$14,282.50**
TOTAL ADVOCACY FEES AND WITNESS FEES:	**$232,091.00**

EXHIBIT B

Harvey Rosenfield, SBN 123082
Pamela Pressley, SBN 180362
Ryan Mellino, SBN 342497
CONSUMER WATCHDOG
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Attorneys for Consumer Watchdog

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Rulemaking Hearing re: Catastrophe Modeling and Ratemaking.	File No.: REG-2023-00010 **CONSUMER WATCHDOG'S PETITION TO PARTICIPATE AND NOTICE OF INTENT TO SEEK COMPENSATION** [Ins. Code §1861.10; Cal. Code Regs, tit. 10, §§ 2661.4]

Consumer Watchdog hereby submits this petition to participate in the above-referenced rulemaking proceeding before the California Department of Insurance ("CDI") and gives notice that it intends to seek compensation for its participation. This petition is based on the facts as set forth herein and the accompanying verification of Pamela Pressley. Consumer Watchdog intends to seek compensation in this proceeding, and, pursuant to California Code of Regulations, title 10 ("10 CCR"), section 2661.3, subdivision (c), Consumer Watchdog's proposed budget is attached hereto as Exhibit A.

I. PETITIONER

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

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

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

[1] For example, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243; *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473; *Spanish Speaking Citizens' Found. v. Low* (2000) 85 Cal.App.4th 1179; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968; *State Farm Mut. Auto. Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029; *The Found. for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354; *Ass'n of Cal. Ins. Cos. v. Poizner*

4. Consumer Watchdog has initiated and intervened in numerous proceedings before the CDI related to the implementation and enforcement of Proposition 103's reforms, including over 150 rate and rulemaking proceedings in the last twenty years. In every proceeding that has resulted in a final decision and in which Consumer Watchdog sought and was awarded compensation, the Commissioner found that Consumer Watchdog made a substantial contribution, meaning that it presented relevant issues, evidence and arguments that resulted in more credible, non-frivolous information being available to the Commissioner in making his final decision.

II. ELIGIBILITY TO SEEK COMPENSATION

5. The Commissioner issued Consumer Watchdog's latest Finding of Eligibility on August 2, 2024, effective in proceedings commenced within two years of July 12, 2024. Consumer Watchdog was previously found eligible to seek compensation on July 26, 2022, effective as of July 12, 2022; August 25, 2020, effective as of July 12, 2020; July 12, 2018; July 14, 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. Consumer Watchdog is eligible to seek compensation in this rulemaking proceeding, which commenced within two years of its 2022 Finding of Eligibility and is ongoing.

III. INTEREST OF PETITIONER IN REG-2023-00010

6. Consumer Watchdog's interest in the above-captioned proceeding is to ensure that the regulations adopted by the Commissioner are consistent with Prop 103's statutory requirements and underlying goals. Specifically, Consumer Watchdog participation is aimed at ensuring that homeowners policyholders are charged rates and premiums that comply with Insurance Code section 1861.05(a)'s requirement that "no rate shall be approved or remain in effect which is excessive, inadequate, [or] unfairly discriminatory or otherwise in violation of this chapter," and that any adopted regulations are also consistent with Prop 103's "ultimate goal[, which] is the guaranty that 'insurance is fair, available, and affordable for all Californians.'" (*20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 300.) For many homeowners, their home is their most valuable asset, and they are required to purchase

(2009) 180 Cal.App.4th 1029; *Mercury Cas. Co. v. Jones* (2017) 8 Cal.App.5th 561; *Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th 82; and *State Farm General Ins. Co. v. Lara* (2021) 71 Cal.App.5th 197.

homeowners insurance by their mortgage lenders. Consumers who are overcharged by insurers for this insurance coverage and who have been denied homeowners coverage or nonrenewed are part of Consumer Watchdog's core constituency. Consumer Watchdog also has an interest in ensuring that all information provided to the commissioner in support of rate applications, including catastrophe models used to project losses and determine rates, premiums, and eligibility, are made publicly available as required by Insurance Code section 1861.07.

7. Consumer Watchdog's staff and consultants have substantial experience and expertise in representing the interests of consumers in insurance rate matters, as well as advocating for consumer interests in other insurance rulemaking proceedings, and as such, Consumer Watchdog believes its participation and comments on the draft regulations will provide a distinct perspective to aid the Commissioner in making his ultimate decision.

IV. POSITION OF PETITIONER ON SPECIFIC ISSUES

8. Climate-driven weather events have undoubtedly increased, and models used in the right way can help insurance companies better gauge changing climate risk. Yet models are notoriously inaccurate, inconsistent, and contain biases that threaten to restore redlining and other notorious discriminatory practices. Catastrophe models will simply be tools for insurance companies to charge more unless the Commissioner mandates transparency into how they impact prices, imposes rules of the road requiring review and approval of their design and use, and requires that insurance companies use them to provide consumers and communities with actionable information about their own climate risk. A public model—that is testable and fully open to public scrutiny—would best serve these goals.

9. The proposed catastrophe modeling regulations are instead designed to facilitate the use of black box models by giving in to the demands of the private modeling companies to keep their products secret. The proposed regulations set up an NDA-protected pseudo review of models that will not enable regulators or the public to confirm insurance companies' use of models is pricing insurance fairly. The regulation does not comply with the insurance consumer protections mandated by the voters in Proposition 103: Public review and justification of everything that goes into an insurance company's prices. Unaccountably higher premiums will be the result.

10. A stated goal of the proposed regulations is for insurance companies to increase

sales of homeowners insurance in "distressed areas." Yet, as drafted the proposed regulations do not require the sale of policies with comprehensive coverage; would not require insurance companies to charge a price that consumers are able to afford; and contain so many loopholes that insurance companies' "commitment" to sell insurance in distressed areas can be waived for any insurer that claims it cannot, or later opts not to, meet it. But when insurance companies fail to expand coverage, they will still get to keep the double-digit price hikes that will result from allowing them to use unverifiable secret algorithms to set prices.

11. Consumer Watchdog's position, as further discussed in its written comments and oral comments submitted to the Department in conjunction with four workshops and the rulemaking hearing held to date, is that the proposed regulations to allow catastrophe modeling in exchange for insurers' commitments to sell in distressed areas must be amended to include robust consumer protections that would:

- Be fully transparent in accordance with Proposition 103's requirement for public disclosure of catastrophe models;
- Mandate a substantive review and approval of models;
- Identify uniform standards against which a model's reliability and its rate impact will be evaluated;
- Enable regulators and the public to access a model to test both its design and its impact on a specific insurance company's rate;
- Require all companies to disclose the same information for consistent results;
- Require diverse and independent academic and scientific input; and
- Preserve participants' due process rights.

V. AUTHORITY FOR PETITION TO PARTICIPATE

12. The authority for this petition is Insurance Code section 1861.10, subdivision (a), which grants "any person" the right to initiate or intervene in a proceeding permitted or established by Proposition 103 and the right to enforce Proposition 103. Specifically, as stated above, Consumer Watchdog seeks to participate in this rulemaking proceeding to advocate for clear and strong regulations

that will implement and enforce Insurance Code sections 1861.05(a) and 1861.07, and 10 CCR § 2632.1 et seq.

13. This petition is also authorized by 10 CCR §§ 2661.2 and 2661.4.

VI. PARTICIPATION OF CONSUMER WATCHDOG

14. Consumer Watchdog verifies, in accordance with 10 CCR § 2661.3(b), that it has attended, participated, and submitted comments in connection with all workshops and the rulemaking hearing held to date, including the July 2023, September 2023, April 2024, and June 2024 workshops, and the September 17, 2024 rulemaking hearing, and will be able to attend and participate in the remainder of this rulemaking proceeding without delaying this proceeding or any other proceedings before the Insurance Commissioner.

VII. INTENT TO SEEK COMPENSATION

15. Consumer Watchdog intends to seek compensation in this proceeding. Pursuant to 10 CCR § 2661.3(c), Consumer Watchdog's estimated budget is attached as Exhibit A. Consumer Watchdog based its estimated budget on several factors, including: (1) the technical and legal expertise needed to address the legal, actuarial, and policy issues raised by the CDI's requests for public comment on questions and issues raised in connection with the 2023 workshops and the three separate sets of proposed regulations noticed in conjunction with the subsequent 2024 workshops and rulemaking hearing; (2) its current best estimate of the time needed to participate effectively in this proceeding, taking into account the time already expended by Consumer Watchdog staff in participating in and preparing and submitting oral and written comments in the four separate workshops and the rulemaking hearing and an estimate of time needed to complete remaining tasks in this ongoing proceeding through completion of a request for compensation; and (3) past experience in similar rulemaking proceedings before the CDI. The attorney, paralegal, executive director, and staff and consulting actuaries' hourly rates contained in the attached budget do not exceed market rates as defined by 10 CCR § 2661.1(c).[2]

[2] 10 CCR § 2661.1(c) defines "market rates" 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* for attorney advocates, non-attorney advocates, or experts with similar experience, skill and ability." (Emphasis added.) Attached as Exhibit B and Exhibit C are the two most recent Decisions Awarding Compensation by Commissioner Lara to Consumer Watchdog in 2023 in

The estimated budget is reasonable, and the staffing level and division of labor is appropriate, given the expertise that Consumer Watchdog brings to this proceeding when the issues involved are issues at the very core of its organizational mission and strike at the very heart of Proposition 103 itself.

16. The budget presented in the attached Exhibit A is a preliminary estimate, and Consumer Watchdog reserves the right to amend its proposed budget as its expenses become more certain, or in its final request for compensation. Consumer Watchdog affirms that it will file an amended budget as soon as possible when it learns that its total estimated budget amount increases by $10,000 or more, in accordance with 10 CCR § 2661.3(d).

WHEREFORE, Consumer Watchdog respectfully requests that the Insurance Commissioner GRANT its petition to participate.

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rate proceedings, which found that the *same* 2024 rates used in the estimated budget set forth in Exhibit A for its attorneys and paralegal, Mr. Rosenfield, Ms. Pressley, Mr. Mellino, and Ms. Gentile, were reasonable and did not exceed market rates in the private market in Los Angeles and the San Francisco Bay Area. Those decisions also found Consumer Watchdog's consulting actuary Allan I. Schwartz's 2023 hourly rate was reasonable and did not exceed market rates. (Exh. B [Decision Awarding Compensation, July 12, 2023, *In the Matter of the Rate Applications of Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company*, File No. PA-2022-00007], pp. 9–11, 15; Exh. C [Decision Awarding Compensation, Nov. 8, 2023, *In the Matter of the Rate Application of CSAA Insurance Exchange*, File No. PA-2023-00004], pp. 4–7, 10.) Consumer Watchdog will submit a declaration from Mr. Schwartz supporting his 2024 hourly rate when it submits any request for compensation in this matter. Mr. Armstrong is Consumer Watchdog's staff actuary with over 12 years of professional actuarial experience who joined staff in May 2023. His $425 hourly rate in the estimated budget in Exhibit A is comparable to the $415 market rate found reasonable by the Commissioner in the Decisions attached as Exhibits B and C for one of Mr. Schwartz's former associates who does not have the additional Fellow Casualty Actuarial Society designation that Mr. Armstrong does. Since this is a preliminary estimated budget, and section 2661.1(c) defines "market rate" as the prevailing market rates at the time of the Commissioner's compensation award, Consumer Watchdog intends to submit further support for its attorneys' and actuaries' market rates at the time it submits any request for compensation.

DATED: September 27, 2024

Respectfully submitted,

Harvey Rosenfield
Pamela Pressley
Ryan Mellino
CONSUMER WATCHDOG

By: 

Pamela Pressley
Attorneys for CONSUMER WATCHDOG

VERIFICATION OF PAMELA PRESSLEY IN SUPPORT OF CONSUMER WATCHDOG'S PETITION TO PARTICIPATE AND NOTICE OF INTENT TO SEEK COMPENSATION

I, Pamela Pressley, verify:

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

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

3. Pursuant to California Code of Regulations, title 10, section 2661.3, subdivision (c), Consumer Watchdog attaches as Exhibit A its estimated budget in this proceeding. I affirm that the hourly rates in the estimated budget do not exceed market rates.

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

Executed on September 27, 2024 at Los Angeles, California.

Pamela Pressley

Pamela Pressley

EXHIBIT A

EXHIBIT A

PRELIMINARY BUDGET

REG-2023-00010

ITEMS **ESTIMATED COST**

1. Consumer Watchdog Attorneys/Paralegal

Pamela Pressley (Senior Staff Attorney) @ $595 per hour, 110 hours $65,450

- Review draft and edit petition to participate; draft and edit Consumer Watchdog comments on CDI's proposed regulation text in connection with multiple workshops and the rulemaking hearing, particularly with a focus on the legal issues relating to compliance with Prop 103; perform factual and legal research in connection with issues raised by proposed regulations; review and edit draft request for compensation, declaration in support.

Harvey Rosenfield (Of Counsel) @ $695 per hour, 110 hours $76,450

- Research issues for discussion at workshops and attend same; communicate with actuarial experts regarding comments on proposed regulations; review and edit draft comments; participate in discussions on Consumer Watchdog's positions on the proposed regulations, particularly as they relate to compliance with Prop 103.

Ryan Mellino (Staff Attorney) @ $250 per hour, 80 hours.....$20,000

- Edit petition to participate; draft and edit Consumer Watchdog comments on CDI's proposed regulation text in connection with the PRID process; perform factual and legal research in connection with issues raised by proposed regulations; review and edit draft request for compensation, declaration in support.

Ben Armstrong (Staff Actuary) @ $425 per hour, 75 hours $31,875

- Review and evaluate proposed regulations from actuarial perspective; communicate with legal team concerning actuarial issues with regulations.

Carmen Balber (Executive Director) @ $320 per hour, 200 hours $64,000

- Draft and edit testimony; testify at workshop hearings and rulemaking hearing.

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

- Draft and edit petition to participate, edit draft comments, proposed amendments to regulation text; draft request for compensation.

Consumer Watchdog Subtotal $262,775

2. Expert Witness: AIS Risk Consultants, Inc.

Allan I. Schwartz, President of AIS Risk Consultants @ $955 per hour, 90 hours $85,950

- Consult with Consumer Watchdog advocates on questions and issues raised by CDI on cat models for submission of comments at July and September 2023 workshops; consult with Consumer

Watchdog advocates concerning actuarial issues with proposed regulations; prepare written comments on proposed regulations for April 2024 workshop and September 2024 rulemaking hearing.	
AIS Risk Consultants, Inc. Subtotal	$89,950
TOTAL ESTIMATED BUDGET:	$348,725

EXHIBIT B

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Requests for Compensation of **CONSUMER WATCHDOG,** Intervenor.	FILE NO. RFC-2023-006 *In the Matter of the Rate Application of Farmers Exchange, Fore Insurance, and Mid-Century Insurance Company* *PA-2022-00007*

DECISION AWARDING COMPENSATION

In this Request for Compensation (RFC) Consumer Watchdog (CW or Petitioner) seeks $82,814.50 in compensation for its intervention in a Rate Application (RA) filed by Farmers Exchange, Fore Insurance, and Mid-Century Insurance Company (Farmers or Applicant). The RA sought a 24.9 percent increase in its homeowners multiple peril insurance line of insurance, but was ultimately resolved by a stipulation, granting Farmers a 17.7% increase. Farmers did not oppose CW's Request for Compensation arising therefrom. For the reasons explained below, the Request for Compensation is GRANTED.

FINDINGS OF FACT

Farmers' Rate Application

On June 15, 2022, Farmers filed a Rate Application with the Department of Insurance (Department) seeking a 24.9 percent increase in its homeowners' multiple peril insurance line.[1]

[1] RFC, p. 3.

The Department assigned the RA to Darjen Kuo for investigation.[2] On July 8, 2022, Farmers' RA was made public.[3] Several events occurred on August 22, 2022. The Department requested that Applicant waive the deemer period,[4] Applicant responded by waiving both the 60-day and the 180-day deemer periods,[5] and CW filed a Petition for Hearing, Petition to Intervene, and Notice of Intent to Seek Compensation (collectively, "Petition").[6]

In its Petition, CW raised a number of concerns, which may be briefly described as Farmers': (a) failure to demonstrate that its proposal to non-renew 10,000 policies will not create excessive and/or unfairly discriminatory rates;[7] (b) use of only one model for Fire Following Earthquake (FFEQ);[8] (c) use of quarterly rather than annual paid loss development;[9] (d) failure to demonstrate that the use of incurred rather than paid loss development is the most actuarially sound method;[10] (e) failure to demonstrate that the selected trend factors and trend data period used were the most actuarially sound, and how the non-renewal of policies would likely impact the trend;[11] (f) failure to demonstrate that all institutional advertising expenses were accounted for;[12] (g) failure to justify for the loss trend factors proposed in the Variance 7B request;[13] (h) failure to justify the loss trend factors proposed in the variance 8B request;[14] and (i)

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[2] Rate Applications may be found online at https://interactive.web.insurance.ca.gov/apex_extprd/f?p=186:1:13936543914997. An administrative agency may take official notice of its own records, (See Evid. Code, § 452, subd. (d).) Official Notice is hereby taken of the Rate Application number 22-1617, as well as the related Rate Applications numbered 22-1617-A, and 22-1617-B. Citations in this decision to a Rate Application ("RA") utilize the State Tracking number. Although Rate Applications do not contain continuous internal pagination, page numbers are referenced according to their order of appearance in the .pdf.
[3] RFC, p. 3.
[4] RA #22-1617, p. 17.
[5] RA #22-1617, p. 38.
[6] Exh. 3, attached to Powell Decl., RFC, p. 4.
[7] Petition, ¶ 8.a.
[8] Petition, ¶ 8.b.
[9] Petition, ¶ 8.c.
[10] Petition, ¶ 8.d.
[11] Petition, ¶ 8.e.
[12] Petition, ¶ 8.f.
[13] Petition, ¶ 8.g.
[14] Petition, ¶ 8.h.

failure to comply with filing instructions and submission of exhibits in searchable Excel and PDF format.[15]

On September 6, 2022, the Commissioner granted CW's Petition to Intervene.[16] The Commissioner found that CW complied with the procedural requirements in the Insurance Regulations, and that the issues it sought to address were relevant to the ratemaking process.[17] The decision withheld a ruling on the Petition for Hearing.[18]

On October 4, 2022, the Department issued an Objection Letter asking Farmers to respond to eight concerns. In brief, the concerns raised by the Department seek the following information: (1) how the decision to non-renew 10,000 policies due to wildfire risk will affect the proposed rate and premium; (2) a justification for the use of only one model to calculate FFEQ; (3) a justification for the use of quarterly time rather than annual in calculating catastrophe adjustment; (4) an explanation for why using incurred losses to develop ultimate losses is the most actuarially sound selection; (5) a justification for the use of 12-point for premium trends and 12-point with closed Frequency and Total Paid Severity; (6) a standard exhibit 7 for Smart Plan Home data only; (7) given annual losses and exposures, a correction to the assigned 0% credibility for Smart Plan Home's experiences in calculating the loss trends and loss development factors; and (8) the resubmission of multiple exhibits in Excel and PDF formats according to specifications.[19] Six of the eight Objections raised by the Department had already been raised or partially raised by CW in its August 22 Petition.

On October 11, 2022, Farmers responded to the Department's inquiries by resubmitting

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[15] Petition, ¶ 8.i.
[16] RFC, p. 6.
[17] Exh. 4, attached to Powell Decl.
[18] *Ibid.*
[19] RA #22-1617, p. 16.

exhibits in Excel and PDF formats.[20] In its response, Farmers rescinded the non-renewal plan and declared that it was not moving forward with any "wildfires non-renewals."[21] In explanation for its use of only one model to calculate FFEQ, Farmers argued that use of only one model was the commonly accepted practice among its competitors. It referenced other rate applications by various competitors where only one model was used and argued that the RMS model complies with "actuarial statutory standards."[22] Farmers' explanation for calculating quarterly, rather than annual, catastrophe ratios, was because the main contributor to catastrophe losses in California—wildfires—occur more frequently in the 4th quarter of the fiscal year. According to Farmers, "this causes the total to [*sic*] non-CAT factor to be inflated in years experiencing extreme Q4 event[s] and extraordinary CAT losses," as was the case in years 2003, 2007, 2018, and 2020.[23] To explain its use of incurred losses, Farmers argued that, paid losses are driven by smaller damage claims, while incurred losses more accurately reflect rising inflation and other repair costs and ALE expenses.[24] As explanation for its use of 12-point, rather than 20-point, loss experience, Farmers explained that the shorter period gave greater weight to the pandemic and recent inflation, which it believed would be more suited to prospective rate making.[25] In response to the Department's request for a standard Exhibit 7 for Smart Plan Home data only, Farmers provided it in an electronic attachment.[26] Farmers did not provide corrected loss trends and loss development factors in response to the Department's concerns about its use of 0% credibility for Smart Plan Home's experiences. It did, however, provide a reasoned explanation for its failure to do so. Essentially, Farmers stated its willingness to make the requested changes,

[20] RA #22-1617, p. 33; see also Exh. C, attached to Powell Decl.
[21] Exh. C, attached to Powell Decl.
[22] *Ibid.*
[23] *Ibid.*
[24] *Ibid.*
[25] *Ibid.*
[26] *Ibid.*

as soon as sufficient data became available.[27] Finally, Farmers provided Excel files for each exhibit requested by the Department.[28]

On November 21, 2022, CW made a request for information, seeking the following additional information from Farmers: (1) A new table showing competitors' filings where more than one model was used for FFEQ; (2) support for Applicant's claim that inflation has caused longer cycle time on repairs, higher lumber costs, higher material costs, and increasing ALE expenses, and support for the claim that paid losses are driven by smaller damage claims; (3) a complete description and explanation of the impact from the pandemic on California homeowners insurance costs; (4) a basis for the claim that the response to Item 5 was the most actuarially sound choice for frequency and severity analysis; (5) an annual distribution of modeled losses used to obtain the expected average annual losses for the RMS FFEQ model results; (6) which portion of the AAL is attributable to the use of Loss Amplification factors in the RMS FFEQ model results; (7) any analyses performed showing the underwriting and operating results of the Applicants for Homeowners Insurance in California covering 2019 to the present; (8) a description of any changes in operations related to California homeowners insurance that has occurred from 2019 to the present, as well as any such changes anticipated for the future; and (9) a list of the actions taken or expected to be taken by Farmers regarding homeowners insurance in California.[29]

On November 18, 2022, the Department issued an Objection Letter in which it asserted that Farmers, through subsidiaries, was applying the Supergroup Exemption and Multi-policy Discount at the same time.[30] To correct for this error, the Department ordered Farmers to revise

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[27] *Ibid.*
[28] *Ibid.*
[29] Powell Decl., ¶ 42; Exh. D, attached to RFC.
[30] RA # 22-1617, p. 15.

its manuals to indicate which companies the multi-policy discounts could be applied to. On November 23, 2022 Farmers responded to the Department's Objections by disputing the Department's apparent contention that the Super Group Exemption applies to all Farmers programs, including Homeowners programs.

On November 26, 2022. the Department issued an Objection Letter, demanding that Farmers provide premiums, losses, and loss ratios information for each peril in Excel format to justify the proposed base rate change by peril, for each policy form.

On November 28, 2022, Farmers responded to the November 26 Objection Letter, stating, "Current base rates used to develop proposed base rates already reflect the latest loss experience by peril; therefore, no further adjustments at the peril level were needed and applied in this filing. As a result, base rates were revised uniformly for each peril to achieve overall rate proposal for each form." In short, Farmers made no changes to its Application, and provided no additional documents.

On December 6, 2022, the Department issued an Objection Letter following up on Farmers' October 11 response. In particular, the Department sought further explanation for: (1) why incurred ultimate loss is the most actuarially sound selection, given that there had been a drastic increase of Average Case Reserve on Open Claims for each of the perils in the three most recent accident years; (2) "why the closed frequencies for 'All Other' peril are so high ranging from 17.9% to 76.98% for Smart Plan Renter, and from 3.9% to 32.92% for Next Generation form. What perils are included in 'All Other' Peril?"; (3) proof that all institutional advertising expenses had been reflected in the excluded expense provision.[31]

On December 7, 2022, Farmers provided a response to CW's November 21 inquiry. In brief, Farmers responded: (1) with a list of other companies using a single model to develop

[31] RA #22-1617, p.12.

FFEQ losses, and a list of their SERFF filing numbers; (2) documentation supporting trends toward higher prices for lumber and other repair materials, as well as shortages in those materials resulting in smaller damage claims dominating paid losses, making accurate future predictions more difficult; (3) supply chain issues, increased cost of goods, and a strong demand for building materials in the California market have increased materials costs, as well as putting pressure on labor costs; (4) the basis for this claim is that this approach provides the closest match in terms of timing of when a claim is counted as fully paid and the total dollar amount associated with that claim; (5) Farmers identified the exhibit that shows annual aggregate losses by policy form for various return periods underlying the expected average annual losses; (6) Farmers provided a graph with breakdown of the percentage of total AAL attributable to the demand surge for each policy form; (7) Farmers provided a table showing the results for its most recent five year history; (8) a statement affirming that there have been no significant changes in operations since 2019, and no future changes are planned; and (9) a statement affirming that all major actions have been filed with the Department, with a supporting list of filings/tracking numbers.

On January 19, 2023, the parties participated in a teleconference.[32] In late January and early February 2023, CW and Farmers engaged in a series of communications both seeking and providing additional information and explanation regarding the Rate Application.[33]

On January 31, 2023, CW made two Requests for Information. It sought a list of payments to affiliates for the period 2019-2021, with supporting documentation, and requested a discussion of the loss reserving methods used to derive the values for homeowners insurance reserves contained in the Annual and Quarterly financial statements submitted to the

[32] Powell Decl., ¶ 44.
[33] Powell Decl., ¶ 45; Exh. F, attached to Powell Decl.

Department.[34] On February 1, 2023, Farmers partially responded to the January 31 request for information, but also disputed, to some degree, CW's asserted need for the information.[35] CW provided a justification for the requested information on February 3, 2023, followed by its actuarial analysis of the Rate Application on February 6.[36] On February 8, the parties participated in another teleconference, which resulted in Farmers providing additional information regarding its trend selections, loss development method, and management fees.[37] On February 9, 2023, CW sought more data directly arising from the February 8 response by Farmers.[38] Farmers provided the data the same day.[39]

On March 10, 2023, the parties reached a Settlement Stipulation.[40] In it, the parties agreed that a 17.7 percent increase was "supportable" and should be implemented with an effective date of June 17, 2023.[41] In return, CW agreed to withdraw its Petition for Hearing upon the Commissioner's approval of the Settlement Agreement.[42]

On March 14, 2023, the Commissioner gave his approval of the Settlement Stipulation and, accordingly, CW withdrew its Petition for Hearing, effective March 24, 2023.[43]

This Request for Compensation was filed on April 11, 2023. In total, CW seeks $42,425.50 in fees for its employees' time, and $40,389 in expert witness fees.[44]

CW's Request for Compensation

CW is a non-profit, public interest organization that conducts its education and advocacy

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[34] Powell Decl., ¶ 45.
[35] Powell Decl., ¶46; Exh. G, attached to RFC.
[36] Powell Decl., ¶ 47, Exh. H, attached to RFC.
[37] RFC, p. 8.
[38] RFC, pp. 8-9.
[39] RFC, p. 9; Exh. K, attached to RFC.
[40] Exh. 5, attached to Powell Decl.
[41] *Ibid.*
[42] *Ibid.*
[43] Exh. 6, attached to Powell Decl.
[44] Exh. A, attached to RFC.

efforts as a public interest service.[45] As a result of its intervention in Farmers' RA, CW's attorneys and paralegal incurred 80.6 hours of labor in the proceeding.[46] Attached to Benjamin Powell's Declaration as Exhibit 1.a. are detailed billing records for CW's attorneys Pamela Pressley, Harvey Rosenfield, and Benjamin Powell, as well as for CW Paralegal, Kaitlyn Gentile.[47]

In total, Pressley performed 51.6 hours of work on this matter, for which she billed $595 per hour.[48] Pressley has over 26 years' experience as a consumer advocate.[49] In that role, she has litigated a number of matters of first impression involving the implementation and enforcement of Proposition 103.[50] She has also participated in a number of rulemaking proceedings involving implementation of Proposition 103's rating factor requirements.[51] Pressley's hourly rate is within the range of rates charged by similarly-qualified attorneys in the Los Angeles area.[52]

CW's attorney Benjamin Powell performed 15.4 hours of work on this matter, at an hourly rate of $350.[53] Powell began working at CW before he was admitted to the California State Bar in 2016. His employment at CW has included work on civil litigation maters as well as on matters relating to Proposition 103.[54] Powell's hourly rate of $350 is within the range of rates charged by similarly-qualified attorneys in Los Angeles and the San Francisco Bay Area.[55]

CW's attorney Harvey Rosenfield is an attorney with over 40 years of experience in

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[45] Powell Decl., ¶ 4.
[46] Powell Decl., ¶ 6.
[47] Exh. 1.a., attached to Powell Decl.
[48] *Ibid.*
[49] Powell Decl., ¶ 13.
[50] *Ibid.*
[51] *Ibid.*
[52] Exh. 2, attached to Powell Decl.
[53] Exh. 1.a., attached to Powell Decl.
[54] Powell Decl., ¶ 16.
[55] Powell Decl., ¶ 19; Exh. 2, attached to Powell Decl.

insurance regulatory and litigation matters.[56] He is the founder of CW and author to Proposition 103. As such, he has participated in numerous lawsuits involving the interpretation an enforcement of Proposition 103.[57] He has also participated in numerous rulemaking proceedings implementing Proposition 103.[58] Rosenfield spent 7.3 hours working on this matter, for which he billed his hourly rate of $695.[59] Rosenfield's hourly rate is within the range of hourly rates charged by similarly-qualified attorneys in Los Angeles and the San Francisco Bay Area.[60]

Finally, CW's paralegal, Kaitlyn Gentile, has over 14 years of professional experience.[61] Gentile worked 6.3 hours on this matter, for which she billed $200 per hour.[62] Gentile's hourly rate is within the range of hourly rates charged by paralegals in Los Angeles and the San Francisco Bay Area.[63]

In addition to seeking fees for work performed by its own staff, CW seeks fees for 56.6 hours performed by its expert witnesses, AIS Risk Consultants, in the amount of $40,389.[64] Allan I. Schwarz is an actuary with over 40 year of consulting actuarial experience.[65] He performed 34.3 hours of work on this matter at his rate of $915 per hour. Data regarding consulting actuarial rates are typically not made public.[66] However, Schwarz's prior approved rates are known. For example, in 2021 and 2022, Schwarz's hourly rate was $835 and $870, respectively.[67] In a 2023 request for compensation, Schwarz's hourly rate of $870 was deemed

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[56] Powell Decl., ¶ 9.
[57] *Ibid.*
[58] Powell Decl., ¶ 10.
[59] Powell Decl., p. 19.
[60] Exh. 2, attached to Powell Decl.
[61] Powell Decl., ¶ 20.
[62] Powell Decl., p. 19.
[63] Exh. 2, attached to Powell Decl.
[64] Exh. 8, attached to Schwarz Decl.
[65] Schwarz Decl., ¶ 1.
[66] Schwarz Decl., ¶ 2.
[67] Schwarz Decl., ¶¶ 2-3.

reasonable for work performed in 2022.[68] His current rate of $915 represents a 5.2% increase over his 2022 billing rate. This increase is lower than the rate of inflation in the U.S. for the same period.[69]

Katherine Tollar is an Actuarial Assistant with over 30 years of professional experience.[70] Tollar worked for 17.3 hours on this matter, for which she billed $415 per hour.[71]

Marianne Dwyer is an Actuarial Assistant with over 30 years of professional experience.[72] She spent 5 hours on this matter, for which she billed $365 per hour.[73]

DISCUSSION

I. Prior Approval Framework and Public Participation

The 1988 approval of Proposition 103 by California's voters added Article 10, "Reduction and Control of Insurance Rates" to Division 1, Part 2, Chapter 9 of the Insurance Code. Proposition 103 establishes a system of "prior approval" for changes to insurance rates in automobile, home, and other property-casualty policies.[74] The application for rate change and any hearings arising therefrom are subject to public notice and scrutiny.[75] Thus, as of November 8, 1989, "insurance rates . . . must be approved by the Commissioner prior to their use."[76]

Insurance Code section 1861.05(a) prohibits the Commissioner from approving any rate that is "excessive, inadequate, unfairly discriminatory, or otherwise in violation of this chapter," or from allowing such rates to remain in effect. The primary consideration in the

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[68] Schwarz Decl., ¶ 8.
[69] Schwarz Decl., fn. 5.
[70] Exh. 6, attached to Schwarz Decl.
[71] Exh. 8, attached to Schwarz Decl.
[72] Exh. 7, attached to Schwarz Decl.
[73] Exh. 8, attached to Schwarz Decl.
[74] Cal. Code Regs., tit. 10, § 1861.05, subd. (b).
[75] Cal. Code Regs., tit. 10, § 1861.05, subd. (c), and §§ 1861.06 – 1861.07.
[76] Cal. Code Regs., tit. 10, § 1861.01, subd. (c).

Commissioner's determination must be "whether the rate mathematically reflects the insurance company's investment income."[77]

In order to encourage consumer participation, Section 1861.10 of the Insurance Code authorizes any person to initiate a proceeding to enforce any provision of Proposition 103.[78] To that end, the Commissioner has promulgated regulations setting forth the substantive and procedural requirements for those seeking compensation under the code.[79] Given the statute's purpose to encourage public participation, the regulations should be liberally construed in favor of compensation.[80] The statute and regulations set forth both procedural and substantive requirements for an award of compensation.

Intervenors who represent the interests of consumers and make a substantial contribution to the adoption of any order, regulation, or decision by the Commissioner are to be compensated for reasonable advocacy and witness fees.[81]

A. CW Met the Procedural Prerequisites to Compensation for Public Participation

Before an intervenor may file a request for compensation, they must first obtain a finding from the Commissioner's Public Advisor that they are eligible to seek compensation—i.e., that they represent the interests of the consumer.[82] An intervenor is found to represent the interests of the consumer if it represents the interests of individual insurance consumer(s), or the intervenor is a group organized for the purpose of consumer protection as demonstrated by, but is not limited to, a history of representing consumers in administrative, legislative or judicial

[77] Ins. Code, § 1861.05, subd. (a).
[78] Ins. Code, § 1861.10, and *State Farm Insurance Co. v. Lara* (2021) 71 Cal.App.5th 197
[79] Cal. Code Regs., tit. 10, §§ 2661.3 – 2661.4.
[80] *State Farm Insurance Co. v. Lara, supra,* 71 Cal.App.5th 197.
[81] Ins. Code, § 1861.10, and Cal. Code Regs., tit. 10, § 2662.5.
[82] Cal. Code Regs., tit. 10, § 2662.3.

proceedings.[83]

Once granted, a Finding of Eligibility to Seek Compensation is valid in any proceeding in which the intervenor's participation commences within two years of the finding of eligibility, provided the intervenor still meets all the requirements in the initial request.[84]

In addition to establishing that it represents the interests of the consumer the intervenor must also submit a request for an award of compensation within 30 days after the Commissioner's decision or action in the proceeding for which intervention was sought, or within 30 days after conclusion of the entire proceeding.[85] A "proceeding" is any action conducted pursuant to Proposition 103, including a proceeding other than a rate proceeding.[86]

Failing to comply with the procedural as well as substantive requirements may be fatal to a Request for Compensation. For example, where the Commissioner failed to grant permission to intervene in a particular matter, a later request for compensation by the putative intervenor was denied.[87]

1. CW Represents the Interests of Consumers

On July 26, 2022, the Commissioner issued CW its most recent Finding of Eligibility, effective for two years from July 12, 2022.[88] The Commissioner's finding of eligibility to seek compensation under Insurance Regulation 2662.2 is conclusive on this matter.

2. CW Made a Timely Request for Compensation

CW filed the present RFC on April 11, 2023, less than 30 days from the Commissioner's March 14 approval of the Settlement Stipulation. Accordingly, CW has made a timely Request

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[83] Cal. Code Regs., tit. 10, § 2661.1, subd. (j).
[84] Cal. Code Regs., tit. 10, § 2662.2
[85] Cal. Code Regs., tit. 10, § 2662.3, subd. (a).
[86] Cal. Code Regs., tit. 10, § 2661.2, subd. (f).
[87] RFC-2021-002.
[88] RFC, p. 2, fn. 3.

for Compensation, per Insurance Regulation section 2662.3, subdivision (a).

B. CW Met the Substantive Requirements for Compensation

Once the intervenor has established that it is eligible to seek compensation, and has made a timely request for compensation, it must then establish that it has made a "substantial contribution" to the proceedings.

An intervenor's contribution is substantial when, viewed as a whole, their contribution results in more relevant, credible, and non-frivolous information being available than would otherwise have been available to the Commissioner to make a decision.[89] In the context of an application for a rate change, a substantial contribution may be found whether a petition for hearing is granted or denied.[90] Moreover, the intervenor need not be a prevailing party in order to be deemed to have made a substantial contribution.[91]

1. CW Made a Substantial Contribution to the Commissioner's Decision

In its RFC, CW describes its asserted "substantial contribution" as: initiating the proceeding and raising issues through its Petition; identifying issues regarding Farmers' payments of management fees and the proper accounting therefor; eliciting Farmers' responses to its requests for information; teleconferences; and participation discussions leading to the Settlement Stipulation.

Of particular importance to the determination whether CW's contribution was relevant, were the requests for information that prompted Farmers' response thereto. In particular, Farmers' December 7 response to CW's November 21 request for information resulted in more relevant, credible, and non-frivolous information being available to the commissioner.

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[89] Cal. Code Regs., tit. 10, § 2661.1, subd. (k).
[90] *Ibid.*
[91] *State Farm Insurance Co. v. Lara, supra,* 71 Cal.App.5th 197.

Specifically, this data came in the form of lists of other companies utilizing similar models for FFEQ losses, documentation of economic factors affecting damages claims, as well as graphic breakdowns and tables justifying the requested increase. Accordingly, CW has made a substantial contribution to these proceedings.

C. An Intervenor is Entitled to Reasonable Fees and Expenses

Reasonable advocacy and witness fees are determined according to 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.[92] This standard is applied to attorney advocates, non-attorney advocates, and experts with similar experience, skill and ability. Reasonable, actual out of pocket costs may also be compensated.[93] Billing rates shall not exceed the market rate.[94]

The requirement that fees be reasonable preserves the Commissioner's discretion to reduce fees for unnecessary, excessive, or duplicative work.[95] For example, when an intervenor seeks contributions for efforts that were not authorized in the ruling on the Petition to Intervene, and when those efforts duplicate the contribution of another party, the request for compensation may be reduced accordingly.[96] An intervenor may not reopen matters that were decided prior to their petition being granted.[97] The intervenor is required to file a "detailed description of services and expenditures," "legible time and/or billing records," and citations to the record of the proceedings.[98]

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[92] Cal. Code Regs., tit. 10, § 2661.1, subd. (c).
[93] Cal. Code Regs., tit. 10, § 2661.1, subds. (b) and (d).
[94] *Ibid.*
[95] *State Farm Insurance Co. v. Lara, supra*, 71 Cal.App.5th 197.
[96] Cal. Code Regs., tit. 10, § 2662.5, subd. (b).
[97] Cal. Code Regs., tit. 10, § 2661.3, subd. (h).
[98] Cal. Code Regs., tit. 10, § 2662.3, subd. (b).

1. Petitioner's Requested Fees are Reasonable.

CW has provided detailed billing records for the staff and expert witnesses who worked on this matter. Moreover, it has established through the Declarations of Richard M. Pearl and Allan I. Schwarz that the hourly rates charged by its staff and expert witnesses were reasonable and/or comparable to services in the private sector in the Los Angeles and San Francisco Bay Area at the time they were incurred. Accordingly, CW's fees are reasonable.

CONCLUSIONS

CW is entitled to advocacy and witness fees in the amount of $82,814.50 for its substantial contribution to the *Matter of the Rate Application of Farmers Exchange, Fore Insurance, and Mid-Century Insurance Company*, PA-2022-00007. The award shall be paid by Respondent.

ORDER

1. Consumer Watchdog is hereby awarded $82,814.50 in advocacy fees in connection with the *Matter of the Rate Application of Farmers Exchange, Fore Insurance, and Mid-Century Insurance Company*, PA-2022-00007.

2. Respondent shall pay the award no later than thirty (30) days after the date of this Decision and shall notify the Department's Office of the Public Advisor[99] upon making payment.

Date: July 12, 2023

RICARDO LARA
Insurance Commissioner

By: _____
Alicia A. Clement
Administrative Law Judge

[99] Jamie Katz, 1901 Harrison Street, 4th Floor, Oakland, California 94612 or jamie.katz@insurance.ca.gov.

PROOF OF SERVICE

Case Name/Number: In the Matter of the Request for Compensation of
CONSUMER WATCHDOG
File No. **RFC-2023-006**

I, Camille E. Johnson, declare that:

I am employed by the California Department of Insurance, Administrative Hearing Bureau, in the City of Oakland and County of Alameda. I am over the age of eighteen (18) years and not a party to this action. My business address is 1901 Harrison Street, 3rd Floor, Oakland, CA 94612.

I am readily familiar with the business practices of the California Department of Insurance for collecting and processing correspondence for mailing, electronic filing and electronic mail. On July 12, 2023, I served the **DECISION AWARDING COMPENSATION** regarding in the **Matter of the Request for Compensation of CONSUMER WATCHDOG.**

X **(By U.S. Mail)** on those identified parties in said action, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items to be sent by mail, pursuant to Code of Civil Procedure Section 1013.

X **(By Intra-Agency Mail)** on those identified parties in said action, by placing this correspondence in a place designated for collection for delivery by Department of Insurance intra-agency mail.

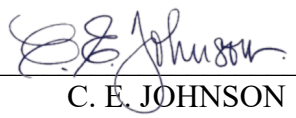
_____ **(By Facsimile transmission)** on those identified parties in said action, by transmitting said document(s) from our office by facsimile machine to facsimile machine number(s) shown below. Following the transmission, I received a "Transmission Report" from our fax machine indicating that the transmission had been transmitted without error.

X **(By Email)** on those identified parties in said action, in accordance with Code of Civil Procedure §1013, by emailing true copies thereof at the address set forth below.

SEE ATTACHED PARTY SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Oakland, California, on July 12, 2023.

July 12, 2023
DATE



C. E. JOHNSON

PARTY SERVICE LIST

Name/Address	Method of Service
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EXHIBIT C

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Requests for Compensation of **CONSUMER WATCHDOG,** Intervenor.	FILE NO. RFC-2023-011 **DECISION AWARDING COMPENSATION** *In the Matter of the Rate Application of CSAA Insurance Exchange* *PA-2023-00004*

INTRODUCTION

Consumer Watchdog ("CW" or Petitioner), files this Request for Compensation (RFC) in the amount of $77,693.50, for its intervention in proceedings initiated by a Rate Application (RA) filed by CSAA Insurance Exchange (CSAA or Applicant). CSAA did not oppose the RFC. Upon consideration of all the facts and evidence in this case, and for the reasons explained below, the Request for Compensation is GRANTED.

FINDINGS OF FACT[1]

On February 1, 2023, CSAA filed a Rate Application[2] with the Department, seeking a 25 percent increase in its Auto Liability and Physical Damage lines. Over the course of the ensuing investigation, the Department issued five objection letters.[3] CSAA responded to each of the Objection Letters in a timely fashion.[4] On April 10, 2023, CW filed a Petition for Hearing, Petition to Intervene, and Notice of Intent to Seek Compensation.[5] In its Request for Hearing, CW provided a non-exhaustive list of issues related to the Rate Application that it intended to explore, along with a list of evidence it intended to produce.[6] On April 14, 2023, CSAA filed an Answer to the Request for Hearing, refuting CW's claims that the RA was actuarially unsound.[7] On April 24, 2023, the Department granted CW's Petition to Intervene.[8] In it, the Department found that CW "has raised and seeks to address issues that are relevant to the ratemaking process."[9]

On May 2, 2023, CW submitted a Request for Information to CSAA that sought responses to 24 separate inquiries.[10]

On May 3, 2023, CSAA submitted a "Response to Consumer Watchdog's Petition to

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[1] All findings of fact in this matter are derived from the Petitioner's filings and attachments, and from the Department's official files. Neither CSAA nor the Department filed a response to the RFC.
[2] Rate applications may be found online at https://interactive.web.insurance.ca.gov/apex_extprd/f?p=186:1:13936543914997. An administrative agency may take official notice of its own records, such as the Rate Application filed with the Department of Insurance on February 1, 2023, and assigned State Tracking Number 23-385. (See Evid. Code, § 452, subd. (d).) Official Notice is hereby taken of the Rate Application number 23-385. Citations in this decision to the Rate Application ("RA") utilize the State Tracking # 23-385. Although the document does not contain continuous internal pagination, page numbers are referenced according to their order of appearance in the .pdf.
[3] RA #23-385, p. 4.
[4] *Ibid.*
[5] Exh. 3 attached to Declaration of Daniel L. Sternberg.
[6] Request for Hearing, ¶ ¶ 7-9.
[7] Answer to Request for Hearing.
[8] Ruling Granting Consumer Watchdog's Petition to Intervene.
[9] Ruling Granting Consumer Watchdog's Petition to Intervene, ¶ 5.
[10] Exh. B, attached to RFC.

Intervene."[11] In its response, CSAA included argument and "a detailed explanation for how [it] derived the selected trends for the four largest coverages...."[12] It also provided excerpts of financial statements from 2020 and 2021 to support its variance for loss development.[13]

On May 4, 2023, CSAA provided an extensive "Response to Consumer Watchdog's Requests for Information." In its point-by-point response to CW's information request, CSAA included, among other things, additional annual statements from 2019 through 2022, additional consolidated annual statements from 2019 through 2022, corrected tables of data (upon discovery of an error), and comparison data between the trends filed in the RA compared against the actuarial reserve report for 2022.[14]

On May 16, 2023, CW submitted a "Second Set of Requests for Information" to CSAA.[15]

On May 17, 2023, CSAA provided a detailed "Response to Consumer Watchdog's Second Set of Requests for Information."[16] In CSAA's response to the second set of information requests, CSAA defined its newly-coined phrase, "*reverse* catastrophe" as "a rare phenomenon (once in a century) that led to *fewer* than expected losses."[17] CSAA also provided additional data justifying its application of annual trends to trend historical losses to 2022 levels.[18]

On May 23, 2023, the parties and the Department participated in the first of two teleconferences.[19]

On June 20, 2023, in advance of a second teleconference scheduled for June 23, CSAA

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[11] Exh. C, attached to RFC.
[12] *Ibid.*
[13] *Ibid.*
[14] Exh. D, attached to RFC.
[15] Exh. E, attached to RFC.
[16] Exh. F, attached to RFC.
[17] *Ibid*, emphasis added.
[18] *Ibid.*
[19] Sternberg Decl., ¶ 43.

provided CW with advance copies of its yet-to-be filed updated rate templates.[20] CSAA prefaced its e-mail to which these updated rate templates were attached, with the statement, "These differ from the filing in selected trends, which we'll be prepared to fully discuss on Friday."[21] A second teleconference was convened on June 23, 2023.

On July 17, 2023, the parties entered into a settlement stipulation that includes a rate change of 16.7 percent, rather than the 25 percent increase sought in the RA.[22]

The Commissioner approved the Stipulated Settlement on July 20, 2023.[23]

In keeping with the terms of the Stipulated Settlement, CW subsequently withdrew its Petition for Hearing on July 28, 2023.[24]

At various times during their intervention, the attorneys for CW engaged in the following tasks: conferred regarding overall strategy and positions; drafted, reviewed, and edited CW's filed documents; reviewed CSAA's RA and updated filings; prepared the requests for information; exchanged correspondence regarding and participated in the two conference calls; consulted with CW's actuary; negotiated the stipulated settlement; and drafted the Request for Compensation, including supporting declarations and exhibits.[25] In addition to this generalized list, CW includes detailed records of how each attorney, paralegal, and expert witness spent their time on this matter.

An extensive survey of hourly rates charged by attorneys in the Los Angeles area in 2022, correlated to their relative level of experience demonstrates that the rates CW charged in 2022 were comparable and competitive at that time.[26] In April 2023 the Department approved of

[20] Exh. G, attached to RFC.
[21] *Ibid.*
[22] RFC, pp.1, 8.
[23] RFC, p. 8.
[24] *Ibid.*
[25] Decl. of Sternberg, ¶ 8.
[26] Exh. 2, attached to Sternberg Decl.

CW's current hourly rates in its Ruling Granting Consumer Watchdog's Petition to Intervene in the Application of CSAA Insurance Exchange, application number 23-385.[27]

Pamela Pressley is an attorney with over 26 years of experience in consumer advocacy. She has spent 16 years as an attorney with CW, focusing primarily on insurance regulatory and litigation matters before the Department.[28] Detailed time records of Pressley's work demonstrate that she was heavily involved in this matter from its inception and continuing until the RFC was filed, from April through August 2023.[29] Pressley spent a total of 33.9 hours on this matter. At her hourly rate of $595.00, she billed a total of $20,170.50.[30]

Harvey Rosenfield is an attorney with over 40 years of experience in insurance regulatory and litigation matters.[31] As the author of Proposition 103, he has participated in a number of major lawsuits interpreting and enforcing the statute.[32] Detailed time records of Rosenfeld's work tend to demonstrate that he provided oversight ("review") of CSAA's RA from April through June 2023.[33] Rosenfield spent a total of 2.3 hours on this matter. At his hourly rate of $695.00, his bill for services amounts to $1,598.50.[34]

Daniel L. Sternberg is an attorney with seven years of professional experience in litigation and advocacy.[35] He has been with CW for less than a year, but has spent the majority of that time litigating matters before the Department.[36] Detailed records of Sternberg's work reveal that his involvement in this matter was concentrated on reviewing CW's correspondence with CSAA as well as CW's internal work product, including e-mails, requests for information,

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[27] Exh. 5, attached to Sternberg Decl.
[28] Sternberg Decl., ¶13.
[29] Exh. 1a, attached to Sternberg Decl.
[30] Sternberg Decl., ¶ 7; Exh. 1a, attached to Sternberg Decl.
[31] Sternberg Decl., ¶ 9.
[32] *Ibid.*
[33] Exh. 1a, attached to Sternberg Decl.
[34] Sternberg Decl., ¶ 7; Exh. 1a, attached to Sternberg Decl.
[35] Sternberg Decl., ¶ 16.
[36] *Ibid.*

and settlement offers.[37] Sternberg spent a total of 36.2 hours on this matter. At his hourly rate of $350.00 his bill for services amounts to $12,670.00.[38]

Ryan Mellino was admitted to the California State Bar in 2022.[39] His professional experience includes work with the Legal Aid Foundation of Los Angeles, the ACLU, and the Los Angeles Homeless Services Authority, as well as CW.[40] Detailed records of Mellino's work show that he was only involved in this matter during May 2023 with regard to requests for information.[41] Mellino spent a total of 2.1 hours on this matter. At his hourly rate of $250.00, his bill for services totals $525.00.[42]

Kaitlyn Gentile is a paralegal at CW with over fourteen years of professional experience in litigation support. Gentile worked a total of 7.1 hours on this matter. Detailed time records of Gentile's work demonstrate that she was primarily engaged in preparing and finalizing the RFC during the month of August 2023.[43] At her hourly rate of $200.00, her bill for services totals 1,420.00.[44]

Allan I. Schwartz is the President of AIS Risk Consultants, Inc., and is an actuary with over 40 years consulting actuarial experience.[45] He provided consulting actuarial services to CW on this matter, as he has in numerous Proposition 103 matters.[46] Detailed time records of Schwartz's work demonstrate that he spent larger blocks of time reviewing CSAA's initial filings, as well as its responses to CW's information requests in April and May 2023.[47] Schwartz

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[37] Exh. 1a, attached to Sternberg Decl.
[38] Sternberg Decl., ¶ 7; Exh. 1a, attached to Sternberg Decl.
[39] Sternberg Decl., ¶ 20.
[40] *Ibid.*
[41] Exh. 1a, attached to Sternberg Decl.
[42] Sternberg Decl., ¶ 7; Exh. 1a, attached to Sternberg Decl.
[43] Exh. 1a, attached to Sternberg Decl.
[44] Sternberg Decl., ¶ 7; Exh. 1a, attached to Sternberg Decl.
[45] Schwartz Decl., ¶ 1.
[46] Schwartz Dec., ¶ 2.
[47] Exh. 8, attached to Schwartz Decl.

worked 41.7 hours on this matter.[48] At his hourly rate of $915.00,[49] his bill for services totals $38,155.50.[50]

Katherine Tollar is an Actuarial Assistant at AIS Risk Consultants, Inc., with over 20 years of professional actuarial experience.[51] Detailed records of Tollar's work demonstrate that the majority of her time was spent on "trend and indication," work, which was primarily performed during May and June 2023.[52] Tollar worked a total of 7.6 hours on this matter at her hourly rate of $415.00, for which she billed $3,154.00.[53]

In total, CW has established that its hourly rates, and the hours billed for services rendered in this matter are reasonable.

DISCUSSION

I. Prior Approval Framework and Public Participation

In California, insurance rates for automobile, home, and other property-casualty policies must be approved by the Commissioner prior to their use."[54] Insurance Code section 1861.05, subdivision (a), prohibits the Commissioner from approving any rate that is "excessive, inadequate, unfairly discriminatory, or otherwise in violation of this chapter," or from allowing such rates to remain in effect. The primary consideration in the Commissioner's determination must be "whether the rate mathematically reflects the insurance company's investment income."[55]

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[48] Exh. 8, attached to Schwartz Decl.
[49] Schwartz Decl., ¶ 6.
[50] Exh. 8, attached to Schwartz Decl.
[51] Exh. 6, attached to Schwartz Decl.
[52] Exh. 8, attached to Schwartz Decl.
[53] Exh. 8, attached to Schwartz Decl.
[54] Ins. Code, § 1861.01, subd. (c).
[55] Ins. Code, § 1861.05, subd. (a).

In order to foster "consumer participation in the rate-setting process,"[56] section 1861.10 of the Insurance Code authorizes any person to initiate a proceeding to enforce any provision of Proposition 103.[57] Intervenors who represent the interests of consumers and make a substantial contribution to the adoption of any order, regulation, or decision by the Commissioner are to be compensated for reasonable advocacy and witness fees.[58] To that end, the Commissioner has promulgated regulations setting forth the substantive and procedural requirements for those seeking compensation under the code.[59] These regulations are binding on the AHB and have the force of statute.[60] Given the statute's purpose to encourage public participation, the regulations should be liberally construed in favor of compensation.[61]

A. The Procedural Prerequisites for Compensation are Met

Before an intervenor may file a request for compensation, they must first obtain a finding from the Commissioner's Public Advisor that they are eligible to seek compensation—i.e., that they represent the interests of the consumer.[62] Once granted, a Finding of Eligibility to Seek Compensation is valid in any proceeding in which the intervenor's participation commences within two years of the finding of eligibility, provided the intervenor still meets all the requirements in the initial request.[63] There is no dispute that CW is eligible to seek compensation in this case.

In addition to establishing that it represents the interests of the consumer the intervenor must also submit a request for an award of compensation within 30 days after the

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[56] See *State Farm General Ins. Co. v. Lara* (2021) 71 Cal.App.5th 197, 215, citing *State Farm Mutual Automobile Ins. Co. v. Garamendi, supra*, 32 Cal.4th 1029.
[57] Ins. Code, § 1861.10, and *State Farm Insurance Co. v. Lara* (2021) 71 Cal.App.5th 197
[58] Ins. Code, § 1861.10, and Cal. Code Regs., tit. 10, § 2662.5.
[59] Cal. Code Regs., tit. 10, §§ 2661.3 – 2661.4.
[60] *Agriculture Labor Relations Board v. Superior Court* (1976)16 Cal.3d 392.
[61] *State Farm Insurance Co. v. Lara, supra*, 71 Cal.App.5th 197.
[62] Cal. Code Regs., tit. 10, § 2662.3.
[63] Cal. Code Regs., tit. 10, § 2662.2

Commissioner's decision or action in the proceeding for which intervention was sought, or within 30 days after conclusion of the entire proceeding.[64] CW's RFC was filed on August 18, 2023, less than 30 days after the Commissioner approved the Stipulated Settlement on July 20, 2023. Accordingly, the RFC was timely filed.

B. The Substantive Requirements for Compensation are Met

Once the intervenor has established that it is eligible to seek compensation, and has made a timely request for compensation, as CW has done here, it must then establish that it has made a "substantial contribution" to the proceedings.[65] The only *statutory requirements* for compensation are set out subdivision (b) of Insurance Code section 1861.10.[66] But the statutory language does not encapsulate the whole of the intervenor's obligation. The regulations adopted by the Insurance Commissioner fill in the details not specified by Proposition 103.[67] The regulations state that a "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 relevant, credible, and non-frivolous information being available for the Commissioner to make the Commissioner's decision than would have been available to the Commissioner had the intervenor not participated. A substantial contribution may be demonstrated without regard to whether a petition for hearing is granted or denied."[68]

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[64] Cal. Code Regs., tit. 10, § 2662.3, subd. (a).
[65] Ins. Code, §1861.10, subd. (b); Cal. Code Regs., tit. 10, §§ 2661.2, subd. (k), and 2662.3, subd. (b)(3).
[66] *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029, 1047-1048.
[67] *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029, 1050.
[68] Cal. Code Regs., tit. 10, § 2661.2(k).

What constitutes a substantial contribution requires a fact-intensive analysis by the tribunal in which the matter originated.[69] And, while the intervenor's substantial contribution may be shown with documents,[70] it is incumbent on the intervenor to provide specific citations to its services and expenditures.[71] There is no question in this case that CW participated in the rate proceedings.

As a direct result of CW's participation in this case, CSAA produced additional analysis and data concerning the Trend Selection for Bodily Injury Property Damage, Comprehensive and Collision;[72] CSAA also provided several years' worth of Annual Statements and Consolidated Annual Statements;[73] and in connection with CW's inquiries, CSAA discovered and corrected several data errors.[74] Accordingly, CW has established that its intervention in this case made a substantial contribution to the Commissioner's ultimate approval of the stipulated settlement by providing more relevant credible, and non-frivolous information than would have been available had the intervenor not participated. Additionally, through detailed time records, rate surveys, and prior findings by the Department, CW has established that it charged market rates, as that phrase is defined by regulation.[75]

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[69] *Economic Empowerment Foundation v. Quackenbush* (1997) 57 Cal.App.4th 677.
[70] *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029, 1040.
[71] *Economic Empowerment Foundation v. Quackenbush, supra*, 57 Cal.App.4th 677, 681; Cal.Code Regs., tit. 10, § 2662.5, subd. (a)(1).
[72] Exh. C, attached to RFC.
[73] Exh. D, attached to RFC.
[74] Exh. D, attached to RFC.
[75] Cal. Code Regs., tit. 10, § 2661.1, subd. (c).

CONCLUSION

For the foregoing reasons, CSAA is entitled to expenses and advocacy fees *in the Matter of the Rate Application of CSAA Insurance Exchange*, Prior Approval File No. PA-2023-00004, in the amount of $77,693.50.

ORDER

1. Consumer Watchdog is hereby awarded $77,693.50 in advocacy and expert witness fees in connection with CSAA's Rate Application (Prior Approval File No. *PA-2023-00004*).
2. CSAA shall pay the award no later than 30 days after the date of this Decision and shall notify the Department's Office of the Public Advisor[76] upon making payment.

Date: November 8, 2023

RICARDO LARA
Insurance Commissioner

By: 
Alicia A. Clement
Administrative Law Judge

[76] Jon Phenix, Public Advisor, 1901 Harrison Street, 4th Floor, Oakland, CA 94612, or jon.phenix@insurance.ca.gov.

PROOF OF SERVICE

Case Name/Number: In the Matter of the Request for Compensation of
CONSUMER WATCHDOG
File No. **RFC-2023-011**

I, Florinda Cristobal, declare that:

I am employed by the California Department of Insurance, Administrative Hearing Bureau, in the City of Oakland and County of Alameda. I am over the age of eighteen (18) years and not a party to this action. My business address is 1901 Harrison Street, 3rd Floor, Oakland, CA 94612.

I am readily familiar with the business practices of the California Department of Insurance for collecting and processing correspondence for mailing, electronic filing and electronic mail. On August 18, 2023, I served **DECISION AWARDING COMPENSATION** regarding **In the Matter of the Request for Compensation of Consumer Watchdog.**

__X__ **(By U.S. Mail)** on those identified parties in said action, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items to be sent by mail, pursuant to Code of Civil Procedure Section 1013.

__X__ **(By Intra-Agency Mail)** on those identified parties in said action, by placing this correspondence in a place designated for collection for delivery by Department of Insurance intra-agency mail.

_____ **(By facsimile transmission)** on those identified parties in said action, by transmitting said document(s) from our office by facsimile machine Fax Number to facsimile machine number(s) shown below. Following the transmission, I received a "Transmission Report" from our fax machine indicating that the transmission had been transmitted without error.

__X__ **(By Email)** on those identified parties in said action, in accordance with Code of Civil Procedure §1013, by emailing true copies thereof at the address set forth below.

SEE ATTACHED PARTY SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Oakland, California, on August 18, 2023

November 8, 2023
(Date)

F. CRISTOBAL

PARTY SERVICE LIST

Name/Address	Method of Service
Harvey Rosenfield, SBN 123082 Pamela Pressley, SBN 180362 Daniel L. Sternberg, SBN 329799 **Ryan Mellino, SBN 342497** **CONSUMER WATCHDOG** 6330 San Vicente Boulevard, Suite 250 Los Angeles, CA 90048 Tel No.: (310) 392-0522 Fax No.: (310) 392-8874 harvey@consumerwatchdog.org pam@consumerwatchdog.org danny@consumerwatchdog.org ryan.m@consumerwatchdog.org	via Email & U. S. mail
Lisbeth Landsman-Smith Melissa Wurster Sara Ahn Rate Enforcement Bureau **CALIFORNIA DEPARTMENT OF INSURANCE** 1901 Harrison Street, 4th Floor Oakland, CA 94612 Tel No.: (415) 538-4500 Fax No.: (510) 238-7830 Lisbeth.Landsman@insurance.ca.gov Melissa.Wurster@insurance.ca.gov Sara.Ahn@insurance.ca.gov	via Email & Intra-agency
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NON-PARTY

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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 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 South San Vicente Boulevard, Suite 250, Los Angeles, California 90048, and I am employed in the city and county where this service is occurring.

On September 27, 2024, I caused service of true and correct copies of the document entitled

CONSUMER WATCHDOG'S PETITION TO PARTICIPATE AND NOTICE OF INTENT TO SEEK COMPENSATION

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

1. If marked FAX SERVICE, by facsimile transmission this date to the FAX number stated to the person(s) named.

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

3. If marked U.S. MAIL or OVERNIGHT or HAND DELIVERED, 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.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 27, 2024 at Los Angeles, California.

Kaitlyn Gentile

Service List

Sara Ahn Rate Enforcement Bureau **California Department of Insurance** 1901 Harrison Street, 6th Floor Oakland, CA 94612 Tel. (415) 538-4500 Fax (510) 238-7830 CDIRegulations@insurance.ca.gov Sara.Ahn@insurance.ca.gov	☐ FAX ☐ U.S. MAIL ☐ OVERNIGHT MAIL ☐ HAND DELIVERED ☒ EMAIL
Jon Phenix Public Advisor Tina Warren Office of the Public Advisor **California Department of Insurance** 300 Capitol Mall, 17th Floor Sacramento, CA 95814 Tel. (916) 492-3705 Fax (510) 238-7830 Jon.Phenix@insurance.ca.gov Tina.Warren@insurance.ca.gov	☐ FAX ☐ U.S. MAIL ☐ OVERNIGHT MAIL ☐ HAND DELIVERED ☒ EMAIL

EXHIBIT C

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Petition to Participate of CONSUMER WATCHDOG, Petitioner.	Intervenor Participation File # IP-2024-00018 ORDER GRANTING CONSUMER WATCHDOG'S PETITION TO PARTICIPATE in the Proposed Regulatory Action Regarding Catastrophe Modeling and Ratemaking Regulatory File #: REG-2023-00010

As set forth below, California Insurance Commissioner Ricardo Lara (Commissioner) grants Petitioner Consumer Watchdog's (Petitioner) Petition to Participate and Notice of Intent to Seek Compensation (Petition) in the above proceeding concerning the Proposed Regulatory Action regarding Catastrophe Modeling and Ratemaking.

I. APPLICABLE LAW

In November 1988, California voters approved Proposition 103, which made changes in the regulation of automobile insurance, as well as the approval of premium rates for property and casualty lines of insurance in California. (Ins. Code §§ 1861.01, et seq.) Proposition 103 also allows for public participation through consumer intervention. (Ins. Code § 1861.10.) The Commissioner has implemented Proposition 103's statutory provisions concerning consumer participation through regulations. (California Code of Regulations, Title 10, §§ 2661.1, et seq.) Cal. Code Regs. § 2661.2, permits intervention if the intervenor's issues are relevant to the issues of the proceeding:

> Any person shall be permitted to intervene in any proceeding on any rate application or in any proceeding subject to Chapter 9 of Part 2 of Division 1 of the California Insurance Code if the issues to be raised by the intervenor or participant are relevant to the issues of the proceeding…

Intervenors may be awarded with reasonable advocacy fees if they demonstrate they (1) represent the interests of consumers, and (2) have made a substantial contribution to the adoption of "any order, regulation or decision" by the commissioner. (Ins. Code § 1861.10.)

II. RELEVANT PROCEDURAL HISTORY

On or about April 23, 2024, the Commissioner held a rulemaking workshop concerning the use of catastrophe modeling in ratemaking. On or about June 26, 2024, the Commissioner held another rulemaking workshop concerning the commitments insurers must undertake to utilize rate-level wildfire catastrophe modeling.

On August 16, 2024, the Commissioner issued a Notice of Proposed Action and Notice of Public Hearing concerning regulatory amendments concerning the incorporation of catastrophe modeling in ratemaking. The Commissioner held the public hearing on September 17, 2024.

On September 27, 2024, the Petitioner submitted its verified Petition to Participate and Notice of Intent to Seek Compensation. Petitioner claims that, "In every proceeding that has resulted in a final decision and in which Consumer Watchdog sought and was awarded compensation, the Commissioner found that Consumer Watchdog made a substantial contribution." (Petition, p. 2.)

The Petition substantively asserted, among other things, that:

- "The proposed catastrophe modeling regulations are . . . designed to facilitate the use of black box models by giving in to the demands of the private modeling companies to keep their products secret." (*Id.* at 3.)
- "The proposed regulations set up an NDA-protected pseudo review of models that will not enable regulators or the public to confirm insurance companies' use of models is pricing insurance fairly." (*Ibid.*)
- "The regulation does not comply with the insurance consumer protections mandated by the voters in Proposition 103: Public review and justification of everything that goes into an insurance company's prices." (*Ibid.*)
- "[A]s drafted the proposed regulations do not require the sale of policies with comprehensive coverage; would not require insurance companies to charge a price

that consumers are able to afford; and contain so many loopholes that insurance companies' 'commitment' to sell insurance in distressed areas can be waived for any insurer that claims it cannot, or later opts not to, meet it." (*Id.* at 4)

- "[T]he proposed regulations to allow catastrophe modeling in exchange for insurers' commitments to sell in distressed areas must be amended to include robust consumer protections that would" be "fully transparent," mandate "substantive review and approval of models," "identify uniform standards" for models and their rate impact, allow access to a model "to test both its design and its impact," require standardized disclosures, require diverse academic and scientific input, and preserve due process. (*Ibid.*)

As authority for intervention, the Petition cites both the right to participate in proceedings permitted or established by Proposition 103, and the right to enforce provisions of Proposition 103. Additionally, the Petition asserts Cal. Code Regs. sections 2661.2 and 2661.4 authorize intervention.

Petitioner stated it will be able to attend and participate in the proceeding without delaying this or any other proceedings before the Commissioner. (*Ibid.*) The Petition further stated Petitioner intends to seek compensation in the proceeding and submitted a Preliminary Budget for purposes of participation in the total sum of $348,725. (Petition, Exh. A.)

III. FINDINGS

The Petition meets the requirements set forth in Cal. Code Regs. §§ 2652.1 through 2652.3, inclusive. The Petition complies with the relevant provisions of Cal. Code Regs. § 2661.3 as incorporated by Cal. Code Regs. § 2661.4.

The Commissioner finds that this rulemaking proceeding does not concern enforcement of article 10 of chapter 9 of part 2 of division 1 of the Insurance Code and enforcement cannot serve as an authority supporting intervention in this proceeding. The Commissioner finds that the Petition cites other law that may authorize intervention and participation in this proceeding.

Contrary to the Petition's assertions, Petitioner has not made a substantial contribution in every proceeding before the Department that resulted in a final decision and in which Petitioner

sought compensation. In the past few years, the Commissioner has found on two occasions that Petitioner failed to make a substantial contribution because Petitioner failed to provide the Commissioner with any information beyond what he already possessed.

The Commissioner finds the Petition proposes to raise issues relevant to this proceeding, but advises Petitioner to focus its advocacy on relevant issues, evidence, or arguments that will result in more relevant, credible, and non-frivolous information being available for the Commissioner to make the Commissioner's decision than would have been available to a Commissioner had the intervenor not participated. The Petition opines extensively on its disagreements with the foundational policies that underpin the proposed regulatory framework and provides policy alternatives already considered by the Commissioner. The Petition says little about what information Petitioner proposes to make available regarding the regulatory framework that is actually proposed for adoption, however, and the Petition could be read to suggest Petitioner is on track to provide the Commissioner with information he already possesses. Petitioner is, of course, free to proffer whatever advocacy it deems appropriate for whatever ends it deems worth pursuing. Whether this advocacy results in additional relevant, credible, and non-frivolous being made available to the Commissioner is a narrower question that may be the subject of a separate determination.

Finally, Petitioner submits a preliminary budget of $348,725, which is based upon seven timekeepers billing almost 700 hours for the handful of written and oral comments Petitioner has submitted in connection with this proceeding. By comparison, Petitioner recently provided a preliminary budget of $199,425 for participation *in a trial*, which was based on five timekeepers billing about 450 hours for preparation of motion practice, discovery requests, expert witness testimony, cross examination, post-hearing briefing, and other tasks related to participation in an evidentiary hearing. (Consumer Watchdog's Petition for Hearing, Petition to Intervene, and Notice of Intent to Seek Compensation, In the Matter of the Rate Application of General Insurance Company of America (File No. 24-1184.) The Commissioner finds that the amount of compensation sought is not a ground for denying intervention and declines to reach whether Petitioner's preliminary budget reflects reasonable advocacy and witness fees and expenses.

IV. ORDER

1. For the foregoing reasons, Petitioner's Petition to Participate is **Granted**. Participation is granted consistent with section III, *supra*, of this Order.

2. This Order Granting the Petition to Participate is based on facts presently before the Commissioner. The relevance of the specific issues raised in the Petition and the specific issues on which Petitioner is specifically authorized to intervene may be impacted by evidence deduced during the course of these proceedings and any further pleadings, including any amended pleading filed by the Department. Any disputes concerning the continued relevance of specific issues may be raised by the trier of fact and/or any party.

3. This Order Granting the Petition to Participation does not ensure compensation or compensation at the rates sought. Petitioner must show substantial contribution to the proceedings and document and substantiate the hourly rate being sought in the Request for Compensation, including but not limited to, the attorneys' hourly rate and the reasonableness of the fees and expenses, before compensation will be awarded. In order to receive compensation in this matter, Petitioner must comply with all of the relevant provisions of Insurance Code section 1861.10 and 10 CCR sections 2661.1, et seq. A separate Decision regarding compensation, if any, will be issued on the basis of Petitioner's substantial contribution to the proceeding.

Dated: October 14, 2024

RICARDO LARA
Insurance Commissioner

By _____
Lucy Wang
Deputy Commissioner and Special Counsel

PROOF OF SERVICE
In the Matter of the Petition to Participate of
CONSUMER WATCHDOG,
Petitioner
Case No. IP-2024-00018

I am over the age of eighteen years and am not a party to the within action. I am an employee of the Department of Insurance, State of California, employed at 1901 Harrison Street, 4th Floor, Oakland, California 94612. On November 4, 2024, I served the following document(s):

ORDER GRANTING CONSUMER WATCHDOG'S PETITION TO PARTICIPATE in the Proposed Regulatory Action Regarding Catastrophe Modeling and Ratemaking - Regulatory File #: REG-2023-00010

on all persons named on the attached Service List, by the method of service indicated, as follows:

If **U.S. MAIL** is indicated, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items to be sent by mail, pursuant to Code of Civil Procedure Section 1013. I am familiar with this office's practice of collecting and processing documents placed for mailing by U.S. Mail. Under that practice, outgoing items are deposited, in the ordinary course of business, with the U.S. Postal Service on that same day, with postage fully prepaid, in the city of Oakland and the county of Alameda, California.

If **OVERNIGHT SERVICE** is indicated, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items for overnight delivery, pursuant to Code of Civil Procedure Section 1013. I am familiar with this office's practice of collecting and processing documents placed for overnight delivery. Under that practice, outgoing items are deposited, in the ordinary course of business, with an authorized courier or a facility regularly maintained by one of the following overnight services in the city of Oakland and the county of Alameda, California: Express Mail, UPS, Federal Express, or Golden State overnight service, with an active account number shown for payment.

If **FAX SERVICE** is indicated, by facsimile transmission this date to fax number stated for the person(s) so marked.

If **PERSONAL SERVICE** is indicated, by hand delivery this date.

If **INTRA-AGENCY MAIL** is indicated, by placing this date in a place designated for collection for delivery by Department of Insurance intra-agency mail.

If **EMAIL** is indicated, by electronic mail transmission this date to the email address(es) listed.

Executed this date at Oakland, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Christine Warren

SERVICE LIST
In the Matter of the Petition to Participate of
CONSUMER WATCHDOG, Petitioner
Case No. IP-2024-00018

Name/Address	Phone/Fax Numbers	Method of Service
Harvey Rosenfield Pamela Pressley Ryan Mellino CONSUMER WATCHDOG 6440 San Vicente Blvd, Suite 250 Los Angeles, CA 90048 harvey@consumerwatchdog.org pam@consumerwatchdog.org	Tel: (310) 392-0522 Fax: (310) 861-0862	Via EMAIL
Nikki McKennedy Sara Ahn Jon Phenix Rate Enforcement Bureau CALIFORNIA DEPARTMENT OF INSURANCE 1901 Harrison Street, 4th Floor Oakland, CA 94612 Nikki.McKennedy@insurance.ca.gov Sara.Ahn@insurance.ca.gov Jon.Phenix@insurance.ca.gov	Tel: (415) 538-4500 Fax: (510) 238-7830	Via EMAIL
Richard Holober Douglas Heller CONSUMER FEDERATION OF CALIFORNIA EDUCATION FOUNDATION 273 Delmar Way San Mateo, CA 94403 holober@consumercal.org douglassheller@ymail.com	Tel: (650) 307-7033 Fax: N/A	Via EMAIL
Anthony Manzo 5262 Diamond Heights Blvd., #31897 San Francisco, CA 94131 anthony@manzo.org	Tel: (415) 729-4729 Fax: NA	Via EMAIL
Kathryn Taras Office of Special Counsel CALIFORNIA DEPARTMENT OF INSURANCE 300 Capitol Mall, 16th Floor Sacramento, CA 95814 Kathryn.Taras@insurance.ca.gov	Tel: (916) 492-3675 Fax: N/A	Via EMAIL

EXHIBIT D

Subject: RE: Rulemaking Proceeding re Catastrophe Modeling and Ratemaking , File No. REG-2023-00010
Date: Wednesday, January 8, 2025 at 8:52:52 AM Pacific Standard Time
From: Hosel, Margaret
To: Pam Pressley
CC: Ahn, Sara, Kaitlyn Gentile, Ryan Mellino, De Guzman, Debbie Lynne

Hi Pam,

I hope you had a lovely holiday. I agree to the 30 day extension of time.

Margaret

From: Pam Pressley <pam@consumerwatchdog.org>
Sent: Tuesday, January 7, 2025 11:37 AM
To: Hosel, Margaret <Margaret.Hosel@insurance.ca.gov>
Cc: Ahn, Sara <Sara.Ahn@insurance.ca.gov>; Kaitlyn Gentile <kaitlyn@consumerwatchdog.org>; Ryan Mellino <ryan@consumerwatchdog.org>
Subject: Rulemaking Proceeding re Catastrophe Modeling and Ratemaking , File No. REG-2023-00010

Hi Margaret,

I am writing regarding Consumer Watchdog's intended Request for Compensation (RFC) in the Catastrophe Modeling and Ratemaking rulemaking proceeding, REG-2019-00025. Consumer Watchdog's Petition to Participate in this matter was granted on November 4, 2024. The final regulations were filed by OAL with the Secretary of State on December 12, 2024 with an effective date of that same date. (See attached OAL Notice.) Based on that date, Consumer Watchdog calculated the timeline for submitting an RFC to be Monday, January 13 (since the 30th day falls on Saturday January 11).

Due to several staff being out over the holidays and other upcoming deadlines, including three other RFCs in rate matters due in the next few weeks, Consumer Watchdog would like to request a 30-day extension to February 12 to file its RFC in this matter.

Please let us know if you need any further information from CWD regarding this request. Thank you very much for your time.

Sincerely,

Pam

--
Pamela Pressley
Senior Staff Attorney
Consumer Watchdog
www.consumerwatchdog.org
6330 San Vicente Blvd., Suite 250
Los Angeles, CA 90048

310-392-1372
310-392-8874 fax
pam@consumerwatchdog.org

EXHIBIT E

Subject: Re: Rulemaking Proceeding re Catastrophe Modeling and Ratemaking , File No. REG-2023-00010
Date: Friday, February 7, 2025 at 2:21:11 PM Pacific Standard Time
From: Hosel, Margaret
To: Pam Pressley
CC: Ahn, Sara, Kaitlyn Gentile, Ryan Mellino, De Guzman, Debbie Lynne

Your request is granted. Have a good weekend!

Get Outlook for Android

From: Pam Pressley <pam@consumerwatchdog.org>
Sent: Friday, February 7, 2025 1:03:15 PM
To: Hosel, Margaret <Margaret.Hosel@insurance.ca.gov>
Cc: Ahn, Sara <Sara.Ahn@insurance.ca.gov>; Kaitlyn Gentile <kaitlyn@consumerwatchdog.org>; Ryan Mellino <ryan@consumerwatchdog.org>; De Guzman, Debbie Lynne <DebbieLynne.DeGuzman@insurance.ca.gov>
Subject: Re: Rulemaking Proceeding re Catastrophe Modeling and Ratemaking , File No. REG-2023-00010

Hi Margaret,

I write to request an additional short extension to Friday, February 28 to submit our request for compensation in this rulemaking matter. We had some unexpected deadlines pop up this week in a few of our pending rate matters, as well as a new deadline in one of our civil litigation matters within the next couple weeks. Please let me know if this is acceptable. Thank you,

--
Pamela Pressley
Senior Staff Attorney
Consumer Watchdog
www.consumerwatchdog.org
6330 San Vicente Blvd., Suite 250
Los Angeles, CA 90048
310-392-1372
310-392-8874 fax
pam@consumerwatchdog.org

From: Pam Pressley <pam@consumerwatchdog.org>
Date: Wednesday, January 8, 2025 at 12:33 PM
To: Hosel, Margaret <Margaret.Hosel@insurance.ca.gov>
Cc: Ahn, Sara <Sara.Ahn@insurance.ca.gov>, Kaitlyn Gentile

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 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 South San Vicente Boulevard, Suite 250, Los Angeles, California 90048, and I am employed in the city and county where this service is occurring.

On February 28, 2025, I caused service of true and correct copies of the document entitled

CONSUMER WATCHDOG'S REQUEST FOR COMPENSATION

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

1. If marked FAX SERVICE, by facsimile transmission this date to the FAX number stated to the person(s) named.

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

3. If marked U.S. MAIL or OVERNIGHT or HAND DELIVERED, 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.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 28, 2025 at Los Angeles, California.

Kaitlyn Gentile

Service List

Nikki McKennedy
Sara Ahn
Rate Enforcement Bureau
California Department of Insurance
1901 Harrison Street, 6th Floor
Oakland, CA 94612
Tel. (415) 538-4500
Fax (510) 238-7830
Nikki.McKennedy@insurance.ca.gov
Sara.Ahn@insurance.ca.gov

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

Margaret Hosel
Public Advisor
Tina Warren
Office of the Public Advisor
California Department of Insurance
300 Capitol Mall, 17th Floor
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Tina.Warren@insurance.ca.gov

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

Harvey Rosenfield, SBN 123082
Pamela Pressley, SBN 180362
Ryan Mellino, SBN 342497
CONSUMER WATCHDOG
6330 San Vicente Blvd., Suite 250
Los Angeles, CA 90048
Tel. (310) 392-0522
Fax (310) 392-8874
harvey@consumerwatchdog.org
pam@consumerwatchdog.org
ryan@consumerwatchdog.org

Attorneys for CONSUMER WATCHDOG

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Rulemaking Hearing re: Catastrophe Modeling and Ratemaking.	File No.: REG-2023-00010 **DECLARATION OF PAMELA PRESSLEY IN SUPPORT OF CONSUMER WATCHDOG'S REQUEST FOR COMPENSATION**

I, Pamela Pressley, declare:

1. I am over eighteen years of age and staff attorney for participant Consumer Watchdog in this proceeding. This declaration is submitted in support of Consumer Watchdog's Request for Compensation in the above-captioned rulemaking 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 nonprofit, 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 and Hourly Rates Are Reasonable and in Compliance with the Regulations.

3. Attached as Exhibit 1a are true and correct printouts of detailed time billing reports showing the tasks performed and hours expended by each Consumer Watchdog attorney, staff actuary, advocate, and paralegal in this rate proceeding, including Harvey Rosenfield, Pamela Pressley, Ryan Mellino, Carmen Balber, Ben Armstrong, and Kaitlyn Gentile.[1]

4. As a nonprofit, 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 by the Commissioner and the courts.

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 staff exercised billing judgment by eliminating time entries where appropriate. The time expended and work performed in the proceeding 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.

[1] Pursuant to a prior request of the Public Advisor, attached as Exhibit 1b is a list of all persons identified in the billing reports.

6. Based upon Consumer Watchdog's time billing report attached hereto as Exhibit 1a, after eliminating time entries as noted above, Consumer Watchdog's attorneys, paralegal, advocate, and staff actuary have incurred 497.3 hours in this proceeding through February 27, 2025. The billing report details the tasks performed, is based on contemporaneous daily time records maintained by Consumer Watchdog's attorneys, paralegal, advocate, and staff actuary, and tasks are billed in tenth-of-an-hour increments.

7. The 2025 hourly rates sought by Consumer Watchdog for its attorneys, paralegal, and staff actuary are $695 for Harvey Rosenfield, $595 for Pamela Pressley, $250 for Ryan Mellino, $425 for Ben Armstrong (staff actuary), $320 for Carmen Balber (Executive Director), and $200 for Kaitlyn Gentile (paralegal). The hourly rates for Consumer Watchdog attorneys and staff who worked on the proceeding are consistent with the prevailing market rates for attorneys of similar experience, qualifications, and expertise in insurance regulatory law. The Commissioner has recently issued decisions awarding fees to Consumer Watchdog based on the same hourly rates Consumer Watchdog's legal staff is currently using in 2025 for work done in rate proceedings in 2020–2024. (See, e.g., Decision Awarding Compensation, Feb. 14, 2025, *In the Matter of United Services Automobile Association*, PA-2023-00023, pp. 6–7; Decision Awarding Compensation, Jan. 29, 2025, *In the Matter of Liberty Insurance Corporation*, p. 8; Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate Applications of Garrison Property and Casualty Insurance Company and USAA Casualty Insurance Company*, File No. PA-2021-00004, pp. 8–9; Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate Application of State Farm General Insurance Company*, File No. PA-2023-00006, pp. 8–9; Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate, Rule, and Form Application of Pacific Specialty Insurance Company*, File No. PA-2020-00009, pp. 9–10; Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate Application of State Farm General Insurance Company*, File No. PA-2023-00007, pp. 8–9; Decision Awarding Compensation, Oct. 18, 2024, *In the Matter of the Rate Applications of Farmers Insurance Exchange, Mid-Century Insurance Company, and Truck Insurance Exchange*, File No. PA-2023-00022, pp. 14–15; Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate Application of Allstate Northbrook Indemnity Company*, File No. PA-2023-00014, pp. 8–9; Decision Awarding Compensation, Dec. 6,

2024, *In the Matter of the Rate Application of State Farm Mutual Automobile Insurance Company*, File No. PA-2023-00012, pp. 8–9.) The Commissioner also issued decisions in 2021–2023 awarding fees to Consumer Watchdog based on the same hourly rates Consumer Watchdog's legal staff is currently using in 2025 for work done in 2020–2023. (See, e.g., Decision Awarding Compensation, Nov. 8, 2023, *In the Matter of the Rate Application of CSAA Insurance Exchange*, File No. PA-2023-00004, pp. 5–6; Decision Awarding Compensation, July 12, 2023, *In the Matter of the Rate Applications of Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company*, File No. PA-2022-00007, p. 16; Decision Awarding Compensation, Oct. 6, 2021, *In the Matter of the Rate Applications of Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company*, File No. PA-2020-00006, p. 10; Decision Awarding Compensation, Feb. 14, 2022, *In the Matter of the Rate Application of Homesite Insurance Company of California*, File No. PA-2020-00003, p. 9; Decision Awarding Compensation, Feb. 16, 2022, *In the Matter of the New Program Applications of Farmers Insurance Exchange and Fire Insurance Exchange*, File No. PA-2020-00004, p. 9 [included in Exh. 4 to the Declaration of Allan I. Schwartz ("Schwartz Decl."), filed concurrently herewith].) Consumer Watchdog arrived at the hourly rates of its attorneys and paralegal based on the experience and qualifications of its attorneys, 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.[2] His attached declaration evidences the reasonableness of Consumer Watchdog's hourly rates. (See Exh. 2, Declaration of Richard M. Pearl in Support of Intervenor Consumer Watchdog's Motion for Attorneys' Fees and Expenses ["Pearl Decl.], ¶¶ 10–19.)[3] In his declaration, Mr. Pearl concludes that Consumer Watchdog's rates are "well within, if not below, the range of non-contingent market rates charged by comparably qualified Los Angeles Area attorneys for reasonably

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

[3] The Pearl Declaration was filed on April 15, 2022 in connection with a State Farm writ matter arising out of a rate proceeding and is equally applicable to this proceeding, given that Consumer Watchdog's 2025 rates are within the range of rates considered reasonable for attorneys with comparable experience at that time.

similar work." (Pearl Decl., ¶ 19.) Mr. Pearl's declaration contains substantial details on attorneys' fees and hourly rates and shows that Consumer Watchdog's 2025 rates are within the market rates charged by attorneys with similar experience level and skill.

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

- Conferred regarding overall strategy and positions;
- Reviewed the CDI's March 14, 2024; June 12, 2024; August 16, 2024 proposed draft regulations and October 2, 2024 amended regulation text and consulted with its actuaries and other consumer advocates in developing proposed changes to clarify and strengthen the proposed regulations;
- Drafted and provided oral and written comments with the public workshops held in July 2023, September 2023, April 2024, and June 2024;
- Drafted and provided oral testimony and written comments at the September 2024 public rulemaking hearing regarding the Department's August 16, 2024 Proposed Regulation Text; and
- Drafted, reviewed, and edited Consumer Watchdog's Request for Compensation ("Request"), including this supporting declaration and exhibits.

Harvey Rosenfield

9. Harvey Rosenfield is the author of Proposition 103, the insurance reform initiative enacted by the voters on November 8, 1988. He is also the founder of, and presently counsel to, Consumer Watchdog. He is an attorney with over 45 years of experience in insurance regulatory and litigation matters. As discussed in greater detail below, 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, *Association of California Insurance*

Companies v. Poizner (2009) 180 Cal.App.4th 1029, *Mercury Casualty Company v. Jones* (2017) 8 Cal.App.5th 561, and *Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th 82, among others.

10. Mr. Rosenfield has represented Consumer Watchdog as counsel to provide his expertise in numerous insurance matters before the courts and administrative agencies on behalf of Consumer Watchdog. Notable instances include:

a. *In the Matter of the Rating Practices of Farmers Insurance Exchange and Mid-Century Insurance Company*, CDI File No: NC-2017-00003, a formal inquiry initiated by the Insurance Commissioner, on its own motion and in response to a request by the Los Angeles Superior Court in *Harris et al. v. Farmers Ins. Exchange and Mid-Century Ins. Co.* (Case No. BC579498), into allegations that Farmers had engaged in price optimization in violation of Proposition 103. The CDI inquiry was terminated in 2020, prior to the scheduled evidentiary hearing, as a result of a settlement between the two parties in the underlying civil action.

b. *Villanueva v. Fidelity Nat'l Title Co.*, No. S252035 (Cal. Sup. Ct., filed Oct. 17, 2018), in which he represented Consumer Watchdog, Consumer Federation of America, and Consumer Federation of California as amicus curiae. This case concerned whether California consumers have the right to hold title insurance companies accountable for overcharges and other wrongdoing under Insurance Code section 12414.26. While Proposition 103 does not apply to title insurance, the Court of Appeal erred in relying on two appellate cases that incorrectly concluded that there is no private right of action under Proposition 103. Ultimately, the California Supreme Court agreed with positions taken by amici Consumer Watchdog, et. al. to reverse the Court of Appeal's judgment and remand for further proceedings, *Villanueva v. Fidelity National Title Co.* (2021) 11 Cal.5th 104.

c. *Mercury Insurance Company v. Lara* (2019) 35 Cal.App.5th 82, in which he joined me in successfully defending against a petition for writ of mandate by Mercury, resulting in the Court of Appeal upholding a $27.6 million civil penalty against Mercury for violations of Proposition 103's prior approval requirement and its prohibition against unfair rate discrimination (Insurance Code sections 1861.01 and 1861.05).

d. *Mercury Casualty Company v. Jones* (2017) 8 Cal.App.5th 561, in which he joined me in 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 the Proposition 103 prior approval regulations.

e. *In the Matter of the Rate Application of State Farm General Insurance Company*, File No. PA-2015-00004, an administrative proceeding before the Department which resulted in an order requiring State Farm to lower its homeowners' rates overall by 7%, saving consumers $78.6 million, and issue an additional $110 million in refunds.

f. *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029, in which he joined me in 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 that clarified the scope of a proceeding under Proposition 103.

g. *Allstate Insurance Co. v. Poizner* (Super. Ct. S.F. County, 2008, No. CPF-08-50821), in which he joined me in 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% (*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)).

h. *Fogel v. Farmers Group, Inc.* (2008) 160 Cal.App.4th 1403, in which Consumer Watchdog submitted an amicus brief to the Court of Appeal arguing against Farmers' request that the judiciary adopt the "filed rate doctrine" to immunize challenges to insurance company misconduct; the court concluded that the doctrine was not "analogous" to provisions of Proposition 103.

i. *American Insurance Association, et al. v. Garamendi* and *California Farm Bureau Federation v. Garamendi* (Super. Ct. Sacramento County, 2007, Nos. 06AS03053 and 06AS03036 (consolidated)), representing Consumer Watchdog as an intervenor in a 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.

j. *In the Matter of the Rates, Rating Plans, or Rating Systems of Farmers Ins. Exch., Fire Ins. Exch., and Mid-Century Ins. Co.* (Cal. Ins. Comm'r, Aug. 8, 2007), a "non-compliance" administrative proceeding against Farmers Insurance in which Consumer Watchdog intervened, alleging that the company had been misapplying its own rating guidelines to overcharge certain homeowners policyholders based on the number of claims they made or how far they lived from a fire hydrant. Farmers agreed to refund its policyholders $1.4 million for the overcharges, pay a $2 million penalty to the CDI, and use rating practices that comply with the law.

k. *The Found. for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354, in which Consumer Watchdog brought a successful writ of mandate action to invalidate an insurer-sponsored amendment to Proposition 103 that purported to authorize a rating factor based on prior insurance with any carrier, a violation of Insurance Code section 1861.02(c).

l. *Poirer v. State Farm Mutual Automobile Insurance Co.* (No. B165389) 2004 WL 2325837 (unpublished decision), in which Consumer Watchdog submitted an amicus brief arguing that Proposition 103 prohibited auto insurers from considering a driver's lack of prior insurance as a rating factor.

m. *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, in which Consumer Watchdog submitted an amicus brief arguing that Proposition 103 prohibited auto insurers from considering a driver's lack of prior insurance as a rating factor. After conducting a thorough statutory analysis, the Court of Appeal concluded that Proposition 103 created a private right of action and authorized consumers to bring civil actions against insurance companies for violations of Proposition 103.

n. 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 Exch. of the Auto. Club*, Case No. BC266218; and *Landers v. Interinsurance Exch. of the Auto. Club*, JCCP No. 4438).

o. *State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, in which Consumer Watchdog filed an amicus curiae brief in support of Proposition 103's disclosure

requirements. The Supreme Court rejected an industry challenge to Department of Insurance regulations requiring the public disclosure of insurance redlining data submitted to the Insurance Commissioner.

p. *Mitchell v. Allstate Ins. Co.* (Super. Ct. L.A. County, 2003, No. BC212492), in which Consumer Watchdog successfully objected to a class action settlement that resolved a challenge to the insurance company's improper consideration of a motorist's prior insurance.

q. *Spanish Speaking Citizens Found. v. Low* (2000) 85 Cal.App.4th 1179, 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).

r. *Proposition 103 Enforcement Project v. Chuck Quackenbush* (Super. Ct. L.A. County, 1999, No. BC202283), which was a successful writ of mandate action against former Insurance Commissioner Quackenbush to require that the Commissioner not approve any insurer's rate application prior to the expiration of the 45-day period in which a consumer may petition for a rate hearing as required by Insurance Code section 1861.05.

s. *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, which successfully invalidated an illegal legislative amendment to Proposition 103 that would have decreased the amount of refunds owed to policyholders under the initiative's rate rollback provision.

t. *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, in which the California Supreme Court upheld insurance rate regulations enforcing Proposition 103's prohibition against excessive or inadequate rates.

u. *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, in which the California Supreme Court issued a decision upholding Proposition 103 against a constitutional challenge by the insurance industry.

v. Numerous rulemaking proceedings implementing Proposition 103's prior approval and automobile rating factor and public participation requirements, including: (1) the Gender Nondiscrimination rulemaking matter (REG-2018-00020), supporting the removal of gender as an optional rating factor; (2) the Intervenor Regulations rulemaking matter (RH-06092874), adopting amendments to update and clarify the regulations implementing Insurance Code 1861.10's public

participation requirements; (3) the Mileage Verification rulemaking matter (RH-06091489), implementing amendments to the Automobile Rating Factors regulations to provide requirements for verified mileage programs; (4) 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; (5) 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); (6) the Persistency rulemaking matter (RH-402, Cal. Dept. of Ins., April 18, 2003); and (7) the Accident Verification 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) (RH-01015532, Cal. Dept. of Ins., Sept. 3, 2003), among others. In each of these proceedings, Consumer Watchdog received compensation pursuant to Section 1861.10, subd. (b), from the Proposition 103 Fund maintained by the Department.

w. *Thompson v. Transamerica Life Ins. Co.*, 18-05422 (C.D. Cal., filed June 18, 2018), in which Mr. Rosenfield served as co-lead class counsel, reaching a class action settlement with Transamerica for universal life policy overcharges in 2017–2018; under that settlement, Transamerica agreed to pay up to $88 million in account value credits to policies in effect and those for which death claims were pending as of December 31, 2019. On August 31, 2020, the U.S. District Court in Los Angeles held a hearing on the motion for final approval of the settlement.

x. *Feller v. Transamerica Life Ins. Co.*, No. 16-01378 (C.D. Cal., filed Feb. 28, 2016), in which Mr. Rosenfield served as co-lead class counsel, settling a class action lawsuit on behalf of universal life insurance policyholders whose costs had unexpectedly and illegally skyrocketed, requiring Transamerica to repay more than $150 million in overcharges and freeze future increases for five years.

y. Multiple class action cases in which insurance providers dramatically reduced the number of doctors in their individual health plan networks and misrepresented these changes to

consumers, leaving patients without adequate coverage and higher out-of-pocket costs, including *Anthem Blue Cross Affordable Care Act Cases*, JCCP No. 4805 (2019); *Lehman v. Health Net* (Super. Ct. L.A. County, 2019, No. BC567361); *Davidson v. Cigna Health and Life Ins. Co.*, No. BC558566 (Super. Ct. L.A. County, filed Sept. 24, 2014); and *Blue Shield of Cal. Affordable Care Act Cases*, JCCP No. 4800 (filed Sept. 23, 2014).

z. *Taub v. Blue Cross of Cal.* (Super. Ct. L.A. County, 2017, No. BC457809) and *Kassouf v. Blue Cross of Cal.* (Super. Ct. L.A. County, 2017, No. BC473408) (consolidated), which garnered a settlement of $8.3 million on behalf of insurance customers whose deductibles were increased mid-year by Anthem Blue Cross, resulting in higher out-of-pocket costs.

aa. *Consumer Watchdog et al. v. Department of Managed Health Care et al.* (2014) 225 Cal.App.4th 862, a writ case which held that the Department of Managed Health Care can no longer uphold a health plan's denial of coverage for autism treatment provided or supervised by a nationally board-certified individual on the basis that the provider is not licensed.

bb. *Fairbanks v. Farmers New World Life Ins. Co.* (2009) 46 Cal.4th 56, in which Consumer Watchdog argued that Proposition 103 did not apply to life insurance.

11. 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 2025 for the professional services of an attorney with experience and qualifications comparable to Mr. Rosenfield's.

Pamela Pressley

12. I am an attorney with over 29 years of professional experience advocating on behalf of consumers, including the last 25 years with Consumer Watchdog. During that time, I served as Consumer Watchdog's Litigation Director for 16 years, and I now serve as its Senior Staff Attorney. My legal work with Consumer Watchdog has focused primarily on insurance regulatory and litigation matters before the Department and the courts, and particularly on the enforcement and implementation of Proposition 103. Several of these matters involved issues of first impression before the courts in which I was primarily responsible for litigating the matters through trial and on appeal. Examples include:

a. *State Farm General Insurance Company v. Lara* (2021) 71 Cal.App.5th 197, in which I served as co-lead counsel representing Consumer Watchdog as a respondent and defendant to successfully defend against a challenge by State Farm to the substantial contribution standard for intervenor fee awards under Insurance Code section 1861.10(b).

b. *Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th 82, in which I served as lead counsel representing Consumer Watchdog as Intervenor to successfully defend against a petition for writ of mandate by Mercury, resulting in the Court of Appeal upholding a $27.6 million civil penalty against Mercury for violations of Proposition 103's prior approval requirement and prohibition against unfair rate discrimination (sections 1861.01 and 1861.05) based on its agents charging unapproved fees in addition to the approved premium amounts on over 180,000 insurance transactions over a four-year period from 1999–2004.

c. *Mercury Casualty Company v. Jones* (2017) 8 Cal.App.5th 561, in which I 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.

d. *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029, in which I 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.

e. *Allstate Insurance Co. v. Poizner* (Super. Ct. S.F. County, 2008, No. CPF-08-50821), in which I 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 served 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).

f. *American Insurance Association v. Garamendi* and *California Farm Bureau Federation v. Garamendi* (Super. Ct. Sacramento County, 2007, Nos. 06AS03053 and 06AS03036 (consolidated)), in which I served as lead counsel representing Consumer Watchdog as an intervenor in a successful motion for summary judgment against insurer plaintiffs upholding the Insurance Commissioner's regulations (see paragraph (p)(4), 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.

g. 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 Found. for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354). In that proceeding, I 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.

h. 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 Exch. of the Automobile Club*, Case No. BC266218; *Landers v. Interinsurance Exch. of the Auto. Club*, JCCP No. 4438; and *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968), which resulted in settlements that required the insurers to make refunds to affected auto policyholders.

i. *Mitchell v. Allstate Ins. Co.* (Super. Ct. L.A. County, 2003, No. BC212492), in which I drafted all Consumer Watchdog pleadings submitted to the Court and the Department and made court appearances on Consumer Watchdog's behalf, successfully objecting to the class action settlement.

j. The appeal in 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 Found. v. Low* (2000) 85 Cal.App.4th 1179.)

k. A successful writ of mandate action against former Insurance Commissioner Quackenbush to require that the Commissioner not approve any insurer's rate application prior to the expiration of the 45-day period in which a consumer may petition for a rate hearing as required by Insurance Code section 1861.05. (*Proposition 103 Enforcement Project v. Chuck Quackenbush* [Super. Ct. L.A. County, 1999, No. BC202283].)

l. Two successful noncompliance proceedings before the CDI: *In the Matter of Mercury Ins. Co., Mercury Cas. Co., and California Auto. Ins. Co.* (Cal. Ins. Comm'r, Feb. 6, 2015), in which I 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 Ins. Exch., Ins. Exch., and Mid-Century Ins. Co.* (Cal. Ins. Comm'r, Aug. 8, 2007) in which I served as lead counsel representing Consumer Watchdog as Intervenor against Farmers Insurance, alleging that the company had been misapplying its own rating guidelines to overcharge certain homeowners policyholders based on the number of claims they made or how far they lived from a fire hydrant. According to the 2007 settlement approved by the Commissioner, Farmers refunded its policyholders $1.4 million for the overcharges, was ordered to pay a $2 million penalty to the CDI, will use rating practices that comply with the law, had to review its computer data to find and refund any other policyholders who were overcharged, and was subject to another review of its practices in 2008.

m. Successful rate challenges before the CDI to insurers' earthquake and homeowners rate hikes in which I 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.

n. CDI hearings regarding Low Cost Auto Insurance Program ("LCAIP") proposed rates in 2003, 2005, 2006, 2012, 2014, 2015, 2016, and 2020. In 2012, Consumer Watchdog's participation and comments contributed to the Commissioner's decision requiring the California Automobile Assigned Risk Pool ("CAARP") to implement an overall rate decrease for the LCAIP of -2.8%, 11.1% *lower than* the overall +8.3% rate increase requested by CAARP. In 2014, Consumer

Watchdog's participation and comments contributed to the Commissioner's decision requiring CAARP to implement an overall LCAIP rate of +2.2%, 5.4% *lower than* the overall +7.6% rate increase requested by CAARP, resulting in an overall savings of $140,000 in annual premiums. In 2015, Consumer Watchdog's participation resulted in an approved rate that was 10.5% ***lower*** than the rate requested by CAARP for a savings of nearly $318,000 in annual premiums, and in 2016 Consumer Watchdog's participation contributed to an approved rate that was 5.8% lower than requested, resulting in $237,000 in savings. In 2020, after Consumer Watchdog submitted comments, CAARP withdrew its requested +3.8% rate increase, resulting in a savings of $259,000 in annual premiums.

o. Numerous other successful challenges to automobile, homeowners, and medical malpractice insurers' rate applications before the Department since 2003, resulting in collective savings to consumers of over $6 billion. Examples include *In the Matter of the Rate Application of CSAA Ins. Exch.*, PA-2023-00021 (Cal. Ins. Comm'r 2024), resulting in annual savings of $525 million in auto insurance premiums; *In the Matter of the Rate Applications of GEICO Ind. Co., GEICO Cas. Co., GEICO Gen. Ins. Co., and Gov't Emps. Ins. Co.*, PA-2023-00013 (Cal. Ins. Comm'r 2023), resulting in annual savings of $356 million in auto insurance premiums; *In the Matter of the Rate Application of State Farm Mut. Auto. Co.*, PA-2023-00012 (Cal. Ins. Comm'r 2023), resulting in annual savings of $151.7 million in auto insurance premiums; *In the Matter of the Rate Application of State Farm Gen. Ins. Co.*, PA-2023-00007 (Cal. Ins. Comm'r 2023), resulting in annual savings of $199.7 million in homeowners insurance; *In the Matter of the Rate, Rule, and Form Application of Pacific Specialty Ins. Co.*, PA-2020-00009 (Cal. Ins. Comm'r 2023), resulting in annual savings of $6.3 million in homeowners insurance; *In the Matter of the Rate Application of Allstate Northbrook Ind. Co.*, PA-2023-00014 (Cal. Ins. Comm'r 2023), resulting in annual savings of $149.5 million in auto insurance premiums; *In the Matter of the Rate Application of State Farm Gen. Ins. Co.*, PA-2023-00006 (Cal. Ins. Comm'r 2023), resulting in annual savings of $21.5 million in renters insurance; *In the Matter of the Rate Application of Farmers Ins. Exch., Fire Ins. Exch., and Mid-Century Ins. Co.*, PA-2023-00009 (Cal. Ins. Comm'r 2023), resulting in annual savings of $276 million in renters, condo, and homeowners insurance; *In the Matter of the Rate Application of Farmers Ins. Exch., Mid-Century Ins. Co., and Truck Ins. Exch.*, PA-2023-00008 (Cal. Ins. Comm'r 2023), resulting in annual savings of

$535 million in auto insurance premiums; *In the Matter of the Rate Application of CSAA Ins. Exch.*, PA-2023-00004 (Cal. Ins. Comm'r 2023), resulting an annual savings of $192.4 million in auto insurance premiums; *In the Matter of the Rate Application of Allstate Ins. Co.*, PA-2021-00005 (Cal. Ins. Comm'r 2023), resulting in annual savings of $2.8 million in homeowners insurance; *In the Matter of the Rate Applications of First Nat'l Ins. Co. of Am., Safeco Ins. Co. of Am., and Safeco Ins. Co. of Ill.*, PA-2022-00002 (Cal. Ins. Comm'r 2023), resulting in annual savings of $7.8 million in homeowners multiple peril insurance; *In the Matter of the Rate Applications of Garrison Prop. and Cas. Ins. Co. and USAA-Ca. Ins. Co.*, PA-2021-00004 (Cal. Ins. Comm'r 2023), resulting in annual savings of $8.47 million in homeowners, unit-owners, renters contents, and renters liability insurance; *In the Matter of the Rate Applications of Farmers Ins. Exch., Fire Ins. Exch., and Mid-Century Ins. Co.*, PA-2022-00007 (Cal. Ins. Comm'r 2023), resulting in annual savings of $121 million in homeowners multiple peril insurance; *In the Matter of the Rate Application of Med. Ins. Exch. of Cal.*, PA-2021-00003 (Cal. Ins. Comm'r 2023), resulting in annual savings of $1.41 million in medical professional liability insurance; *In the Matter of the Rate Applications of Farmers Ins. Exch., Fire Ins. Exch., and Mid-Century Ins. Co.*, PA-2021-00007 (Cal. Ins. Comm'r 2022), resulting in annual savings of $6.05 million in fire, allied lines, and other liabilities insurance; *In the Matter of the Rate and Rating Plan Application of CSAA Ins. Exch.*, PA-2021-00002 (Cal. Ins. Comm'r 2021), resulting in annual savings of $14.75 million in homeowners insurance; *In the Matter of the New Program Applications of Farmers Insurance Exchange and Fire Ins. Exch.*, PA-2020-00004 (Cal. Ins. Comm'r 2021), resulting in annual savings of $2.478 million in renters and condominium insurance; *In the Matter of the Rate Application of Homesite Ins. Co. of Am.*, PA-2020-00003 (Cal. Ins. Comm'r 2021), resulting in annual savings of $9.28 million in homeowners insurance; *In the Matter of the Rate Application of Am. Cas. Co. of Reading, Penn.*, PA-2020-00007 (Cal. Ins. Comm'r 2020), resulting in annual savings of $1.12 million in medical malpractice insurance; *In the Matter of the Rate Application of NORCAL Mut. Ins. Co.*, PA-2020-00002 (Cal. Ins. Comm'r 2020), resulting in annual savings of $5.2 million in medical malpractice insurance; *In the Matter of the Rate Application of Esurance Prop. and Cas. Ins. Co.*, PA-2020-00001 (Cal. Ins. Comm'r 2020), resulting in annual savings of over $26.7 million in auto insurance premiums; *In the Matter of the Rate and Rating Plan Application of Pacific Specialty Ins. Co.*, PA-2019-00003

(Cal. Ins. Comm'r 2020), resulting in annual savings of $5.95 million in homeowners insurance; *In the Matter of the Rate and Rating Plan Applications of Pacific Specialty Ins. Co.*, PA-2019-00001 (Cal. Ins. Comm'r 2020), resulting in annual savings of $800,000 in renters, mobile home, and condo owners insurance; *In the Matter of the Rate and Class Plan Applications of Liberty Mut. Fire Ins. Co.*, PA-2017-00007 and PA-2018-00001 (Cal. Ins. Comm'r 2018), resulting in annual savings of $3 million in auto insurance premiums; *In the Matter of the Rate and Class Plan Applications of GEICO Cas. Co.*, PA-2017-00005 and PA-2017-00006 (Cal. Ins. Comm'r 2017), resulting annual savings of $9.3 million in auto insurance premiums; *In the Matter of the Rate Applications of Allstate Ins. Co. and Allstate Indem. Co.*, PA-2015-00009 (Cal. Ins. Comm'r 2016), resulting in a savings of $34.2 million in annual homeowners insurance premiums; *In the Matter of the Rate Application of State Farm Gen. Ins. Co.*, PA-2015-00004 (Cal. Ins. Comm'r 2016), which resulted in an order requiring State Farm to lower its homeowners' rates overall by 7%, saving consumers $78.6 million, and issue an additional $110 million in refunds; *In the Matter of the Rate Application of Mercury Ins. Co.*, PA-2014-00010 (Cal. Ins. Comm'r 2015), resulting in savings of $7 million in annual auto insurance premiums; *In the Matter of the Rates and Rate Applications of United Services Auto. Ass'n, Garrison Prop. and Cas. Ins. Co. and USAA Gen. Ins. Co.*, PA-2013-00009, PA-2013-00009, and PA-2013-00010 (Cal. Ins. Comm'r 2014), resulting in annual savings of $40.5 million in homeowners insurance premiums; *In the Matter of the Rate Application of State Farm Gen. Ins. Co.*, PA-2013-00012 (Cal. Ins. Comm'r 2014), resulting in $86 million in savings for annual homeowners insurance premiums; *In the Matter of the Rate Application of Mercury Cas. Co.*, PA-2013-00004 (Cal. Ins. Comm'r 2013), resulting in over $11 million of savings per year in homeowners insurance premiums; *In the Matter of the Rate Application of Allstate Ins. Co., Allstate Indem. Co., and Northbrook Indem. Co.*, PA-2013-00003 (Cal. Ins. Comm'r 2013), resulting in over $92 million in savings per year in auto insurance premiums; *In the Matter of the Rates and Rating Plan Application of GEICO Indem. Co., GEICO Gen. Ins. Co. and Gov't Emp. Ins. Co.*, PA-2013-00002 (Cal. Ins. Comm'r 2013), resulting in savings of $9.4 million in annual auto insurance premiums; *In the Matter of the Rate Application of Progressive West Ins. Co.*, PA-2012-00008 (Cal. Ins. Comm'r 2013), resulting in savings of almost $1.5 million in annual auto insurance premiums; *In the Matter of the Rate Application of Coast Nat'l Ins. Co.*, PA-2012-00007

(Cal. Ins. Comm'r 2013), resulting in $10.9 million in annual auto insurance premium savings; *In the Matter of the Rate Applications of State Farm Mut. Auto. Co.*, PA-2012-00006 (Cal. Ins. Comm'r 2013), resulting in auto insurance premium savings of $69 million per year; *In the Matter of the Rate Application of Mercury Cas. Co.*, PA-2009-00009 (Cal. Ins. Comm'r 2013), resulting in savings of over $16 million per year in homeowners insurance premiums; *In the Matter of the Rate Application of State Farm Gen. Ins. Co.*, PA-2011-00010 (Cal. Ins. Comm'r 2013), resulting in savings of over $157 million per year in homeowners insurance premiums; *In the Matter of the Rate Application of Interinsurance Exch. of the Auto. Club*, PA-2012-00009 (Cal. Ins. Comm'r 2013), resulting in annual auto insurance premium savings of $70 million; *In the Matter of the Rate Application of Fed. Ins. Co., et al.*, PA-2012-00002 (Cal. Ins. Comm'r 2012), resulting in savings of over $4.2 million per year in earthquake insurance premiums; *In the Matter of the Rate Application of Chartis Prop. and Cas.*, PA-2011-000015 (Cal. Ins. Comm'r 2012), resulting in savings of over $7.6 million per year in earthquake insurance premiums; *In the Matter of the Rate Application of NORCAL Mut. Ins. Co.*, PA-2011-00007 (Cal. Ins. Comm'r 2012), resulting in savings of $2.8 million per year in medical malpractice insurance premiums; *In the Matter of the Rate Application of The Doctors Co.*, PA-2011-00006 (Cal. Ins. Comm'r 2012), resulting in savings of $5.6 million per year in medical malpractice insurance premiums; *In the Matter of the Rates of California State Auto. Ass'n Inter-Insurance Bureau*, PA-2010-00014 (Cal. Ins. Comm'r 2012), resulting in annual homeowners insurance premium savings of $52 million; *In the Matter of the Rate Application of Med. Protective Co.*, PA-2011-00008 (Cal. Ins. Comm'r 2011), resulting in annual premium savings of $2.5 million; *In the Matter of the Rate Application of Explorer Ins. Co.*, PA-2007-00013 (Cal. Ins. Comm'r 2008), resulting in annual auto insurance premium savings of $8.2 million; *In the Matter of the Rate Application of the Med. Protective Co.*, PA-05045074 (Cal. Ins. Comm'r 2005), resulting in savings of $2 million per year in medical malpractice insurance premiums; *In the Matter of the Rate Application of Am. Cas. Co.*, File No. PA-04039736 (Cal. Ins. Comm'r 2005), resulting in savings of $1.6 million per year in medical malpractice insurance premiums; *In the Matter of the Rate Application of Med. Protective Co.*, PA-04036735 (Cal. Ins. Comm'r 2004), resulting in savings of $3.9 million per year in medical malpractice insurance premiums; *SCPIE Indem. Co.*, PA-02025379 (Cal. Ins. Comm'r 2004), resulting in savings of

$23 million per year in medical malpractice insurance premiums; and *In the Matter of the Rate Application of: NORCAL Mutual Insurance Co.*, PA 03032128 (Cal. Ins. Comm'r 2003), resulting in savings of $11.6 million per year in medical malpractice insurance premiums. In these proceedings, I was responsible for overall strategy, briefing, communication with expert witnesses and parties, discovery, and settlement negotiations, among other tasks.

p. Several rulemaking proceedings before the Department implementing Proposition 103's prior approval and automobile rating factor requirements including: (1) the Intervenor Regulations rulemaking matter (RH-06092874) adopting amendments to update and clarify the regulations implementing Insurance Code section 1861.10's public participation requirements; (2) the Mileage Verification rulemaking matter (RH-06091489) implementing amendments to the Automobile Rating Factors regulations to provide requirements for verified mileage programs; (3) 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; (4) 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); (5) the Persistency rulemaking matter (RH-402, Cal. Dept. of Ins., April 18, 2003); and (6) the Accident Verification 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) (RH-01015532, Cal. Dept. of Ins., Sept. 3, 2003), among others. In these proceedings, I 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.

13. Prior to my employment with Consumer Watchdog, I served for two years as 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. I am 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 2025 for the professional services of an attorney with experience and qualifications comparable to mine.

Ryan Mellino

15. Ryan Mellino is a staff attorney for Consumer Watchdog providing litigation support spanning across Consumer Watchdog's issue areas, including insurance, civil rights, open government, and healthcare litigation. He has also worked on eviction defense with the Legal Aid Foundation of Los Angeles, matters concerning inmates in L.A. County jails with the American Civil Liberties Union, and with the Los Angeles Homeless Services Authority. Mr. Mellino is a 2021 graduate of the University of Southern California Gould School of Law, and was admitted to the California State Bar in January 2022.

16. 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 $250 per hour is a very reasonable rate in 2025 for the professional services of an attorney with experience and qualifications comparable to Mr. Mellino's.

Kaitlyn Gentile

17. Kaitlyn Gentile is a paralegal at Consumer Watchdog with over fourteen years of professional experience in litigation matters. Ms. Gentile provides legal support to all members of the litigation team, including drafting pleadings and motions such as the instant request for compensation.

18. Prior to joining Consumer Watchdog in November 2018, Ms. Gentile worked for eight years as a legal assistant at Lambda Legal. She also worked for four years as a legal secretary at Sullivan & Cromwell, LLP.

19. Ms. Gentile is a 2003 graduate of the University of Massachusetts at Amherst, where she earned a Bachelor of Arts in Sociology. She holds a signed declaration from a California State Bar

member verifying her as a member of the paralegal profession under Business & Professions Code section 6450.

20. I am informed through the Declaration of Richard M. Pearl, which details his extensive familiarity with the billing practices and schedules for numerous private law firms in San Francisco and Los Angeles, and believe that a rate of $200 per hour is a very reasonable rate in 2025 for the professional services in comparable matters of a paralegal with experience and qualifications comparable to Ms. Gentile's.

Ben Armstrong

21. Ben Armstrong, FCAS, MAAA is the Staff Actuary at Consumer Watchdog. In this capacity, Mr. Armstrong performs independent analyses of insurer rate filings, including assessments of their accuracy and actuarial soundness. His duties also include participation in rate discussions between Consumer Watchdog, insurance companies, and the CDI, preparation of the actuarial portions of requests for information submitted to insurers, and research tasks such as catastrophe modeling in insurance ratemaking. Mr. Armstrong is a Fellow of the Casualty Actuarial Society (2019) and a Member of the American Academy of Actuaries with over 12 years of professional actuarial experience. Prior to joining Consumer Watchdog, he was employed by Markel Insurance (formerly FirstComp) as a Senior Actuary, performing various actuarial tasks including pricing, reserving, and reinsurance work. His resume is attached hereto as Exhibit 3.

22. I am informed and believe that a rate of $425 per hour is a very reasonable rate in 2025 for the professional services in comparable matters of an actuary with experience and qualifications comparable to Mr. Armstrong's. (See, e.g., Decision Awarding Compensation, Feb. 14, 2025, *In the Matter of United Services Automobile Association*, PA-2023-00023, pp. 6–7; Decision Awarding Compensation, Jan. 29, 2025, *In the Matter of Liberty Insurance Corporation*, p. 8; Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate Application of State Farm General Insurance Company*, File No. PA-2023-00007, pp. 8–9; Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate Application of Allstate Northbrook Indemnity Company*, File No. PA-2023-00014, pp. 8–9; Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate Application of State Farm Mutual Automobile Insurance Company*, File No. PA-2023-00012, pp. 8–9; Decision Awarding

Compensation, Oct. 18, 2024, *In the Matter of the Rate Applications of Farmers Insurance Exchange, Mid-Century Insurance Company, and Truck Insurance Exchange*, File No. PA-2023-00022, pp. 14–15 [awarding hourly rate of $425 for Mr. Armstrong's actuarial work performed in rate proceedings in 2023–2024]; see also Schwartz Decl., ¶ 8; and Exh. 4: Decision Awarding Compensation, July 12, 2023, *In the Matter of the Rate Applications of Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company*, File No. PA-2022-00007, pp. 11, 16 [awarding hourly rates of $415 and $365 for actuarial associates of AIS Risk Consultants, Inc. who have not completed the requirements for the FCAS designation as has Mr. Armstrong].)

23. Mr. Armstrong performed the following tasks in this proceeding:

- Reviewed and provided analyses regarding the proposed regulations; and
- Consulted with Consumer Watchdog attorneys regarding actuarial issues in the preparation of oral and written comments.

Carmen Balber

24. Consumer Watchdog executive director Carmen Balber has been with the organization for over two decades. She spent four years directing the group's Washington, D.C. office where she advocated for key health insurance market reforms that were ultimately enacted into law as part of the Affordable Care Act.

25. Balber is recognized as a leading expert on a wide range of personal insurance issues and has authored or co-authored numerous reports on the home, auto, health and medical malpractice insurance industries, and insurance rate regulation. Her advocacy focuses on the impacts of climate change and insurance industry accountability on access and affordability of home insurance and she has presented solutions on these topics to policymakers and citizens in venues across the state.

26. Previously Balber led Consumer Watchdog's patient safety campaigns to win new access to justice for victims of medical negligence by updating the state's cap on medical malpractice damages and winning a voice for injured consumers at the Medical Board of California.

27. I am informed and believe that a rate of $320 per hour is a very reasonable rate in 2025 for the professional services in comparable matters of an advocate with experience and qualifications comparable to Ms. Balber's. I am informed from the Petition to Participate submitted by Consumer

Federation of California Education Foundation's (CFC) Amended Petition to Participate in the Complete Property and Casualty Rate Applications rulemaking, REG-2019-00025 that CFC's consumer advocates Douglas Heller and Richard Holober's hourly rates are $350 and $320 respectively. (Exh. 4 hereto, p. 10.)

Consumer Watchdog's Fees

28. 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 reasonable hours, at that attorney's prevailing market rate, plus expenses. Consumer Watchdog's attorneys 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 billed hours by that individual's prevailing market rate. The lodestar component of Consumer Watchdog's attorney fees for work performed in this proceeding for which compensation is requested totals $217,808.50 as follows:

Attorney	**Total Hours**	**Hourly Rate**	**Total Lodestar**
Harvey Rosenfield	73.6	$695.00	$51,152.00
Pamela Pressley	114.4	$595.00	$68,068.00
Ryan Mellino	50.6	$250.00	$12,650.00
Kaitlyn Gentile	35.4	$200.00	$7,080.00
Ben Armstrong	70.5	$425.00	$29,962.50
Carmen Balber	152.8	$320.00	$48,896.00
Total	497.3		$217,808.50

Consumer Watchdog's Expert Witness Fees

29. Consumer Watchdog incurred $14,282.50 in fees for its consulting actuary, as set forth in the billing statement and detailed time records of AIS Risk Consultants, Inc., attached as Exhibit 8 to the Declaration of Allan I. Schwartz. These time records show Consumer Watchdog's consulting actuary, Allan I. Schwartz, spent a total of 14.5 hours performing the following tasks in this proceeding:

- Reviewed and provided analyses regarding the proposed regulations;
- Prepared two sets of written testimony regarding actuarial issues; and

- Consulted with Consumer Watchdog regarding this Request for Compensation and preparation of his supporting declaration.

30. I am informed and believe that the time records for AIS Risk Consultants, Inc. detail the actual tasks performed in this proceeding, are based on contemporaneous time entries, and accurately represent the total time spent by Consumer Watchdog's consulting actuary in this proceeding. I am informed and believe that the time expended and work performed by Mr. Schwartz in this proceeding, as reflected in his time records, including review and consultation regarding trend selections and Consumer Watchdog's written analysis and overall rate indications, was reasonable and appropriate and the minimum required to achieve the result obtained. I am informed and believe that the rate charged by AIS Risk Consultants, Inc. reflects the 2025 hourly rate of Mr. Schwartz. Pursuant to 10 CCR §§ 2662.6(b) and 2661.1(c)(1), the expert witness fees billed for the actuarial consulting services of Mr. Schwartz reflect his current 2025 market rate for such services. Mr. Schwartz's over 40 years of professional actuarial experience includes being President of AIS Risk Consultants, Inc., Assistant Commissioner of the New Jersey Department of Insurance, and chief actuary of the North Carolina Department of Insurance. His resume is attached to the Declaration of Allan I. Schwartz as Exhibit 5.

Facts Regarding This Proceeding and Consumer Watchdog's Substantial Contribution

31. On June 7, 2023, the Commissioner issued an "Invitation to Workshop Examining Catastrophe Modeling and Insurance" ("Invitation") to be held on July 13, 2023, seeking to provide "interested and affected persons an opportunity to present statements or comments regarding contemplated future regulations." (Exh. 5 hereto, p. 1.) The Invitation presented questions for discussion, focusing primarily on how the use of catastrophe models could be incorporated into ratemaking and comply with the public disclosure requirements of Insurance Code section 1861.07, and exploring how other states review models. In preparation for the workshop, Consumer Watchdog reviewed the Invitation questions and consulted with its actuaries in developing its testimony. (*Ibid*.)

32. Consumer Watchdog's Executive Director Carmen Balber actively participated and provided oral comments at the July 13, 2023 workshop on behalf of Consumer Watchdog.[4]

[4] A video link to the workshop is available at https://www.youtube.com/watch?v=bm_8ZlXUE4U. Consumer Watchdog's testimony begins at 3:10:10 (three hours, ten minutes, ten seconds).

33. Consumer Watchdog submitted its written comments to the Department that same day. (Exh. 6 hereto.) These 14 pages of comments, with 24 linked source citations and documents, focused on answering the Invitation's questions by providing a detailed discussion of: 1) the purpose and legal requirements of Proposition 103 that require transparency, particularly Insurance Code section 1861.07 and the court cases that have upheld that requirement; 2) the opacity of black-box private models; 3) how maintaining private catastrophe models' secrecy would derail the ability of regulators and the public to review rates and confirm they are justified; and 4) examples of private models' inconsistency and bias across financial industries. (*Ibid*.) The written comments also included a list of 12 questions that should be asked by regulators and the public in determining whether a model is producing rates that are excessive, inadequate, or unfairly discriminatory. (*Ibid*.) These comments were available to the Commissioner in developing the proposed regulations, as stated in the Invitation: "the Commissioner will consider public comments received in these prenotice public discussions as he contemplates any additional regulatory changes that may be proposed in a Notice of Proposed Action." (Exh. 5 hereto, p. 4.)

34. These comments became part of the public record, as stated in the Invitation: "under the California Public Records Act (Government Code Section 6250, et seq.), your written and oral comments . . . will become part of the public record and can be released to the public upon request" and later became part of the rulemaking record when they were submitted to the Department during the formal hearing and public comment stage on September 17, 2024. (Exh. 5 hereto, p. 1.)

35. Consumer Watchdog was one of only four consumer groups that participated in the July 13, 2023 workshop by providing oral testimony, and one of only two consumer groups that submitted written comments.

36. On August 30, 2023, CDI issued an "Invitation to Second Workshop Examining Catastrophe Modeling and Insurance" ("Second Invitation") to be held September 28, 2023. (Exh. 7 hereto.) As stated in the Second Invitation, the focus of this workshop was "on understanding how the use of catastrophe modeling in the rate approval process to develop an aggregate catastrophe adjustment and aggregate losses will impact insurance availability and affordability over time and how the Department can ensure the integrity of model projections upon implementation." (*Id.*, p. 3.) The Second

Invitation contained a set of questions focusing primarily on three areas: (1) the impact of cat models on the marketplace, including insurance availability and affordability and models' incorporation of mitigation and risk-reduction strategies; (2) model review; and (3) model implementation. (*Id.*, pp. 4–5.)

37. In preparation for the second workshop, Consumer Watchdog reviewed the questions for discussion in the Second Invitation, consulted its actuaries, and drafted its written comments.

38. Consumer Watchdog's Executive Director Carmen Balber actively participated and provided oral testimony at the September 28, 2023 workshop on behalf of Consumer Watchdog.[5]

39. Consumer Watchdog submitted its written comments to the Department that same day. (Exh. 8 hereto.) These comments focused on emphasizing the issues with models that must be addressed by the Department in any proposed regulations, including conflicts of interest, accuracy, fairness, and transparency, and specifically responded to eleven questions posed by the Second Invitation, including: (1) how consumers can be fully represented in a ratemaking process allowing models; (2) what safeguards should be implemented if cat models are allowed for loss prediction; (3) what benefits and expertise consumer representatives bring to the process of reviewing cat models; (4) what difficulties consumer groups might experience in the model review process; (5) how Proposition 103's mandate for public disclosure should apply to model review; (6) what information regarding models should be made public; and (7) how insurance companies could be encouraged to increase coverage for properties in high risk areas. (*Ibid.*) These comments were available to the Commissioner in developing the proposed regulations, as stated in the Second Invitation: "the Commissioner will consider public comments received in these prenotice public discussions as he contemplates any additional regulatory changes that may be proposed in a Notice of Proposed Action." (Exh. 7, p. 5.)

40. These comments became part of the public record, as stated in the Second Invitation: "under the California Public Records Act (Government Code Section 6250, et seq.), your written and oral comments . . . will become part of the public record and can be released to the public upon request" and later became part of the rulemaking record when they were submitted to the Department during the formal hearing and public comment stage on September 17, 2024. (Exh. 7 hereto, p. 1.)

[5] A video link to the workshop is available at https://www.youtube.com/watch?v=uQe5Dtu0laA. Consumer Watchdog's testimony begins at 1:24:30 (one hour, twenty-four minutes, thirty seconds).

41. Consumer Watchdog was one of only five consumer groups that participated in the rulemaking hearing by providing oral testimony, and the only consumer group that submitted written comments.

42. On March 14, 2024, CDI issued an "Invitation to Workshop Regarding Catastrophe Modeling and Ratemaking" ("Third Invitation") to be held April 23, 2024. (Exh. 9 hereto.) The Third Invitation was accompanied by a draft of the text of the proposed regulatory changes, which proposed changes to sections 2644.4, 2644.5, 2644.8, 2644.27, and 2651.1 of Title 10 of the California Code of Regulations, and proposed adoption of section 2644.4.5 regarding use of catastrophe models and section 2651.10 regarding the Pre-Application Required Information Determination ("PRID") Procedure ("March 14, 2024 Draft Regulation Text"). (*Ibid.*) As stated in the Third Invitation: "the purpose of this discussion [was] to provide interested and affected persons an opportunity to present statements or comments regarding the contemplated regulations." (*Ibid.*)

43. In preparation for the third workshop, Consumer Watchdog reviewed the Third Invitation and March 14, 2024 Draft Regulation Text; consulted with its actuaries; and drafted its written comments.

44. Consumer Watchdog's Executive Director Carmen Balber actively participated and provided oral testimony at the April 23, 2024 workshop on behalf of Consumer Watchdog.[6]

45. Consumer Watchdog submitted its written comments to the Department that same day. (Exh. 10 hereto.) These 18 pages of comments with linked source citations and documents focused on Consumer Watchdog's overarching concerns, as well as comments on specific proposed sections of the March 14, 2024 Draft Regulation Text. (*Ibid*.) Consumer Watchdog explained in its comments how regulations with robust consumer protections would:

- Be fully transparent in accordance with Proposition 103's requirement for public disclosure of catastrophe models;
- Mandate a substantive review and approval of models;
- Identify uniform standards against which a model's reliability and its rate impact would be evaluated;

[6] A video link to the workshop is available at https://www.youtube.com/watch?v=shtmqCCJH04. Consumer Watchdog's testimony begins at 1:01:50 (one hour, one minute, fifty seconds).

- Enable regulators and the public to access a model to test both its design and its impact on a specific insurance company's rate;
- Require all companies disclose the same information for consistent results;
- Require diverse and independent academic and scientific input; and
- Preserve participants' due process rights under the APA.

Consumer Watchdog explained how some of the proposed provisions of the March 14, 2024 Draft Regulation Text would conflict with these consumer protections and offered specific suggestions as to how the regulations could be strengthened. Its comments further explained how Florida requires review and approval of private and public catastrophe models with 174 pages of specific standards and advocated that such standards be adopted in California to ensure that the public can be confident that the models are fair. (*Ibid.*)

46. Consumer Watchdog's expert actuarial witness, Allan I. Schwartz, also submitted written comments on behalf of Consumer Watchdog that day. (Exh. 11 hereto.) Mr. Schwartz's comments focused particularly on the more technical ratemaking and model provisions of the draft text, including proposed sections 2644.4.5 (Use of Catastrophe Models), 2644.5 (Catastrophe Adjustment), and 2651.1 ("PRID" Procedure). His comments were aimed at pointing out provisions that lacked clarity from an actuarial perspective and offered suggestions for improving the draft text and explanations of why such changes were necessary. (*Ibid*.) Mr. Schwartz was the only actuary to provide testimony on behalf of a consumer group. (*Ibid.*)

47. These April 23, 2024 comments by Consumer Watchdog and Mr. Schwartz were available to the Commissioner in developing the proposed regulations, as stated in the Third Invitation: "the Commissioner will consider public comments received in this workshop discussion when contemplating regulatory changes that may be proposed in a Notice of Proposed Action." (Exh. 9, p. 3.)

48. These comments became part of the public record, as stated in the Third Invitation: "under the California Public Records Act (Government Code Section 6250, et seq.), your written and oral comments . . . become part of the public record and can be released to the public upon request" and later became part of the rulemaking record when they were submitted to the Department during the formal hearing and public comment stage on September 17, 2024. (Exh. 9, p. 1.)

49. Consumer Watchdog was one of only three consumer groups that participated in the April 23, 2024 workshop by providing oral testimony, and one of only three consumer groups that submitted written comments.

50. On June 12, 2024, CDI issued an "Invitation to Workshop Regarding Catastrophe Modeling and Ratemaking: Insurer Commitments to Increase Writing of Policies in High-Risk Wildfire Areas" ("Fourth Invitation") to be held June 26, 2024. (Exh. 12 hereto.) The Fourth Invitation stated that "[t]he purpose of this discussion [was] to provide interested and affected persons an opportunity to present statements or comments regarding the contemplated regulations." (*Ibid*.) The Fourth Invitation was accompanied by a draft of the text of the proposed regulatory addition, to section 2644.4.8 of Title 10 of the California Code of Regulations, regarding distressed areas and insurer commitments ("June 12, 2024 Regulation Text"). (*Ibid.*) The Fourth Invitation also included a Preliminary List of Distressed Counties for Insurer Qualifying Residential Property Insurance Commitments, a Preliminary List of Undermarketed Zip Codes for Insurer Qualifying Commercial Property Insurance Commitments, and a Preliminary List of Undermarketed Zip Codes for Insurer Qualifying Commercial Property Insurance Commitments. (*Ibid.*)

51. In preparation for the fourth workshop, Consumer Watchdog reviewed the Third Invitation, June 12, 2024 Regulation Text, and additional documents; consulted with its actuaries; and drafted its written comments.

52. Consumer Watchdog's Executive Director Carmen Balber actively participated and provided oral comments at the June 26, 2024 workshop on behalf of Consumer Watchdog.[7]

53. Consumer Watchdog submitted its written comments regarding the June 12, 2024 Regulation Text that same day. (Exh. 13 hereto.) These comments focused on pointing out issues with the June 12, 2024 Regulation Text that would be necessary to fix in order to meet the Department's stated goals of securing insurers' "commitment to write homeowners and commercial policies in wildfire areas" and "ensur[ing] a competitive and sustainable insurance market while protecting consumers" (Exh. 13, p. 1). Some of the issues Consumer Watchdog pointed out with the June 12, 2024 Regulation Text were that it: (1) did not contain any express language explicitly specifying that the

[7] A video link to the workshop is available at https://www.youtube.com/watch?v=jIZVfDJj9Qk. Consumer Watchdog's testimony begins at 50:40 (fifty minutes, forty seconds).

policies insurance companies are committing to sell must provide standard, full-benefit insurance coverage that will make sure people can fully rebuild their property and replace their possessions if they experience a loss; (2) did not require that insurance companies expand their share of sales of policies in distressed areas to at least 85% of their statewide market share; (3) allowed companies to evade the 85% commitment or 5% increase commitment with a standardless "alternative commitment"; (4) did not provide requirements or deadlines for future reporting or compliance; and (5) did not contain any penalties for companies failing to meet their commitments or provisions for publicly proving that they met their commitments. Consumer Watchdog also urged the Commissioner to make the data used by the Commissioner to make the determinations of "distressed areas" public, to endorse a public model, and to mandate that companies sell to consumers who take the necessary steps to protect their homes against wildfire risk. (*Ibid.*)

54. Consumer Watchdog's June 26, 2024 comments were available to the Commissioner in developing the proposed regulations, as stated in the Fourth Invitation: "the Commissioner will consider public comments received in this workshop discussion when contemplating regulatory changes that may be proposed in a Notice of Proposed Action." (Exh. 12, p. 3.)

55. These comments became part of the public record, as stated in the Fourth Invitation: "under the California Public Records Act (Government Code Section 6250, et seq.), your written and oral comments . . . become part of the public record and can be released to the public upon request" and later became part of the rulemaking record when they were submitted to the Department during the formal hearing and public comment stage on September 17, 2024. (Exh. 12, p. 1.)

56. Consumer Watchdog was one of only three consumer groups that participated in the workshop and the only consumer group that submitted written comments.

57. On August 16, 2024, CDI issued a Notice of Proposed Action and Notice of Public Hearing regarding Catastrophe Modeling and Ratemaking ("Notice"), noticing a public hearing for September 17, 2024. (Exh. 14 hereto.) The Notice was accompanied by an Initial Statement of Reasons and proposed text of the regulation ("August 16, 2024 Regulation Text"). (*Ibid.*) The Notice stated that the purpose of the public hearing was "to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, concerning these regulations." (*Id.* at p. 1.)

58. In preparation for the public hearing, Consumer Watchdog reviewed the Notice, Initial Statement of Reasons, and proposed regulation text; consulted with its actuaries; and drafted its written comments.

59. Consumer Watchdog's Executive Director Carmen Balber actively participated and provided oral comments at the September 17, 2024 public hearing on behalf of Consumer Watchdog.[8]

60. Consumer Watchdog submitted its written comments regarding the August 16, 2024 Regulation Text that same day. (Exh. 15 hereto.) These 30-page comments with citations and links to referenced source documents explained in detail Consumer Watchdog's concerns with the insurer commitment and PRID procedure sections of the August 16, 2024 Regulation Text, with the goal of ensuring that the final regulations adopted by the Commissioner: (1) require that companies would have to sell comprehensive policies to meet their commitments to sell in distressed areas; (2) contain enforceable metrics for meeting their 85% and 5% commitments; (3) require public transparency in proving insurer commitments and in the PRID procedure; (4) require accountability and efficiency with clear substantive standards for the review of catastrophe models; (5) emphasize the importance of testing models; (6) provide for due process in the PRID procedure; and (7) eliminate conflicts with other regulations. (*Ibid*.)

61. Consumer Watchdog's expert actuarial witness, Allan I. Schwartz, also submitted written comments on behalf of Consumer Watchdog that day, particularly focusing on the issues with the technical ratemaking and model provisions of the draft regulation text, including proposed sections 2644.4.5 (Use of Catastrophe Models), 2644.5 (Catastrophe Adjustment), and 2651.1 ("PRID" Procedure), with specific provision-by-provision suggestions for amendments to these sections. (Exh. 16 hereto.)

62. Consumer Watchdog's September 17, 2024 comments became part of the public rulemaking record, as stated in the Notice: "under the California Public Records Act (Government Code Section 6250, et seq.), any written and oral comments . . . become part of the public record and can be released to the public upon request." (Exh. 14 at p. 2.)

[8] A video link to the hearing is available at https://www.youtube.com/watch?v=cB0zdluq8SA. Consumer Watchdog's testimony begins at 1:37:35 (one hour, thirty-seven minutes, thirty-five seconds).

63. Consumer Watchdog was one of only four consumer groups that participated in the September 17, 2024 rulemaking hearing, and one of only two consumer groups that submitted written comments. Consumer Watchdog was the only consumer group to provide separate comments by an actuary.

64. On September 27, 2024, Consumer Watchdog submitted its Petition to Participate. (Consumer Watchdog's Petition to Participate and Notice of Intent to Seek Compensation, Sept. 27, 2024, Request, Exh. B.)

65. On October 2, 2024, CDI issued a Notice of Availability of Amended Text ("Amended Text Notice"), inviting public comment through October 17, 2024. (Exh. 17 hereto.) The Amended Text Notice was accompanied by amended proposed text of the regulation ("October 2, 2024 Amended Regulation Text"). (*Ibid.*)

66. On October 17, 2024, Consumer Watchdog submitted its written comments on the October 2, 2024 Amended Regulation Text. (Exh. 18 hereto.) These comments discussed how some of the proposed amendments erected new barriers to public participation in the PRID procedure and criticized the proposed amendments for failing to "mandate wildfire mitigation be considered in sales decisions or rate segmentation." (*Ibid.*)

67. These comments became part of the public rulemaking record, as stated in the Notice: "under the California Public Records Act (Government Code Section 6250, et seq.), your written and oral comments . . . become part of the public record and can be released to the public upon request" and were ultimately included in the final rulemaking file that was transmitted to OAL. (Exh. 17 at p. 2.)

68. On November 11, 2024, the Commissioner granted Consumer Watchdog's Petition to Participate in this rulemaking. (Order Granting Consumer Watchdog's Petition to Participate, Nov. 11, 2024, p. 5; Request, Exh. C.)

69. On November 13, 2024, CDI submitted the final regulation and supporting rulemaking file, including the Final Statement of Reasons incorporating the Department's Summary of and Response to Comments, to OAL. (Request, Exh. 19.)[9]

[9] This document is over 1,000 pages and has not been reproduced in its entirety due to its size. The pages cited are included in the exhibit and the full document is available upon request.

70. In its Summary of and Response to Comments, the Department summarized and responded to each of Consumer Watchdog's comments, including comments pointing out issues with the regulatory text and comments suggesting ways to amend the regulations to be clearer and in compliance with Proposition 103. (Exh. 19, pp. 26–27, 37–79, 779–780, 838–839, 865–867.)

71. On December 12, 2024, the final regulation text and rulemaking record was filed by OAL with the Secretary of State with an effective date of December 12, 2024. (Exh. 20 hereto.)

72. Consumer Watchdog staff divided the workload among its staff who participated in these proceedings, with Mr. Rosenfield and Ms. Balber primarily working on testimony and comments in the initial workshops posing questions for discussion in the development of regulations. In the later workshops and the rulemaking hearing, Ms. Balber primarily drafted the comments on the insurer commitment sections of the proposed regulations, and Mr. Mellino and Ms. Pressley primarily drafted comments related to the PRID section and other ratemaking sections of the proposed regulations in consultation with Mr. Armstrong and Mr. Schwartz.

73. On January 7, 2025, Consumer Watchdog contacted the Public Advisor to request an extension of 30 days until February 12, 2025, to submit this Request. The extension was granted by the Public Advisor the following day. (Request, Exh. D.)

74. Consumer Watchdog subsequently requested and was granted by the Public Advisor an additional extension to February 28, 2025. (Request, Exh. E.)

Executed on February 28, 2025 at Los Angeles, California.

Pamela Pressley

Pamela Pressley

EXHIBIT 1a

Consumer Watchdog Time Entries
Catastrophe Modeling and Ratemaking, File No. REG-2023-00010

Pamela Pressley

Date	Description	Hours	Total
6/27/23	review H Rosenfield and A Schwartz emails on WF models (.1); review A Schwartz and H Rosenfield emails re call on WF models (.1); review GV file for C Balber for testimony (1.0)	1.2	$714.00
6/30/23	review and reply to C Balber email re WF models (.2) review and reply to Ben Armstrong email re models (.2); teleconference with Ben Armstrong re same (.1)	0.5	$297.50
7/6/23	teleconference with A Schwartz, C Balber and B Armstrong re models, issues with disclosure and validation (1.0); review emails from A Schwartz re hurricane models (.2)	1.2	$714.00
7/9/23	review C Balber email re ALJ order re disclosure of models, report	0.2	$119.00
7/10/23	conferences with C Balber re models testimony (.4); email H Rosenfield re Commercial Union EQ rate proceeding (.2)	0.6	$357.00
7/11/23	review and edit testimony (2.0); email K Gentile re redactions (.1)	2.1	$1,249.50
9/27/23	review Ben Armstrong email re models (.1); review and edit comments for workshop (.5)	0.6	$357.00
3/14/24	review emails re proposed cat model regs, review and forward A Schwartz comments, conference with C Balber, J Flanagan, J Court, H Rosenfield and Ben Armstrong re same (1.5); teleconference with H Rosenfield re same (.2)	1.7	$1,011.50
3/19/24	email A Schwartz re model regs	0.2	$119.00
3/20/24	review notice of workshop (.5); review Ben Armstrong analysis of draft reg (.3); review and comment on draft CDI reg (2.5)	3.3	$1,963.50
3/21/24	review Ben Armstrong email re comments (.1); conference with C Balber, H Rosenfield, Ben Armstrong, J Flanagan re draft reg (2.0); review D Heller email (.1); review Ben Armstrong notes on reg (.3); email K Gentile re notes on regs (.2)	2.7	$1,606.50
3/22/24	review and edit comments, email team (1.0); review Ben Armstrong email re same (.2)	1.2	$714.00
4/2/24	review and reply to R Mellino email re regs (.2); reply to H Rosenfield email re call with J Phenix re draft text (.1); review C Balber email re comments (.1); review and reply to R Mellino email re PRID/non-adjudicatory proceeding research (.4)	0.8	$476.00
4/8/24	conference with C Balber and Ben Armstrong re models	0.8	$476.00
4/9/24	legal research, review prior comments re models, common methodology for review of rates	2	$1,190.00
4/10/24	teleconference with C Balber, H Rosenfield re reg comments (1.0); review files, draft comments, review emails re same (1.5)	2.5	$1,487.50
4/11/24	review files, draft comments	4	$2,380.00
4/12/24	emails with C Balber re time entries (.5); review/draft comments (1.8); draft comments (2.0)	4.3	$2,558.50
4/15/24	draft comments (2.0); review comments to PRID section, regs, legal research re same (1.5); edit comments (1.0)	4.5	$2,677.50

4/16/24	review H Rosenfield email re questions/comments (.2); review A Schwartz comments on reg text, H Rosenfield email reply (.3); review and reply to H Rosenfield email re comments, review questions on same (.5); edit questions to CDI (.5); review C Balber notes on draft text (.3); review J Flanagan email re paragraphs insert for comments on PRID process (.2); emails re comments (.3)	2.3	$1,368.50
4/17/24	conference with CDI re proposed model regs (1.0); follow up meeting with H Rosenfield and C Balber re same (.4)	1.4	$833.00
4/18/24	review and reply to C Balber email re comments (.2)	0.2	$119.00
4/19/24	teleconference with A Schwartz re reg text (.1); voicemail to C Balber re same (.1); review initial statement of reasons re model disclosure, email team (1.0); teleconference with C Balber re comments (.1); teleconference with A Schwartz and email C Balber re actuary comments (.2)	1.5	$892.50
4/21/24	review and reply to emails re comments	0.2	$119.00
4/22/24	review emails re UG regulation (.2); review comments re disclosure, email C Balber and conference with C Balber re same (1.0); edit comments (2.3); conference with C Balber re same (.1); review final draft, email C Balber re cites (.3)	3.9	$2,320.50
6/12/24	review CDI proposed regulation re insurer commitments (.8); review CDI regs, conference with team re same (1.0)	1.8	$1,071.00
6/13/24	review R Mellino email re regs	0.2	$119.00
6/18/24	review draft reg text, email C Balber re same (.5); teleconference with C Balber and J Flanagan re draft reg text (.8); email C Balber (.1)	1.4	$833.00
6/26/24	review C Balber email re comments, H Rosenfield reply on comments (.1); review and edit comments for workshop on insurer commitments (1.0)	1.1	$654.50
8/15/24	review and reply to C Balber email re model regs	0.1	$59.50
8/19/24	review emails re proposed regs (.1); review proposed regs, email A Schwartz, Ben Armstrong, C Balber, R Mellino and H Rosenfield re same (.8)	0.9	$535.50
8/20/24	reply to A Schwartz email re comments (.2); teleconference with C Balber, H Rosenfield, R Mellino re revised regulations (.4); review draft proposed reg text (1.1)	1.7	$1,011.50
8/21/24	email Ben Armstrong and A Schwartz re initial statement of reasons (.2); email C Balber re PRID regs (.3); teleconference with C Balber re same (.2); reply to R Mellino email (.1); review initial statement of reasons (.2); review proposed reg, ISOR (1.8)	2.8	$1,666.00
8/22/24	review Initial Statement of Reasons, reg text	2	$1,190.00
8/23/24	review draft reg, compare to 3/14 version (1.6); edit notes on PRID sections (3.0)	4.6	$2,737.00
8/26/24	review R Mellino notes on reg text (.3); conference with C Balber re reg standards (.2)	0.5	$297.50
8/27/24	conference with C Balber, H Rosenfield and R Mellino re comments (1.0); review and reply to H Rosenfield email re A Schwartz testimony (.3); review A Schwartz email to A Schwartz and C Balber, R Mellino emails re comments (.2)	1.5	$892.50
8/28/24	review H Rosenfield email (.1); review ISOR, email team (.2); review emails re cat load (.2); emails to C Balber, R Mellino and S Ahn re questions on draft reg text (.5); review draft reg, draft email to S Ahn re question on text (1.0)	2	$1,190.00

8/29/24	reply to R Mellino re draft PRID reg (.2); email to team re PRID regs (.6); reply to H Rosenfield email (.1); reply to C Balber email re severability (.1)	1	$595.00
9/3/24	review draft comments on PRID sections, comments on same (2.4); conference with C Balber and R Mellino re edits, questions on same (1.5); email A Schwartz re comments on actuarial sections (.1)	4	$2,380.00
9/4/24	emails to Ben Armstrong, team re comments (.3); review C Balber email re same (.1); edit comments, email C Balber and R Mellino re same (6.5)	6.8	$4,046.00
9/9/24	email C Balber re comments (.2); review and reply to C Balber email re comments (.1); email Ben Armstrong re regs (.1); review and reply to C Balber email re comments (.2)	0.6	$357.00
9/11/24	review and forward A Schwartz email re testimony (.2); edit comments (1.6)	1.8	$1,071.00
9/12/24	review H Rosenfield comments, email K Gentile re clean draft (.8); review and edit comments (1.5); teleconference with L Wang and CDI staff re "public review" meaning in reg text (.5); conference with C Balber, H Rosenfield and R Mellino re comments (1.0); reply to K Gentile email re comments (.1); edit comments, email to team (2.3)	6.2	$3,689.00
9/13/24	emails re comments (.2); review comment edits, email K Gentile re exhibits, review and reply to Ben Armstrong email re A Schwartz testimony (.5); review Milliman contract (.2)	0.9	$535.50
9/16/24	conference with C Balber re comments (.7); review edits/comments, conference with C Balber re same (1.0); review H Rosenfield edits (.1); review and finalize A Schwartz testimony, conference with C Balber and K Gentile re same (.9); review Ben Armstrong edits to comments, conference with K Gentile (.4); review final comments (1.3)	4.4	$2,618.00
9/19/24	edit petition to participate	3.5	$2,082.50
9/24/24	review and reply to C Balber email re petition to participate (PTP) (.2); review R Mellino email re same (.1); email revised PTP to team (.1)	0.4	$238.00
9/27/24	conference with C Balber re PTP, teleconference with C Balber re same (.4); revise PTP, email K Gentile re same (.5); review C Balber email re PTP (.1); review/edit PTP, email K Gentile re same (.5)	1.5	$892.50
10/2/24	review amended model regs (1.0); review and reply to emails re reg amendments (.3)	1.3	$773.50
10/2/24	review and reply to emails re reg amendments	0.3	$178.50
10/2/24	review and reply to C Balber question re amended language	0.1	$59.50
10/8/24	set call to discuss comments on amendments (.1); review emails re same (.2); conference with C Balber, R Mellino re comments on amendments (.7)	1	$595.00
10/11/24	email C Balber re comments on amended text (.1); edit comments (1.0)	1.1	$654.50
10/15/24	review reg amendments, email C Balber and R Mellino re comments (.2); conference with C Balber and R Mellino re same (.5)	0.7	$416.50
10/16/24	edit comments	1.2	$714.00
10/17/24	review/edit comments, format (1.0); review emails re same (.2)	1.2	$714.00
11/4/24	email Public Advisor re petition to participate ruling, review CDI website re same (.3); review order granting PTP (.3)	0.6	$357.00
2/13/25	draft request for compensation	1.5	$892.50
2/20/25	draft and edit request for compensation factual background and substantial contribution sections, edit same	5	$2,975.00

2/21/25	email K Gentile re C Balber bio for P Pressley declaration ISO request for compensation (.1); edit request for compensation (.1); edit draft request for compensation and email to K Gentile (.5); email A Schwartz re billing statement (.1)	0.8	$476.00
2/24/25	review and edit time records, exercise billing judgment	2.1	$1,249.50
2/27/25	review A Schwartz declaration (.3); review edits to request for compensation (.3); email K Gentile re time entries (.2); edit Pressley declaration, emails re same and time records (1.0); email K Gentile re request for compensation (.1)	1.9	$1,130.50
	Pamela Pressley Total:	**114.4**	**$68,068.00**

Harvey Rosenfield

Date	Description	Hours	Total
6/7/23	Review workshop notice from CDI and email with Consumer Watchdog team re same, Doug Heller (.3);	0.3	$208.50
6/8/23	Consumer Watchdog email with B. Armstrong re workshop and regs (.2)	0.2	$139.00
6/16/23	Microsoft Teams conference with C Balber and B. Armstrong re Consumer Watchdog testimony @ workshop (.4): research on AI email article to C Balber (.3)	0.7	$486.50
6/26/23	Discussion with Consumer Watchdog, B. Armstrong, re workshop issues (@ lit mtg] (1.1); Discussion with C Balber re workshop issues (.6); Research .07 case law and docs and forward to C Balber (1.3); Review docs from Pam Pressley re models (.3)	3.3	$2,293.50
6/28/23	Email B. Armstrong re models analysis, reply, further team email (.3)	0.3	$208.50
6/30/23	Microsoft Teams conference with Doug Heller and C Balber re issues (.9); Further telephone conference with C Balber re tasks (.1); Microsoft Teams conference with Public Citizen and C Balber (.7); Research re .07, use State Farm briefing (.4); Email Public Citizen experts (.2); Review Consumer Watchdog challenges to models in previous rate proceedings (.4)	2.7	$1,876.50
7/4/23	Research and complete draft of .07 bullet points forward to C Balber (2.2)	2.2	$1,529.00
7/9/23	Research model experts, review their analyses, email C Balber summary re same, follow up with TURN re same, review PUC rules on models (2.6); Research re CEA models and CALJ decision (.4)	3	$2,085.00
7/11/23	Telephone conference with C Balber re testimony (.1); Review and revise draft testimony for workshop (2.7)	2.8	$1,946.00
7/12/23	Follow up with K Gentile re CEA research (.3); Telephone conferences with C Balber (.9); Review B. Armstrong email, research and edits to testimony (.3);	1.5	$1,042.50
7/13/23	Telephone conference with C Balber re workshop (.1); Partial review of recording of workshop (.6)	0.7	$486.50
7/17/23	Discussion with C Balber re workshop (.4)	0.4	$278.00
7/18/23	Review research from Doug Heller re models (.1);	0.1	$69.50
7/19/23	Review further research on models from B. Armstrong (.3)	0.3	$208.50
7/20/23	Microsoft Teams conference with Doug Heller C Balber, B. Armstrong re models research (1.3)	1.3	$903.50
8/10/23	Discuss B. Armstrong research on state public models with B. Armstrong and C Balber (.5)	0.5	$347.50
8/25/23	Telephone conference with Jon Phenix re workshop (.1)	0.1	$69.50

9/8/23	Review list of questions from Jon Phenix, CDI, and annotate, forward to CWD (1.0); Microsoft Teams conference with Consumer Watchdog team re CDI questions (.9); Review Pam Pressley edits and edit, comment and forward to Consumer Watchdog (.2)	2.1	$1,459.50
9/15/23	Review research re models - conflicts of interest (.2); Microsoft Teams conference with Consumer Watchdog re models workshop (.3)	0.5	$347.50
9/25/23	Review B. Armstrong research re FSF model - public for testimony (.3)	0.3	$208.50
9/26/23	Draft email for C Balber to climate coalition, review final (.8);	0.8	$556.00
9/26/23	Research, draft testimony (2.2); Draft revised responses to CDI questions to consumer groups (1.8)	4	$2,780.00
9/27/23	Review B. Armstrong research/email for testimony (.2); Review and revise draft testimony and Q&A, review Pam Pressley edits, forward to K Gentile for formatting, further revisions, telephone conference with her, check with Pam Pressley, telephone conference with C Balber re same (2.6)	3.2	$2,224.00
9/28/23	Attend CDI workshop (2.2); Telephone conference with C Balber post-hearing (.1)	2.3	$1,598.50
3/14/24	Skim draft text of models reg, Microsoft Teams conference with Consumer Watchdog further review (.8); Microsoft Teams conference with Consumer Watchdog to analyze draft text (.9); Further review of key text, email Consumer Watchdog re same (.9); Review A Schwartz initial thoughts (.1);	2.7	$1,876.50
3/17/24	Review A Schwartz email re cat model review in other states (.1); Reply to C Balber and J Court re models in other states and experts for hearing (.2)	0.3	$208.50
4/2/24	Review Ryan Mellino email re non-adjudicative facts, email Ryan Mellino for clarification re same, review Pam Pressley email re same (.4); Partly review and annotate CB/PP comments on reg (.6)	1	$695.00
4/3/24	Confirm meeting with CDI, email Consumer Watchdog re same (.1); Review notes and questions to prepare for call (.3); Microsoft Teams conference with Consumer Watchdog team re issues and questions in draft reg (1.4)	1.8	$1,251.00
4/4/24	Review Consumer Watchdog comments on draft regs, notes prior calls (.5); Microsoft Teams conference with A Schwartz, C Balber, J Flanagan, B. Armstrong re issues in draft reg (1.3);	1.8	$1,251.00
4/10/24	Review Consumer Watchdog drafts/comments on reg (.3); Microsoft Teams conference with Pam Pressley and C Balber re drafting Consumer Watchdog comments to proposed reg (1.1); Further notes to draft (.2); Further email re drafting comments, review C Balber draft questions to discuss with CDI at meeting (.4)	2	$1,390.00
4/13/24	Research/draft sections model comments (1.5)	1.5	$1,042.50
4/15/24	Review A Schwartz draft testimony re reg, reply (.3); Review notes on issues with draft reg, review and revise questions for CDI re same, draft comments on sections of proposed reg (4.0)	4.3	$2,988.50

4/16/24	Continue research and drafting ¶¶ for Consumer Watchdog submission, review Pam Pressley draft ¶¶, email from C Balber re confirming task (2.2); Skim Pam Pressley's additional questions for telephone conference with CDI tomorrow, email C Balber, and telephone conference with C Balber re edits, reply to Jon Phenix email and forward same (.6); Reply to Pam Pressley and J Flanagan re next steps in Consumer Watchdog comments, reply to C Balber re same, revise and forward clean version of ¶¶ (.4); Reply to Ryan Mellino Teams messages (.1); Respond to C Balber inquiry re draft ¶¶ (.5); Review and reply to A Schwartz email re same (.2)	4	$2,780.00
4/17/24	Discussion with C Balber re call with CDI to discuss questions (.1); Review questions for call (.1); Zoom conference with CDI (L Wang, N McKennedy, CDI, and Jon Phenix), Pam Pressley, C Balber re draft (.9); Further Microsoft Teams conference with C Balber and Pam Pressley (.4)	1.5	$1,042.50
4/18/24	Email with Consumer Watchdog re scope of model draft (.3); Research and email with Ryan Mellino re sections of models draft reg (.7); Consumer Watchdog email with A Schwartz (.1); Review Ryan Mellino draft section on procedures (.2)	1.3	$903.50
4/19/24	Discussions with C Balber re comments for CDI draft reg (.5); Review Pam Pressley email for comments (.1); Review call notes re closure of the record, reply to C Balber email (.1)	0.7	$486.50
4/20/24	Check notes re issue in PRID propposal and reply to C Balber re same (.1); Review and annotate draft of comments, email Consumer Watchdog re same (.6); Redline draft, forward to C Balber and Pam Pressley (3.3);	4	$2,780.00
4/21/24	Research .07, review and forward CPUC decision on trade secrets, Prop 103 to C Balber for Consumer Watchdog comments on draft (.5); Research cases re agency discretion, APA (.8); Review Ryan Mellino notes re PRID process (.1)	1.4	$973.00
4/22/24	Discuss draft comments with C Balber (.2); Review her revised draft (.3); Review A Schwartz draft testimony (.3)	0.5	$347.50
5/1/24	Email with C Balber re analysis/summary of workshop, revise (.8); Email CFA re comments (.1); Review Pub Cit testimony on models (.2)	1.1	$764.50
6/12/24	Email with Consumer Watchdog re expected reg announcement (.3); Review materials from CDI re draft reg on coverage, email summary to CWD, Microsoft Teams conference with Consumer Watchdog further review, further Microsoft Teams conference with Consumer Watchdog (2.5)	2.8	$1,946.00
6/25/24	Review and comment on draft reg testimony for hearing (.5)	0.5	$347.50
8/20/24	Microsoft Teams conference with Pam Pressley, Ryan Mellino and C Balber re analysis of new draft regs (.3)	0.3	$208.50
8/21/24	Email with C Balber re ISOR, PRID analysis (.1); Review team email re analysis (.1); Telephone conference with C Balber (.1); Review draft reg (.4)	0.7	$486.50
8/23/24	Microsoft Teams conference with Ryan Mellino re issues - models, review research and email him same (.2);	0.2	$139.00

8/27/24	Review notes/annotations, review C Balber, Pam Pressley and Ryan Mellino notes and comments to draft (2.4); Microsoft Teams conference with them re same (1.0); Microsoft Teams conference with Ryan Mellino (.2); Email draft questions to A Schwartz B. Armstrong re draft reg's compliance with ASOPs, cost statements, review feedback, revise and send, send additional per feedback (.7)	4.3	$2,988.50
8/28/24	Telephone conference with J Flanagan re strategy on models (.3); Review team email on draft questions to CDI re PRID (.2)	0.5	$347.50
9/2/24	Review C Balber edits to Ryan Mellino draft of comments (.3)	0.3	$208.50
9/4/24	Review B. Armstrong comments on actuarial sections of draft (.2); Review Pam Pressley comments on draft (.3)	0.5	$347.50
	Harvey Rosenfield Total:	**73.6**	**$51,152.00**

Ryan Mellino

Date	Description	Hours	Total
4/2/24	Emailing Lit Team re issues w/ PRID Process nonadjudicative label	1.7	$425.00
4/2/24	Emailing Lit Team re PRID Process being quasi-legislative	0.5	$125.00
4/4/24	Writing up email to Lit Team re issues w/ PRID Process	3	$750.00
4/5/24	Call w/ Lit Team re PRID Process notes	0.3	$75.00
4/15/24	Drafting paragraphs re PRID Process and APA application	2	$500.00
4/15/24	Meeting w/ Lit Team re writing up paragraphs re nonadjudicative issue re PRID Process	0.2	$50.00
4/16/24	Call w/ Lit Team re PRID Process APA paragraphs	0.2	$50.00
4/16/24	Call w/ Lit Team re propriety of model advisor in PRID Process	0.1	$25.00
4/16/24	Finishing write-up of PRID Process APA paragraphs	3	$750.00
4/16/24	Further call w/ Lit Team re PRID Process APA paragraphs	0.2	$50.00
4/18/24	Circulating edit to paragraphs re PRID Process APA application	0.2	$50.00
4/19/24	Call w/ Lit Team re PRID Process	0.3	$75.00
8/19/24	Reviewing draft regs and ISOR	1.5	$375.00
8/20/24	Call w/ Lit Team re reviewing modeling reg	0.3	$75.00
8/27/24	Responding to email re questions for actuaries	0.1	$25.00
8/27/24	Re-reviewing type of policy that qualifies under Ins Code 10087	0.8	$200.00
8/27/24	Call w/ CWD Team re modeling regs comments	1	$250.00
8/27/24	Call w/ Lit Team re modeling regs	0.2	$50.00
8/28/24	Emailing CWD Team re possible questions to ask CDI re public review	0.3	$75.00
8/28/24	Revising/drafting comments on updated regs	6	$1,500.00
8/29/24	Emailing CWD Team re meaning of draft reg language re public review	0.4	$100.00
8/29/24	Drafting/revising comments on updated reg	7	$1,750.00
8/30/24	Drafting/revising comments on PRID section of updated reg and emailing to CWD Team	7.5	$1,875.00
9/3/24	Reviewing C. Balber comments on draft modeling reg comments	0.6	$150.00
9/3/24	Meeting w/ C. Balber + P. Pressley re modeling reg comments and revisions to PRID section	1.5	$375.00
9/12/24	Call w/ CWD Team re comments on modeling reg	0.9	$225.00
9/12/24	Call w/ P. Pressley + CDI re meaning of "public review" in reg	0.5	$125.00
9/16/24	Call w/ P. Pressley + C. Balber + B. Armstrong re comments on reg	0.5	$125.00
9/16/24	Call w/ C. Balber + P. Pressley + B. Armstrong re comments on modeling reg	0.5	$125.00
9/17/24	Reviewing/editing Petition to Partitipate	0.6	$150.00
9/24/24	Reviewing/editing draft Petition to Participate, fixing time entries	1	$250.00

10/2/24	Emailing P. Pressley docs + notes re ratemaking exception as applied to 10 CCR 2648.4	0.6	$150.00
10/2/24	Writing up notes on changes to PRID reg and emailing to CWD Team	1	$250.00
10/2/24	Reviewing amended proposed reg and emailing CWD Team re apparent changes	0.3	$75.00
10/8/24	Call w/ C. Balber + P. Pressley re comments on amended reg	0.6	$150.00
10/9/24	Drafting comments on amended PRID reg	1.8	$450.00
10/10/24	Finishing draft comments re amended PRID reg and emailing to C. Balber + P. Pressley	0.6	$150.00
10/15/24	Call w/ P. Pressley + C. Balber re comments on reg	0.5	$125.00
2/24/25	Reviewing/revising draft RFC	2.3	$575.00
	Ryan Mellino Total:	**50.6**	**$12,650.00**

Ben Armstrong

Date	Description	Hours	Total
6/27/23	Draft portions of comments for CDI workshop on modeling re reasons models need to be transparent	3	$1,275.00
6/28/23	Draft portions of comments for CDI workshop on modeling re reasons models need to be transparent	2	$850.00
6/29/23	Draft portions of comments for CDI workshop on modeling re reasons models need to be transparent	2	$850.00
6/30/23	Draft portions of comments for CDI workshop on modeling re reasons models need to be transparent	1	$425.00
7/5/23	Draft portions of comments for CDI workshop on modeling re reasons models need to be transparent	1.7	$722.50
7/6/23	Call on cat modeling with A Schwartz, H Rosenfield, C Balber, P Pressley	1	$425.00
7/7/23	Draft portions of comments for CDI workshop on modeling re reasons models need to be transparent	4.5	$1,912.50
7/12/23	Draft portions of comments for CDI workshop on modeling re reasons models need to be transparent	1.9	$807.50
7/13/23	CDI modeling workshop and prep work	3.7	$1,572.50
7/20/23	Call with D Heller, H Rosenfield, C Balber	1	$425.00
7/25/23	Draft email to FL Hurricane modeling group	1.6	$680.00
8/4/23	Call with Gail Flannery from Florida Hurricane Loss Projection Model (FHLPM) to discuss potential applicability of elements of their model to California	0.5	$212.50
8/10/23	Cat modeling call with C Balber, H Rosenfield and prep work	2.7	$1,147.50
8/16/23	FL cat modeling legislation search for C Balber	0.4	$170.00
8/18/23	FEMA cat model research	1.1	$467.50
9/11/23	Call with CDI and advocates re: modeling (set up by Doug Heller) and prep work	1.9	$807.50
9/12/23	Prep for 2nd CDI modeling workshop	3.7	$1,572.50
9/25/23	Research in advance of 2nd CDI workshop	2.3	$977.50
9/26/23	Research in advance of 2nd CDI Workshop	0.5	$212.50
9/27/23	Research in advance of 2nd CDI workshop (1.8), dissect 2644.9 based on CDI/CSAA discussions (0.5)	2.3	$977.50
3/14/24	Questions for C Balber on public availability of models (1.0), review commissioner's proposed modeling regulation (0.8), call on modeling reg with C Balber, J Court, H Rosenfield, P Pressley, J Flanagan (0.7)	2.5	$1,062.50
3/20/24	Review commissioner's proposed modeling reg	5.1	$2,167.50

3/21/24	Review commissioner's proposed modeling reg (1.2), call on proposed cat modeling reg with C Balber, H Rosenfield, P Pressley, J Flanagan (2.0)	3.2	$1,360.00
3/25/24	Add my comments to P Pressley's modeling reg doc	0.9	$382.50
4/3/24	Prep for call on modeling reg (1.3), call on modeling reg with C Balber, H Rosenfield, P Pressley, J Flanagan (1.3)	2.6	$1,105.00
8/28/24	Model regulation question for C Balber	0.7	$297.50
9/4/24	Review additional questions from H Rosenfield (3.2), review CDI draft regulations (3.5)	6.7	$2,847.50
9/5/24	Call on CDI draft regulations with P Pressley, C Balber, B Powell	1	$425.00
9/10/24	Review CDI draft regs	1	$425.00
9/13/24	Review CDI draft regs	1.1	$467.50
9/16/24	Review CDI draft modeling regs (0.5), review/edit CW comments on CDI draft regs (1.9)	2.4	$1,020.00
9/24/24	Review time entries	0.7	$297.50
10/2/24	Review amended cat modeling regs	0.9	$382.50
10/7/24	Research cat load impact in CDI rate template	1.7	$722.50
10/17/24	Review/edit CW comments on CDI draft regs	1.2	$510.00
	Ben Armstrong Total:	**70.5**	**$29,962.50**

Kaitlyn Gentile

Date	Description	Hours	Total
4/22/24	review comments from industry and pull relevant comments referencing proprietary nature of models	1.5	$300.00
4/23/24	file comments for CWD (.1); finalize and file comments for A Schwartz (.2)	0.3	$60.00
6/27/24	Proof and finalize CWD comments (1.4); submit (.1)	1.5	$300.00
7/23/24	draft petition to participate	1.5	$300.00
7/24/24	draft petition to participate	0.6	$120.00
9/12/24	edits to model reg comments	1.8	$360.00
9/13/24	edits to CWD comments	1.8	$360.00
9/16/24	edit and finalize comments and Schwartz testimony	3.2	$640.00
9/20/24	edits to petition to participate	1	$200.00
9/27/24	edits to Petition to Participate (.7); file and serve (.1)	0.8	$160.00
1/21/25	draft request for compensation	0.8	$160.00
1/22/25	draft request for compensation	1	$200.00
1/24/25	draft Request for Compensation	1.8	$360.00
1/29/25	draft Request for Compensation	0.7	$140.00
1/30/25	draft Request for Compensation	1.8	$360.00
1/31/25	draft request for compensation	3	$600.00
2/10/25	edits to RFC	4	$800.00
2/26/25	edits to Request for Compensation and declarations	5.8	$1,160.00
2/27/25	edits to Request for Compensation and Declarations	2.5	$500.00
	Kaitlyn Gentile Total:	**35.4**	**$7,080.00**

Carmen Balber

Date	Description	Hours	Total
6/23/23	develop questions for team to answer	1.0	$320.00
6/23/23	write principles outline for testimony	1.0	$320.00
6/24/23	develop questions for team to answer for testimony	0.4	$128.00

6/28/23	outline testimony	0.5	$160.00
6/29/23	Discuss GeoVera & Safeco model challenges on transparency with P Pressley	0.9	$288.00
6/29/23	review B Armstrong comments	0.1	$32.00
6/29/23	review B Armstrong comments	0.1	$32.00
6/30/23	review B Armstrong input identifying actuarial questions re models	0.4	$128.00
7/2/23	incorporate into written comments past model disclosure issues	0.6	$192.00
7/2/23	incorporate into written comments past model disclosure issues	0.2	$64.00
7/2/23	incorporate into written comments past model disclosure issues	0.3	$96.00
7/2/23	review P Pressley materials re past model disclosure issues	0.5	$160.00
7/2/23	review P Pressley materials re past model disclosure issues	0.5	$160.00
7/4/23	draft written comments	1.0	$320.00
7/4/23	draft written comments	1.1	$352.00
7/4/23	draft written comments	0.5	$160.00
7/4/23	draft written comments	0.4	$128.00
7/4/23	incorporate into written comments past model disclosure issues	0.3	$96.00
7/4/23	incorporate into written comments past model disclosure issues	0.9	$288.00
7/5/23	review H Rosenfield .07 notes	0.8	$256.00
7/6/23	prep questions for A Schwartz	1.4	$448.00
7/7/23	review actuarial comments from B Armstrong	0.5	$160.00
7/7/23	draft written comments including transparency & .07	0.1	$32.00
7/7/23	draft written comments including transparency & .07	0.1	$32.00
7/7/23	email CDI scheduling testimony	0.1	$32.00
7/8/23	draft written comments including transparency & .07	1.7	$544.00
7/8/23	draft written comments including transparency & .07	1.5	$480.00
7/8/23	draft written comments including transparency & .07	2.0	$640.00
7/9/23	draft and edit written comments including model reliability	2.1	$672.00
7/9/23	draft written comments including model reliability	0.8	$256.00
7/9/23	draft written comments including model reliability	2.4	$768.00
7/10/23	discuss comments w/ P Pressley, H Rosenfield	1.0	$320.00
7/11/23	draft and edit written comments including model reliability	0.7	$224.00
7/12/23	draft oral testimony	0.1	$32.00
7/12/23	edit written comments	0.2	$64.00
7/12/23	edit written comments	0.9	$288.00
7/12/23	edit written comments	1.0	$320.00
7/12/23	edit written comments	1.6	$512.00
7/12/23	draft and edit written comments including model reliability	1.0	$320.00
7/13/23	attend CDI workshop and testify	0.9	$288.00
7/13/23	attend CDI workshop and testify	0.5	$160.00
7/13/23	attend CDI workshop and testify	1.5	$480.00
7/13/23	attend CDI workshop and testify	1.7	$544.00
7/13/23	draft oral testimony	0.8	$256.00
7/13/23	draft oral testimony	0.6	$192.00
7/13/23	draft oral testimony	0.2	$64.00
9/8/23	prepare questions for consumer group meeting with CDI	0.2	$64.00
9/11/23	attend meeting and ask questions of CDI at consumer group meeting	1.6	$512.00
9/11/23	prepare questions for consumer group meeting with CDI	1.6	$512.00
9/27/23	draft oral comments	0.8	$256.00
9/27/23	draft oral comments	0.6	$192.00
9/27/23	draft written comments for 9/28 workshop	0.5	$160.00
9/27/23	draft written comments for 9/28 workshop	0.9	$288.00
9/27/23	draft written comments for 9/28 workshop	0.6	$192.00

9/28/23	attend, testify at CDI workshop	1.0	$320.00
9/28/23	attend, testify at CDI workshop	1.7	$544.00
9/28/23	draft oral comments	2.1	$672.00
3/14/24	review first draft of regulation for 4-23-24 workshop	0.5	$160.00
3/20/24	develop questions & comments on PRID provisions	0.1	$32.00
3/20/24	develop questions & comments on PRID provisions	0.3	$96.00
3/20/24	read text of reg; develop questions & comments on provisions	1.0	$320.00
3/21/24	B Armstrong, P Pressley, H Rosenfield, J Flanagan convo w/ point by point analysis of PRID portion of reg to draft comments	1.8	$576.00
4/1/24	consolidate my/ P Pressley/ B Armstrong comments on PRID provisions including applicable lines of insurance	0.2	$64.00
4/1/24	consolidate my/ P Pressley/ B Armstrong comments on PRID provisions including model review and approval standards, transparency, role of model advisor	0.5	$160.00
4/1/24	consolidate my/ P Pressley/ B Armstrong comments on PRID provisions including model review and approval standards, transparency, role of model advisor	0.8	$256.00
4/2/24	draft comments (.5); identify questions for CDI call (.2)	0.7	$224.00
4/3/24	discuss regulation and comment assignments with P Pressley, H Rosenfield, B Armstrong, J Flanagan	1.5	$480.00
4/3/24	identify topics for CW comments	0.3	$96.00
4/3/24	ID questions for CDI	0.2	$64.00
4/3/24	pose questions for actuaries	0.2	$64.00
4/4/24	conversation with A Schwartz re his actuarial analysis and potential testimony	1.4	$448.00
4/9/24	draft written comment intro including consumer impact, best practices for model oversight	0.3	$96.00
4/9/24	draft written comment intro including consumer impact, best practices for model oversight	0.7	$224.00
4/9/24	draft written comment intro including consumer impact, best practices for model oversight	0.9	$288.00
4/9/24	draft written comment intro including context of crisis, consumer impact of lack of transparency	0.2	$64.00
4/9/24	draft written comment intro including context of crisis, consumer impact of lack of transparency	0.3	$96.00
4/9/24	draft written comment intro including context of crisis, consumer impact of lack of transparency	0.6	$192.00
4/10/24	draft written comment intro including consumer impact of lack of transparency; model review best practices	0.5	$160.00
4/10/24	narrow questions for department call	0.1	$32.00
4/10/24	discuss comment assignments w/ P Pressley and H Rosenfield	1.1	$352.00
4/10/24	review reg sections to assign sections to draft	0.5	$160.00
4/11/24	draft written comment including section on accountability, efficiency	0.2	$64.00
4/11/24	draft written comment including section on transparency	0.9	$288.00
4/11/24	draft written comment including section on transparency	0.2	$64.00
4/11/24	draft written comment including section on transparency	0.5	$160.00
4/11/24	draft written comment including section on transparency	0.5	$160.00
4/11/24	draft written comment intro including consumer impact of lack of transparency; model review best practices	0.2	$64.00
4/11/24	draft written comment intro including consumer impact of lack of transparency; model review best practices	0.5	$160.00

4/11/24	draft written comment intro including consumer impact of lack of transparency; model review best practices	0.1	$32.00
4/12/24	draft written comment including section on accountability, efficiency	0.7	$224.00
4/12/24	draft written comment including section on accountability, efficiency	0.4	$128.00
4/12/24	draft written comment including section on accountability, efficiency	0.5	$160.00
4/12/24	draft written comment including section on accountability, efficiency	0.4	$128.00
4/12/24	draft written comment including section on accountability, efficiency	0.6	$192.00
4/12/24	draft and edit comments received on testimony from team	1.2	$384.00
4/13/24	draft written comment including section on independent expertise	3.2	$1,024.00
4/16/24	email questions for P Pressley, H Rosenfield, J Flanagan to finalize their sections and merge into main	0.3	$96.00
4/16/24	review P Pressley draft comments	0.2	$64.00
4/16/24	review H Rosenfield draft comments	0.3	$96.00
4/16/24	review A Schwartz actuarial comments	0.2	$64.00
4/16/24	review J Flanagan/ R Mellino draft testimony on APA	0.2	$64.00
4/16/24	finalize CDI questions for JP	0.4	$128.00
4/16/24	edit list of questions for call w/CDI J Phenix, L Wang	0.3	$96.00
4/16/24	review PP HR draft comments (.2); edit list of questions for call w/CDI J Phenix, L Wang (.1)	0.3	$96.00
4/16/24	discuss with B Armstrong Florida model for testimony	0.1	$32.00
4/16/24	review and edit B Armstrong notes on Florida model for testimony	0.1	$32.00
4/17/24	draft & edit written comments including section on model review and approval	0.9	$288.00
4/17/24	draft & edit written comments including section on model review and approval	1.4	$448.00
4/17/24	draft & edit written comments including section on model review and approval	0.2	$64.00
4/17/24	discuss CDI call w/ P Pressley, H Rosenfield	0.4	$128.00
4/17/24	convo with CDI to answer questions about text of regulation	1.0	$320.00
4/17/24	integrate team comments into main written comments	0.3	$96.00
4/17/24	integrate team comments into main written comments	0.1	$32.00
4/17/24	review B Armstrong notes on Florida model and incorporate into written comments	0.3	$96.00
4/18/24	Edit written comments	1.0	$320.00
4/18/24	Edit written comments	0.1	$32.00
4/18/24	Edit written comments	0.4	$128.00
4/18/24	Edit written comments	1.9	$608.00
4/18/24	Edit written comments	0.3	$96.00
4/18/24	draft & edit written comments including section on model review and approval	1.1	$352.00
4/18/24	draft & edit written comments including section on model review and approval	0.2	$64.00
4/18/24	draft & edit written comments including section on model review and approval	0.1	$32.00
4/18/24	draft and edit written comments (.8); email A Schwartz re his comments on Florida and review responses (.1)	0.9	$288.00
4/18/24	draft & edit written comments including section on model review and approval	1.2	$384.00
4/19/24	draft & edit written comments including secttion on conflicts with prior regulations	1.6	$512.00
4/19/24	draft & edit written comments including secttion on conflicts with prior regulations	0.9	$288.00

4/19/24	Edit written comments	0.2	$64.00
4/19/24	Edit written comments	0.2	$64.00
4/19/24	Edit written comments	2.1	$672.00
4/20/24	draft & edit written comments including secttion on conflicts with prior regulations	0.7	$224.00
4/21/24	draft and edit written comments; fill in footnotes	0.7	$224.00
4/21/24	draft and edit written comments; fill in footnotes	0.2	$64.00
4/21/24	Review and incorporate H Rosenfield edit of comments	0.5	$160.00
4/21/24	Review and incorporate H Rosenfield edit of comments	0.6	$192.00
4/22/24	Edit written comments	0.6	$192.00
4/22/24	Edit written comments	0.5	$160.00
4/22/24	review P Pressley edit of wrtitten comments	0.4	$128.00
4/22/24	Edit written comments	0.1	$32.00
4/22/24	Edit written comments	0.3	$96.00
4/22/24	review A Schwartz's comments; email edits	0.7	$224.00
4/22/24	Edit written comments	0.3	$96.00
4/22/24	Edit written comments	1.1	$352.00
4/22/24	Edit written comments; fill in footnotes	0.9	$288.00
4/23/24	Testify at CDI workshop	1.1	$352.00
4/23/24	Testify at CDI workshop	1.7	$544.00
4/23/24	Prepare oral testimony	0.2	$64.00
4/23/24	Prepare oral testimony	0.2	$64.00
4/23/24	finalize testimony to send CDI	0.6	$192.00
4/23/24	discuss A Schwartz comments w A Schwartz, J Flanagan, H Rosenfield, B Armstrong	0.5	$160.00
4/23/24	Prepare oral testimony	1.0	$320.00
6/22/24	Draft written comments on insurer commitment reg including scope of policy	1.6	$512.00
6/22/24	Draft written comments on insurer commitment reg including scope of policy	0.3	$96.00
6/23/24	Draft written comments on insurer commitment reg including 85/5% sections	0.1	$32.00
6/23/24	Draft written comments on insurer commitment reg including 85/5% sections	0.4	$128.00
6/23/24	Draft written comments on insurer commitment reg including 85/5% sections	0.4	$128.00
6/23/24	Draft written comments on insurer commitment reg including 85/5% sections	0.6	$192.00
6/23/24	Draft oral testimony for workshop	0.1	$32.00
6/24/24	Draft written comments on insurer commitment reg including 85/5% sections	0.2	$64.00
6/24/24	Draft written comments on insurer commitment reg including 85/5% sections	0.2	$64.00
6/24/24	Draft written comments on insurer commitment reg including 85/5% sections	0.3	$96.00
6/24/24	Draft written comments on insurer commitment reg including 85/5% sections	0.2	$64.00
6/25/24	Draft written comments on insurer commitment reg including loophole sections	1.1	$352.00
6/25/24	Draft oral testimony for workshop	0.3	$96.00
6/25/24	Draft oral testimony for workshop	0.3	$96.00

6/25/24	Draft written comments on insurer commitment reg including 85/5% sections	0.6	$192.00
6/25/24	Draft written comments on insurer commitment reg including 85/5% sections	0.3	$96.00
6/25/24	Draft written comments on insurer commitment reg including loophole sections	0.2	$64.00
6/25/24	Draft written comments on insurer commitment reg including loophole sections	0.3	$96.00
6/25/24	Draft oral testimony for workshop	0.1	$32.00
6/25/24	Draft oral testimony for workshop	0.3	$96.00
6/25/24	Draft oral testimony for workshop	0.3	$96.00
6/26/24	Draft written comments on insurer commitment reg including loophole sections	0.2	$64.00
6/26/24	Testify at workshop	2.1	$672.00
6/26/24	Draft written comments on insurer commitment reg including loophole sections	1.1	$352.00
6/26/24	Draft oral testimony for workshop	0.1	$32.00
6/26/24	Draft oral testimony for workshop	0.7	$224.00
6/26/24	Draft written comments on insurer commitment reg including loophole sections	0.4	$128.00
6/27/24	Prepare written comments to submit	0.1	$32.00
8/20/24	compare text of versions (.1); call w/ P Pressley, H Rosenfield, R Mellino to divide review of reg changes	0.4	$128.00
8/21/24	read ISOR	0.7	$224.00
8/21/24	compare text of June & Aug versions of regulation	0.8	$256.00
8/21/24	compare text of June & Aug versions of regulation	0.7	$224.00
8/22/24	read ISOR	0.1	$32.00
8/22/24	read ISOR	0.3	$96.00
8/22/24	read ISOR	0.4	$128.00
8/23/24	read alternatives in ISOR	0.1	$32.00
8/23/24	read intro to ISOR	0.4	$128.00
8/23/24	write comment on changed text/ISOR for commitment section	0.2	$64.00
8/23/24	write comment on changed text/ISOR for commitment section	0.3	$96.00
8/23/24	read ISOR	0.2	$64.00
8/23/24	read ISOR	0.6	$192.00
8/26/24	read ISOR	0.2	$64.00
8/26/24	read ISOR	0.2	$64.00
8/26/24	read ISOR	0.4	$128.00
8/26/24	review P Pressley, R Mellino comments on ISOR	0.1	$32.00
8/26/24	draft written comments on ISOR	0.4	$128.00
8/26/24	review P Pressley, R Mellino comments on PRID changes	0.2	$64.00
8/26/24	review P Pressley, R Mellino comments on PRID changes	0.1	$32.00
8/26/24	review P Pressley, R Mellino comments on PRID changes	0.8	$256.00
8/27/24	draft written comments	0.5	$160.00
8/27/24	phone call to discuss comments with P Pressley, R Mellino, H Rosenfield	1.0	$320.00
8/28/24	draft written comments	0.9	$288.00
8/28/24	review P Pressley comments on meaning of ‘public review’	0.1	$32.00
8/29/24	draft written comments including prior public review	0.3	$96.00
8/29/24	draft written comments including prior public review	0.4	$128.00
8/31/24	draft written comments	1.7	$544.00
9/2/24	review R Mellino draft comments	1.6	$512.00

9/3/24	review questions re draft comments w/ P Pressley, R Mellino	1.3	$416.00
9/3/24	draft and edit written comments including barriers to participation	0.1	$32.00
9/4/24	draft and edit written comments including barriers to participation	0.7	$224.00
9/5/24	draft and edit written comments including barriers to participation	0.7	$224.00
9/5/24	draft and edit written comments including barriers to participation	0.6	$192.00
9/9/24	review & edit P Pressley portion of written comments	2.6	$832.00
9/9/24	review P Pressley edits	1.0	$320.00
9/12/24	draft and edit written comments (.1); discuss P Pressley & H Rosenfield edits (.8)	0.9	$288.00
9/12/24	draft and edit written comments	0.6	$192.00
9/12/24	draft and edit written comments	0.1	$32.00
9/12/24	review P Pressley edits to draft comments	0.2	$64.00
9/12/24	draft written comments	0.3	$96.00
9/13/24	edit written comments	0.3	$96.00
9/13/24	review ISOR responses	0.7	$224.00
9/13/24	edit written comments including insurer commitment section	0.4	$128.00
9/13/24	edit written comments including insurer commitment section	1.7	$544.00
9/13/24	review and finalize P Pressley PRID comments	1.7	$544.00
9/14/24	review clean version of written comments	0.4	$128.00
9/14/24	edit written comments	0.4	$128.00
9/15/24	draft oral testimony	0.2	$64.00
9/15/24	draft oral testimony	0.4	$128.00
9/15/24	draft oral testimony	0.1	$32.00
9/16/24	edit written comments	0.6	$192.00
9/16/24	draft oral testimony	0.2	$64.00
9/16/24	edit written comments	0.6	$192.00
9/16/24	edit written comments	0.7	$224.00
9/17/24	attend workshop, testify	1.6	$512.00
9/17/24	attend workshop, testify	1.3	$416.00
	Carmen Balber Total:	**152.8**	**$48,896.00**
	Consumer Watchdog Total:	**497.3**	**$217,808.50**

EXHIBIT 1b

Identification and Association of Individuals Referenced in Billing Records

Consumer Watchdog
Ben Armstrong, Staff Actuary
Carmen Balber, Executive Director
Jamie Court, President
Jerry Flanagan, former Litigation Director
Kaitlyn Gentile, Paralegal
Ryan Mellino, Staff Attorney
Pamela Pressley, Senior Staff Attorney
Harvey Rosenfield, Of Counsel

AIS Risk Consultants, Inc.
Allan I. Schwartz, Consulting Actuary

California Department of Insurance
Sara Ahn, Staff Attorney
Nikki McKennedy, Assistant Chief Counsel, Rate Enforcement Bureau
Jon Phenix, Staff Attorney
Lucy Wang, Deputy Commissioner and Special Counsel

Consumer Federation of America
Douglas Heller, Director of Insurance

Florida Hurricane Loss Prevention Model
Gail Flannery

EXHIBIT 2

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PAMELA PRESSLEY (SBN 180362)
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MICHAEL J. STRUMWASSER (SBN 58413)
BRYCE A. GEE (SBN 222700)
JULIA MICHEL (SBN 331864)
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Telephone: (310) 576-1233
Facsimile: (310) 319-0156
bgee@strumwooch.com

Attorneys for Respondent Consumer Watchdog

IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

STATE FARM GENERAL INSURANCE COMPANY,

Petitioner and Plaintiff,

v.

RICARDO LARA, in his official capacity as the Insurance Commissioner of the State of California; and DOES 1-50,

Respondent and Defendant,

CONSUMER WATCHDOG,

Respondent and Defendant.

Case No. 37-2016-00041750-CU-MC-CTL

DECLARATION OF RICHARD M. PEARL IN SUPPORT OF CONSUMER WATCHDOG'S MOTION FOR ATTORNEYS' FEES AND EXPENSES

Date Action Filed: November 28, 2016

Date: August 26, 2022
Time: 11:00 a.m.
Dept.: C-69
Judge: Hon. Katherine A. Bacal

DECLARATION OF RICHARD M. PEARL

I, Richard M. Pearl, declare as follows:

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 relating 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. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would competently testify thereto. I make this declaration in support of Defendant and Respondent Consumer Watchdog's Motion for Attorneys' Fees and Expenses in the appeal in the above-referenced action. Specifically, I have been asked by counsel for Consumer Watchdog ("Consumer Watchdog Counsel")[1] to render my opinion as to the reasonableness of the hourly rates they have requested for their work on the appeal in this matter and do so here.

2. To form my opinion as to the reasonableness of the attorneys' fees Consumer Watchdog Counsel request for their work in this case, I have reviewed the Court of Appeal's opinion, documents that describe the history of this matter, counsel's qualifications and experience, the nature and quality of the work required by this case, the results achieved, and the hourly rates that Counsel request. I also have consulted with Ms. Pressley about this motion and the underlying facts of the case.

MY BACKGROUND AND EXPERIENCE

3. Briefly summarized, my background is as follows: I am a 1969 graduate of Berkeley School of Law (then Boalt Hall), University of California, Berkeley, California. I took the California Bar Examination in August 1969 and learned that I had 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

[1] Consumer Watchdog Counsel refers to Harvey Rosenfield and Pamela Pressley and their outside co-counsel with the law firm Strumwasser & Woocher, LLP.

until the summer of 1971, when I 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, 2016, 2017, 2018, 2019, 2020, 2021, and 2022. A true and correct copy of my Resume is attached as **Exhibit A.**

4. Since 1982, the focus of my legal work has been in 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) ("Cal. Fee Awards") and its cumulative annual Supplements between 2011 and March 2022. I also was the author of California Attorney Fee Awards, 2d Ed. (Cal. Cont. Ed. of Bar 1994), and its 1995 through 2008 annual Supplements. Several courts have referred to this treatise as "[t]he leading California attorney fee treatise." *Calvo Fisher & Jacob LLP v. Lujan*, 234 Cal.App.4th 608, 621 (2015); *see also, e.g.*, *Int'l Billing Servs., Inc. v. Emigh*, 84 Cal.App.4th 1175, 1193 (2000) ("the leading treatise"); *Stratton v. Beck*, 30 Cal.App.5th 901, 911 (2019) ("a leading treatise"); *Orozco v. WPV San Jose, LLC*, 36 Cal.App.5th 375, 409 (2019) ("a leading treatise on California attorney's fees"). It also has been cited by the California Supreme Court and Court of Appeal on many occasions, including the Court of Appeal in this case. (Sl. Op. at 36). *See also Graham v. DaimlerChrylser Corp.*, 34 Cal.4th 553, 576, 584 (2004); *Lolley v. Campbell*, 28 Cal.4th 367, 373 (2002); *In re Conservatorship of Whitley*, 50 Cal.4th 1206, 1214–15, 1217 (2010); *Sonoma Land Trust v. Thompson,* 63 Cal.App.5th 978, 986 (2021); *Yost v. Forestiere*, 51 Cal.App.5th 509, 530 n. 8 (2020); *Highland Springs Conference & Training Ctr. v. City of Banning*, 42 Cal.App.5th 416, 428 n. 11 (2019); *Sweetwater Union High Sch. Dist. v. Julian Union Elementary Sch. Dist.*, 36 Cal.App.5th 970, 988 (2019); *Hardie v. Nationstar Mortg. LLC*, 32 Cal. App. 5th 714, 720 (2019); *Syers Props III, Inc. v. Rankin*, 226

Cal.App.4th 691, 698, 700 (2014). California Superior Courts also cite the treatise with approval. *See, e.g., Davis v. St. Jude Hosp.*, No. 30201200602596CUOECX, 2018 WL 7286170, at *4 (Orange Cty. Super. Ct. Aug. 31, 2018); *Hartshorne v. Metlife, Inc.*, No. BC576608, 2017 WL 1836635, at *10 (Los Angeles Super. Ct. May 02, 2017). Federal courts also have cited it. *See In re Hurtado*, Case No. 09-16160-A-13, 2015 WL 6941127 (E.D. Cal. Nov. 6, 2015); *TruGreen Companies LLC v. Mower Brothers, Inc.*, 953 F. Supp. 2d 1223, 1236 nn.50, 51 (D. Utah 2013). I also authored the 1984 through 1993 annual Supplements to the predecessor treatise, *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).

5. More than 95% of my practice is devoted to issues involving court-awarded attorneys' fees. I have appeared as counsel in over 200 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. I have won five cases in the California Supreme Court involving court-awarded attorneys' fees: (1) *Maria P. v. Riles*, 43 Cal. 3d 1281 (1987), which upheld a C.C.P. section 1021.5 fee award based on a preliminary injunction obtained against the State Superintendent of Education, despite the fact that the case ultimately was dismissed under C.C.P. section 583; (2) *Delaney v. Baker*, 20 Cal. 4th 23 (1999), which held that heightened remedies, including attorneys' fees, are available in suits against nursing homes under California's Elder Abuse Act; (3) *Ketchum v. Moses*, 24 Cal. 4th 1122 (2001), which reaffirmed that contingent risk multipliers are an essential consideration under California attorney fee law (note that in *Ketchum,* I was primary appellate counsel in the Court of Appeal and "second chair" in the California Supreme Court); (4) *Flannery v. Prentice*, 26 Cal. 4th 572 (2001), which held that under California law, in the absence of an agreement to the contrary, statutory attorneys' fees belong to the attorney whose services they are based upon; and (5) *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), which held, *inter alia,* that the "catalyst" theory of fee recovery remained viable under California law and that lodestar multipliers could be applied to fee motion

work. In that case, I represented trial counsel in both the Court of Appeal (twice) and California Supreme Court, as well as on remand in the trial court. I also represented and argued on behalf of *amicus curiae* in *Conservatorship of McQueen*, 59 Cal. 4th 602 (2014), which held that attorneys' fees incurred for appellate work were not "enforcement fees" subject to California's Enforcement of Judgments law; I presented the argument relied upon by the Court. Along with Richard Rothschild of the Western Center on Law and Poverty, I also prepared and filed an *amicus curiae* brief in *Vasquez v. State of California,* 45 Ca1. 4th 243 (2009). An expanded list of reported decisions in cases I have handled is set out in **Exhibit A** at pages 4-8.

6. I have been retained by various governmental entities, including the California Attorney General's office and the California Department of Fair Housing and Employment, to consult with them and serve as their expert regarding their affirmative attorney fee claims. *See*, *e.g.*, *In re Tobacco Cases I*, 216 Cal. App. 4th 570, 584 (2013); *Dep. of Fair Employ. and Hous. v. Law Sch. Admission Council, Inc.*, 2018 WL 5791869 (N.D. Cal. No. 12-cv-08130, filed Nov. 5, 2018).

7. I am frequently called upon to opine about the reasonableness of attorneys' fees, and numerous federal and state courts have relied on my testimony on those issues. For example:

a. Most recently, in *Wit v. United Behavioral Health* (N.D. Cal. Jan. 5, 2022) ___F.Supp.3d __, 2022 WL 45057, at *7, the court's fee Order states that "the Court places significant weight on Pearl's opinion that the rates charged by all of the timekeepers listed above are reasonable and 'in line with the standard hourly noncontingent rates charged by Bay Area law firms that regularly engage in civil litigation of comparable complexity.'… Pearl has extensive experience in the area of attorney billing rates in this district and has been widely relied upon by both federal and state courts in Northern California (including the undersigned) in determining reasonable billing rates." (Citations omitted).

b. In *Human Rights Defense Center v. County of Napa*, 2021 U.S.Dist.LEXIS 59778 *; 2021 WL 1176640 (N.D. Cal. No. 20-cv-01296-JCS, Doc. 50, filed March 28, 2021), the Court expressly stated that it had "place[d] significant weight on the opinion of Mr. Pearl that the rates charged by all of the timekeepers listed above are reasonable and in line with the rates charged by law firms that engage in federal civil litigation in the San Francisco Bay Area. Mr. Pearl has

extensive experience in the area of attorney billing rates in this district and has been widely relied upon by both federal and state courts in Northern California [] in determining reasonable billing rates." 2021 U.S.Dist.LEXIS 59778, at *32.

c. Subsequently, in *Andrews v. Equinox Holdings, Inc.,* N.D. Cal. No. 20-cv-00485-SK, Oder on Motion for Attorney Fees and Costs filed November 9, 2021 (Doc. 110), the court quoted the above language from the *Human Rights Defense Center* case and concluded the same: "This Court similarly finds Pearl's opinions well supported and persuasive." Order at p. 4:13-19.

d. Similarly, in *Sonoma Land Trust v. Thompson, supra,* 63 Cal.App.5th 978, 986 (2021), the Court of Appeal expressly held that my expert declaration provided evidentiary support for the trial court's fee determination.

e. Lastly, my declaration was cited favorably by the Second District of the Court of Appeal in *Wood v. Los Angeles County Waterworks Dist. No. 40 (Antelope Valley Groundwater Cases)*, 2021 Cal.App. Unpub. LEXIS 5506 (2nd Dist., Div. 2021).

8. In addition to the *Sonoma Land Trust* and *Antelope Valley Groundwater* cases, the following California appellate and reported trial court cases also have referenced my testimony favorably:

- *Kerkeles v. City of San Jose*, 243 Cal.App.4th 88 (2015);
- *Laffitte v. Robert Half Int'l Inc*., 231 Cal.App.4th 860 (2014), *aff'd* (2016) 1 Cal.5th 480;
- *Habitat and Watershed Caretakers v. City of Santa Cruz*, 2015 Cal. App. Unpub. LEXIS 7156 (2015);
- *In re Tobacco Cases I*, 216 Cal.App.4th 570 (2013);
- *Heritage Pacific Financial, LLC v. Monroy*, 215 Cal.App.4th 972 (2013);
- *Wilkinson v. South City Ford*, 2010 Cal. App. Unpub. LEXIS 8680 (2010);
- *Children's Hospital & Medical Center v. Bonta*, 97 Cal.App.4th 740 (2002);
- *Church of Scientology v. Wollersheim*, 42 Cal.App.4th 628 (1996).

- *Kaku v. City of Santa Clara,* No. 17CV319862, 2019 WL 331053, at *3 (Santa Clara Cty. Super. Ct. Jan. 22, 2019), *aff'd* 59 Cal. App. 5th 385, 431 (2020);
- *Davis v. St. Jude Hosp.*, No. 30201200602596CUOECX, 2018 WL 7286170, at *4 (Orange Cty. Super. Ct. Aug. 31, 2018);
- *Hartshorne v. Metlife, Inc.*, No. BC576608, 2017 WL 1836635, at §*10 (Los Angeles Super. Ct. May 2, 2017).

Many other trial courts also have relied on my testimony in unreported fee awards.

9. In addition to the *Wit*, *Andrews*, and *Human Rights Defense Center* cases, the following reported federal decisions also have referenced my testimony favorably:

- *Antoninetti v. Chipotle Mexican Grill, Inc.*, No. 08-55867 (9th Cir. 2012), Order filed Dec. 26, 2012, at 6;
- *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010) (the expert declaration referred to is mine);
- *Independent Living Center of S. Cal. v. Kent*, 2020 U.S.Dist.LEXIS 13019 (C.D. Cal. 2020);
- *Ridgeway v. Wal-Mart Stores, Inc.*, 269 F. Supp. 3d 975 (N.D. Cal. 2017), *aff'd* 269 F.3d 1066 (9th Cir. 2020);
- *Beaver v. Tarsadia Hotels*, 2017 U.S.Dist.LEXIS 160214 (S.D. Cal. 2017);
- *Notter v. City of Pleasant Hill*, 2017 U.S.Dist.LEXIS 197404, 2017 WL 5972698 (N.D. Cal. 2017);
- *Villalpondo v. Exel Direct, Inc.*, 2016 WL 1598663 (N.D. Cal. 2016);
- *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);
- *In re Cathode Ray Tube Antitrust Litig.*, Master File No. 3:07-cv-5944 JST, MDL No. 1917 (N.D. Cal. 2016) 2016 U.S. Dist. LEXIS 24951 (Report And Recommendation Of Special Master Re Motions (1) To Approve Indirect Purchaser Plaintiffs' Settlements With the Phillips, Panasonic, Hitachi, Toshiba,

Samsung SDI, Technicolor, And Technologies Displays Americas Defendants, and (2) For Award Of Attorneys' Fees, Reimbursement Of Litigation Expenses, And Incentive Awards To Plaintiffs' Representative), Dkt. 4351, dated January 28, 2016, *adopted in relevant part,* 2016 U.S. Dist. LEXIS 88665;

- *Gutierrez v. Wells Fargo Bank*, 2015 U.S. Dist. LEXIS 67298 (N.D. Cal. 2015);
- *Holman v. Experian Information Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014);
- *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, MDL No. 1827 (N.D. Cal.), Report and Recommendation of Special Master Re Motions for Attorneys' Fees And Other Amounts By Indirect-Purchaser Plaintiffs' Plaintiffs And State Attorneys General, Dkt. 7127, filed Nov. 9, 2012, adopted in relevant part, 2013 U.S. Dist. LEXIS 49885 (N.D. Cal. 2013) ("*TFT-LCD (Flat Panel)* Report & Recommendation");
- *Walsh v. Kindred Healthcare*, 2013 U.S. Dist. LEXIS 176319 (N.D. Cal. 2013);
- *A.D. v. California Highway Patrol*, 2009 U.S. Dist. LEXIS 110743, at *4 (N.D. Cal. 2009), *rev'd on other grounds*, 712 F.3d 446 (9th Cir. 2013), *reaffirmed and additional fees awarded on remand*, 2013 U.S. Dist. LEXIS 169275 (N.D. Cal. 2013);
- *Hajro v. United States Citizenship & Immigration Service*, 900 F.Supp.2d 1034, 1054 (N.D. Cal 2012);
- *Rosenfeld v. United States Dep't of Justice*, 904 F. Supp. 2d 988, 1002 (N.D. Cal. 2012);
- *Stonebrae, L.P. v. Toll Bros., Inc.*, 2011 U.S. Dist. LEXIS 39832, at *9 (N.D. Cal. 2011) (thorough discussion), *aff'd* 2013 U.S. App. LEXIS 6369 (9th Cir. 2013);
- *Armstrong v. Brown*, 2011 U.S. Dist. LEXIS 87428 (N.D. Cal. 2011);
- *Lira v. Cate*, 2010 WL 727979 (N.D. Cal. 2010);

- *Californians for Disability Rights, Inc. v. California Dep't of Transportation*, 2010 U.S. Dist. LEXIS 141030 (N.D. Cal. 2010);
- *Nat'l Federation of the Blind v. Target Corp.*, 2009 U.S. Dist. LEXIS 67139 (N.D. Cal. 2009);
- *Prison Legal News v. Schwarzenegger*, 561 F.Supp.2d 1095 (N.D. Cal. 2008) (an earlier motion);
- *Bancroft v. Trizechahn Corp.*, No. CV 02-2373 SVW (FMOx), Order Granting Plaintiffs Reasonable Attorneys' Fees and Costs In the Amount of $168,886.76, Dkt. 278 (C.D. Cal. Aug. 14, 2006);
- *Willoughby v. DT Credit Corp.*, No. CV 05-05907 MMM (CWx), Order Awarding Attorneys' Fees After Remand, Dkt. 65 (C.D. Cal. July 17, 2006);
- *Oberfelder v. City of Petaluma*, 2002 U.S. Dist. LEXIS 8635 (N.D. Cal. 2002), *aff'd* 2003 U.S. App. LEXIS 11371 (9th Cir. 2003).

Summary of Opinion and Overview of Declaration

10. My review of Consumer Watchdog Counsel's declarations shows that their lodestar is based on each attorney's requested 2022 hourly rate. See paragraph 11, *infra*. I have examined each attorney's requested lodestar rate, along with each attorney's experience and background and work product here. Based on that review, in my opinion the rates requested by Consumer Watchdog Counsel are well within, if not at the low end of, the range of hourly rates charged by comparably qualified attorneys in the Los Angeles Area performing similar work and with those that other San Diego and Los Angeles area courts have found reasonable for attorneys with comparable litigation experience performing similar services.[2]

[2] I have not been asked to express an opinion regarding the reasonableness of the number of hours, the tasks performed, or the lodestar multiplier that are a component of Consumer Watchdog's fee request because Consumer Watchdog Counsel do not believe expert opinion on those issues is necessary. I agree, and the absence of any testimony from me on the reasonableness of the number of hours spent, the tasks performed, or the requested lodestar multiplier does not in any way reflect a negative view of their reasonableness.

Consumer Watchdog Counsel's Hourly Rates Are Reasonable.

11. I am aware that Consumer Watchdog Counsel request the following hourly rates for their work on appeal this matter:

Consumer Watchdog[3]

Harvey Rosenfield (admitted CA Bar in 1979)	$695
Pamela M. Pressley (admitted CA Bar in 1995)	$595

Strumwasser & Woocher LLP[4]

Michael J. Strumwasser (admitted CA Bar in 1973)	$900
Bryce Gee (admitted CA Bar in 2002)	$800
Julia Michel (admitted WA Bar in 2019/CA Bar in 2020)	$495

12. Under California law, Consumer Watchdog Counsel's hourly rates are reasonable if they are "within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work." *Children's Hosp. & Med. Ctr. v. Bonta,* 97 Cal.App.4th 740, 783 (2002).

13. Through my writing and practice, I have become familiar with the non-contingent market rates charged by attorneys in California and elsewhere. This familiarity has been obtained in several ways: (a) by handling attorneys' fee litigation; (b) by discussing fees with other attorneys; (c) by obtaining declarations regarding prevailing market rates in cases in which I represent attorneys seeking fees; and (d) by reviewing attorneys' fees applications and awards in other cases, as well as surveys and articles on attorneys' fees in the legal newspapers and treatises. I also have testified before trial courts and arbitrators on numerous occasions, and have submitted expert

[3] These are discounted rates billed by Consumer Watchdog counsel in Proposition 103 matters before the Department of Insurance. In other civil matters, Consumer Watchdog counsel charge higher market rates commensurate with attorneys of comparable experience in civil litigation. It is my understanding that these are the same hourly rates that this Court found reasonable in 2020 for work performed in the trial court proceedings.

[4] These rates are discounted from Strumwasser & Woocher LLP's standard commercial rates in civil litigation. It is my understanding that the hourly rates requested for Strumwasser & Woocher's attorneys are also based on the rates previously approved by this Court, adjusted only to account for inflation since the Court's prior fee award was issued in 2020.

testimony by declaration on hundreds of occasions: each of those efforts require me to be aware of the hourly rates being charged in the relevant community.

14. Here, I have reviewed Consumer Watchdog Counsel's qualifications, backgrounds, experience, work product, and the results they have achieved. Based on the information I have gathered, some of which is set forth below, it is my opinion that the rates requested by Consumer Watchdog Counsel are well within, if not at the low end of, the range of the non-contingent market rates charged by Los Angeles area attorneys of reasonably comparable experience, skill, and reputation for reasonably comparable services. Several factors support my opinion:

15. *First*, it is my understanding that Consumer Watchdog Counsel's requested hourly rates have been found reasonable and awarded in numerous cases. This is a highly probative fact. See *Margolin v. Regional Planning Comm'n,* 134 Cal.App.3d 999, 1005 (1982).

16. *Second*, my opinion also is based on the numerous findings of reasonable hourly rates made by San Diego Area and Los Angeles Area courts, which also are highly probative. *See Children's Hosp. & Med. Ctr. v Bontá*, 97 Cal.App.4th at 783. Those findings are summarized in **Exhibits B (San Diego Area) and C (Los Angeles Area)** attached hereto. For example:

- In *Campbell v. Barnes*, Orange County Superior Court No. 30-2020-01141117-CU-WM-CXC, Order Granting Petitioners' Motion for an Award of Attorneys' Fees, filed January 20, 2022, a case challenging inadequacies in the County jail's response to the Covid epidemic, the court found the following hourly rates reasonable:

LAW SCHOOL GRADUATION YEAR	**RATES**
Munger, Tolles & Olson LLP	
2003	$1,210
2013	$850
2015	$750
2016	$700
2017	$650
2018	$550
Non-Attorneys	
Automated Litig. Analyst	
Litigation Analyst	$250
Paralegals	$250
ACLU	
1988, 2000, and 2003	$1,210

2007	$950
2009	$900
2015	$750
2016	$700
2017	$650
Non-Attorney	
Senior Investigator	$250
Schonbrun, Seplow, Harris, Hoffman, And Zeldes LLP	
1976	$1,000
2016	$450
2016	$600
2019	$440
1975	$1,025
1976	$930
1979	$995
2015	$570

- In *Independent Living Center of S. Cal. v. Kent*, 2020 U.S. Dist. LEXIS 13019 (C.D. Cal. 2020), an action challenging the State's right to alter reimbursement rates for Medi-Cal providers, the court found the following 2019 hourly rates reasonable (plus a 1.5 lodestar multiplier):

LAW SCHOOL GRADUATION YEAR	**RATES**
1975	$1,025
1976	$965
1979	$1,025
2007	$815
2011	$800
2015	$640
2016	$600
2019	$440
1975	$1,025
1976	$930
1979	$995
2015	$570

- In *The Kennedy Commission v. City of Huntington Beach*, Los Angeles County Superior Court No. 30-2015-00801675, Ruling on Submitted Matter filed July 8, 2021, a writ of mandate action challenging a land use amendment adopted by the City of Huntington Beach, the court found the following 2020 hourly rates reasonable (prior to application of a 1.4 lodestar multiplier):

2020 Rates:

Years of Experience	Rates
38	$910
40	$900
26	$815
23	$750
16	$710
14	$680
10	$565
7	$500
6	$475
5	$450
2	$365

- In an earlier ruling in the same case, the court found the following hourly rates reasonable for the Plaintiffs' private *pro bono* law firm (prior to application of a 1.4 multiplier) [5]:

2016 Rates:

Bar Admission Year	Rates
2001	$900
2014	$450

2015 Rates:

Bar Admission Year	Rates
2001	$875
2014	$400

- In *Rea v. Blue Shield*, Los Angeles County Superior Court No. BC468900, Fee Order filed November 13, 2020, a class action challenging Blue Shield's practices

[5] The initial *Kennedy Commission* fee award was remanded in conjunction with the reversal of the merits. 2017 Cal.App.Unpub.LEXIS 7488 (2017).

regarding mental health claims, the court found that $900 per hour was reasonable for Plaintiffs' three lead attorneys, with 35, 37, and 44 years of experience. It also applied a 1.5 multiplier.

Consumer Watchdog Counsel's hourly rates here are well within, if not at the low end of, the range of rates found reasonable in these cases and the others set out in **Exhibits B and C.**

Hourly Rates Charged by Other Law Firms

17. *Third,* Consumer Watchdog Counsel's rates also are well within the range of the standard hourly non-contingent rates charged by numerous Los Angeles Area law firms that regularly engage in civil litigation of comparable complexity. A chart showing the hourly rates charged by numerous Los Angeles area law firms, as stated in court filings, depositions, surveys, or other reliable sources, is attached hereto as **Exhibit D**. The rates requested here are well in line with those rates. For example, in 2021, Munger, Tolles & Olson billed a 31-year attorney at $1,725 per hour and a 12-year attorney at $995 per hour. In 2019, Pearson Simon & Warshaw, a Plaintiffs' class action firm, billed attorneys with 23-38 years of experience at $1,150 per hour; rates have generally increased at least 10-12% since 2019. Again, Consumer Watchdog's Counsel's rates are well within this range.

Hourly Rate Surveys and Articles

18. Counsel's requested rates also are supported by several surveys and articles describing legal rates, including the following:

- The 2020 Mid-Year Real Rate Report compiled by Wolters Kluwer surveyed the hourly rates charged in the second quarter of 2020 by hundreds of Los Angeles area attorneys, relevant excerpts of which are attached hereto as **Exhibit E.** The real market rates of Los Angeles area attorneys who practice "litigation" are surveyed at page 28, which describes the Second Quarter 2020 rates charged by 387 Los Angeles partners and 478 associates who practiced "Litigation." For that category, the Third Quartile rate was **$940** per hour for "Partners" and **$740** for "Associates". Likewise, page 34 of the Report describes the rates charged by 365 Los Angeles partners with

"21 or more years of experience" and 199 attorneys with "Fewer than 21 years". For those categories, the Third Quartile Los Angeles rates were **$1,047** per hour for attorneys with 21 or more years of experience and **$912** for attorneys with fewer than 21 years. Moreover, in my experience, since the Second Quarter of 2020, most Los Angeles Area firms have raised their rates by at least 3-6%.[6] Given the exceptional experience, expertise, and skills possessed by Consumer Watchdog Counsel, it is my opinion that rates exceeding the Third Quartile figures are readily justifiable and consistent with the Los Angeles legal marketplace.

- Consumer Watchdog Counsel's rates also are consistent with the "Adjusted Laffey Matrix" (laffeymatrix.com), which is based on a survey of hourly rates charged in the Baltimore-Washington, D.C. area. This survey is frequently used across the country, with adjustments for differences in cost of living, to evaluate the reasonableness of hourly rates. For March 2022, the Adjusted Laffey Matrix lists a current rate of **$919** per hour attorneys who have been out of law school for 20+ years, **$764** per hour for attorneys who have been out of law school for 11-19 years, **$676** for attorneys who have been out of law school for 8-10 years, $**468** per hour for attorneys who have been out of law school for 4-7 years, and **$381** per hour for attorneys who have been out of law school for 1-3 years. Measured under that survey, counsel's rates here, as adjusted for the Los Angeles Area market, would be 2.08% higher than these figures. See https://www.uscourts.gov/careers/compensation/judiciary-salary-plan-pay-rates (as

[6] Listed billing rates, court awards, and published articles show that over the past four years, Los Angeles area rates have risen an average of 4-6% per year. For example, in *Planned Parenthood Federation of America, Inc. v. Center for Medical Progress*, 2020 U.S. Dist. LEXIS 241035, at *13 (N.D. Cal. Dec. 22, 2020), the district court applied a 25% rate increase for the period from 2016 to 2020. Similar rate increases in the legal marketplace have been observed by commentators. *See, e.g.*, *Aggressive Billing Rate Increases Appear Likely, but Can Clients Stomach It?* Maloney, The American Lawyer (Jan. 24, 2022) (rates rose "nearly 4%" in 2021; Simons, *Big Law Should Raise Partner Billing Rates 10+ Percent Now*, The Recorder (Nov. 15, 2018) at 3 ("In a normal year, partner rates would go up around 5 or 6 percent").

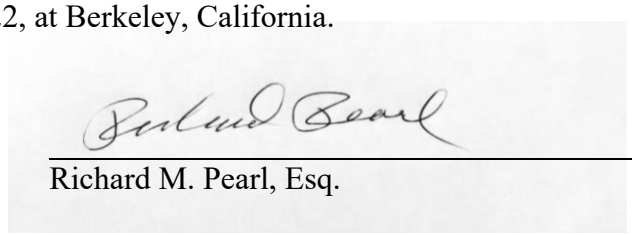
of Jan. 2022, 2.08% differential between Washington D.C. Area and Los Angeles Area rates).

- The 2018 Peer Monitor Public Rates survey, attached hereto as **Exhibit F**, shows that Consumer Watchdog Counsel's rates here are well within, if not below, the range of hourly rates billed by other top-flight Los Angeles area law firms. For example, 18 Los Angeles area attorneys were listed as billing from $1,125 to $1,475 per hour. And again, rates have increased at least 12-16% since 2018.

19. The preceding hourly rates data supports my opinion that Consumer Watchdog Counsel's rates are well within, if not below, the range of non-contingent rates charged by comparably qualified Los Angeles Area attorneys for reasonably similar work.

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

Executed on this 8th day of April, 2022, at Berkeley, California.



Richard M. Pearl, Esq.

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) 548-3143 (facsimile)
rpearl@interx.net (e-mail)

EDUCATION

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

BAR MEMBERSHIP

Member, State Bar of California (admitted February 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 (AV 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, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, and 2021.

QUALIFIED APPELLATE MEDIATOR, APPELLATE MEDIATION PROGRAM, California Court of Appeal, First Appellate District (October 2000 to 2013) (program terminated).

ADJUNCT PROFESSOR, HASTINGS COLLEGE OF THE LAW (January 1988 to 2014): Taught *Public Interest Law Practice*, a 2-unit course that focused 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, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, and March 2021 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 Attorneys' Fees: Practical and Ethical Considerations in Determining, Billing, and Collecting (October 1992)

Program materials on Attorney's Fees in Administrative Proceedings: California Continuing Education of the Bar, prepared as panelist for CEB program on Effective Representation Before California Administrative Agencies (October 1986)

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

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

Program Materials on Remedies 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

Member, Board of Directors, California Rural Legal Assistance Foundation

REPRESENTATIVE CASES

ACLU of N. Cal. v. DEA
(N.D. Cal. 2012) 2012 U.S.Dist.LEXIS 190389

Alcoser v. Thomas
(2011) 2011 Cal.App.Unpub.LEXIS 1180

Arias v. Raimondo
(2018) 2018 U.S.App.LEXIS 7484

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

Children & Families Commission of Fresno v. Brown
(2014) 228 Cal.App.4th 45

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

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Dixon v. City of Oakland
(2014) 2014 U.S.Dist.LEXIS 169688

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

Environmental Protection Info. Ctr. v Department of Forestry & Fire Protection
(2010) 190 Cal.App.4th 217

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

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

Guerrero v. Cal. Dept. of Corrections etc.
(2016) 2016 U.S.Dist.LEXIS 78796, *aff'd in relevant part,* (9th Cir. 2017) 701 Fed.Appx. 613

Heron Bay Home Owners Assn. v. City of San Leandro
(2018) 19 Cal.App.5th 376

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

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

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(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

McQueen, Conservatorship of
(2014) 59 Cal.4th 602 (argued for *amici curiae*)

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

Molina v. Lexmark International
(2013) 2013 Cal.App. Unpub. LEXIS 6684

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

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

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(9th Cir. 2018) 727 Fed.Appx. 265, 2018 U.S.App.LEXIS 6094

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(9th Cir. 2019) 793 Fed.Appx. 485

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(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

Ridgeway v. Wal-Mart Stores, Inc., 269 F. Supp. 3d 975 (N.D. Cal. 2017), *aff'd on merits (fees not appealed)* 269 F.3d 1066 (9th Cir. 2020)

Robles v. Employment Dev. Dept.
(2019) 38 Cal.App.5th 191

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

Ruelas v. Harper
(2015) 2015 Cal.App. Unpub.LEXIS 7922

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

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

Swan v. Tesconi
(2015) 2015 Cal.App. Unpub. LEXIS 3891

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)

REPRESENTATIVE CASES (cont.)

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

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

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

AUGUST 2021

EXHIBIT B

EXHIBIT B

Rates Found Reasonable by San Diego Area Courts

The following hourly rates have been found reasonable by various San Diego area courts for reasonably similar services in the San Diego area:

(1) In *Herring v. Maddow,* 2021 U.S. Dist. LEXIS 23163 (S.D. Cal. 2021), an anti-SLAPP fee award, the court found the following 2020 hourly rates reasonable: $1,050-1,150 per hour for attorneys with 30+ years of experience; $720 per hour for a senior associate with 10+ years of experience; and $470 per hour for associates with 3 years legal experience.

(2) In *In re Easysaver Rewards Litigation,* 2020 U.S. Dist.LEXIS 77483 (S.D. Cal. 2020), a coupon class action settlement, the court found reasonable 2019 rates of $850 and $825 reasonable for partners at San Diego's Cohelan, Khoury and Singer; $675 per hour for a Cohelan Khoury associate; and $795 for partners at San Diego's Patterson Law Group.

(3) In *Corona v. Remington Lodging & Hospitality, LLC*, 2019 U.S.Dist.LEXIS 68116 (S.D.Cal. 2019), a wage and hour class action, the court found that counsel's usual billing rates -- $750 for 33-year attorney and $550 for a 14-year attorney – were reasonable.

(4) In *San Diego Comic Convention v. Dan Farr Productions, No. 14cv1865-AJB-JMA,* 2019 U.S. Dist. LEXIS 64418 (S.D. Cal. Apr. 15, 2019) *attorney fees aff'd by* 807 F. App'x 674 (9th Cir. Apr. 20, 2020), a trademark infringement case, the court found reasonable the hourly rates of $760 for partners with 28-29 years of experience, $685 for a partner with 14 years of

experience, $585 for attorney with 16 years of experience, and $545 for an associate with 5 years of experience;,

(5) In *Youngevity Int'l, Corp. v. Smith*, No. 16-CV-00704-BTMJLB, 2018 U.S. Dist. LEXIS 77659, 2018 WL 2113238, at *5 (S.D. Cal. May 7, 2018), the court found that "Courts in this district have held a range of rates from $450-750 per hour reasonable for a senior partner in a variety of litigation contexts and specialties."

(6) In *Weinstein v. Mortgage Contracting Services, LLC*, 2018 U.S.Dist.LEXIS 182718 (S.D.Cal. 2018), a wage and hour class action, the court found that $750 was a reasonable rate for a 41-year attorney, $625 per hour for 2005 Bar Admittees, and $450 per hour for a 10-year attorney.

(7) In *Lewis v. County of San Diego,* 2017 U.S.Dist.LEXIS 203457 (S.D. Cal. 2017), an unlawful search action against county social workers, the court awarded a 25-year attorney with 19 years of civil rights practice $600 per hour, a 4-year attorney $250 per hour, and $100 per hour for paralegal work.

(8) In *Beaver v. Tarsadia Hotels,* 2017 U.S.Dist.LEXIS 160214 (S.D. Cal. 2017), a consumer class action, the court approved, as part of the lodestar cross-check for a common fund award, hourly rates that included $875 for a 40-year attorney, $725 for a 25-year attorney, $650 for a 16-year attorney, and $400 for a seven year attorney.

(9) In *Dilts v. Penske Logistic, LLC,* 2017 WL 2620664 (S.D. Cal. 2017), a wage and hour class action based in part on the UCL, the court awarded San Diego's Cohelen Khoury & Singer rates

of $750 per hour for a 33-year attorney, $550 for a 22-year attorney, and $170-200 for paralegal work.

(10) In *Makaef v. Trump University, LLC,* 2015 U.S.Dist.LEXIS 46749 (S.D. Cal. 2015), a fee award for a successful anti-SLAPP motion under California law and the subsequent appeals therefrom, the court found the following hourly rates reasonable for San Diego's Robins Geller Rudman & Dowd: $825 for a 20-year attorney, $660 for a 15-year attorney, and $360 for an 8-year associate. For San Diego's Zeldes Haeggquist & Eck, it found $600 and $690 per hour reasonable for 20-year attorneys.

(11) In *Hohnbaum v. Brinker Restaurants, Inc.,* San Diego County Superior Court No. GIC834348, Order and Judgment Granting Plaintiffs' Motion for Final Approval and Class Action Settlement and Motion for Award of Attorneys' Fees, Costs, Class Representative Service Payments, Claims Administration Exhibits, filed December 15, 2014, plaintiffs' requested hourly rates included rates of $850 per hour for San Diego attorneys with as little as 24 years' experience and paralegal rates of up to $195 per hour.

(12) In *Beltran v. D III Transportation Corp.*, San Diego Superior Court No. 77-2012-00099241-CU-OE-CTL, Order Granting (1) Final Approval of Class Settlement and Entering Judgment; and (2) Award of Attorneys' Fees and Costs etc., filed June 20, 2014, the court found $750 per hour reasonable for a 30-year San Diego attorney

(13) In *Chaikin v. Lululemon USA Inc*., 2014 WL 1245461 (S.D. Cal. 2014), a consumer class action, the court found the following hourly rates reasonable: 2000 Bar admittee - $650; 2002 Bar admittee - $500; 2007 Bar admittee - $500; and 2011 Bar admittee - $350.

(14) In *Reed v. 1-800 Contacts, Inc.,* 2014 WL 29011 (S.D. Cal. 2014), a consumer class action alleging violations of Penal Code §630 *et seq.,* the court found that $650 was a reasonable hourly rate for attorneys with 24 and 27 years of experience. It also found that a 2.9 lodestar multiplier was reasonable.

(15) In *Johansson-Dohrmann v. CBR Sys*., 2013 WL 3864341 (S.D. Cal. 2013), a representative action alleging invasion of privacy, the court found that lead class counsel's rate of $695 per hour was reasonable for a 20-year attorney. It also found that a 2.07 multiplier was reasonable.

(16) In *Hartless v. Clorox,* 273 F.R.D. 630, 644 (S.D. Cal. 2011), the Court found, *inter alia,* that class counsel's requested rates were consistent with the hourly rates found reasonable in numerous other class actions and with rates charged by other firms in the San Diego area, including rates of $795 per hour for a 25-year attorney and $675 per hour for an experienced partner. 273 F.R.D. at 644.

(17) In *Shames v. Hertz Corp.,* 2012-2 Trade Case. (CCH) ¶78,120 (S.D. Cal. 2012), the Court, relying on *Hartless,* found that plaintiffs' San Diego Counsel there were comparable in skill and experience to the attorneys whose rates were found reasonable in *Hartless* at *59-61.

(18) In *Briarwood Capital LLC v. HCC Investors LLC,* San Diego Superior Court No. GIC877446, on March 30, 2011, the court found that the 2009 hourly rates charged by the San Diego office of Bernstein Litowitz Berger & Grossman LLP -- $725 for partners, $490-550 for associates -- were reasonable. Similarly, in the same case, the court found that the 2009 rates charged by the Century City office of O'Melveny & Myers LLP, including rates of $860-950 for a 36-37 year attorney and $700-710 for 16-18 year attorneys also were reasonable for San Diego litigation.

EXHIBIT C

Pearl Declaration - Exhibit C

Rates Approved by Los Angeles Area Courts

- In *Campbell v. Barnes,* Orange County Superior Court No. 30-2020-01141117-CU-WM-CXC, Order Granting Petitioners' Motion for an Award of Attorneys' Fees, filed January 20, 2022, a case challenging inadequacies in the County jail's response to the Covid epidemic, the court found the following hourly rates reasonable:

LAW SCHOOL GRADUATION YEAR	**RATES**
Munger, Tolles & Olson LLP	
2003	$1,210
2013	$850
2015	$750
2016	$700
2017	$650
2018	$550
Non-Attorneys	
Automated Litig. Analyst	
Litigation Analyst	$250
Paralegals	$250
ACLU	
1988, 2000, and 2003	$1,210
2007	$950
2009	$900
2015	$750
2016	$700
2017	$650
Non-Attorney	
Senior Investigator	$250
Schonbrun, Seplow, Harris, Hoffman, And Zeldes LLP	
1976	$1,000
2016	$450
2016	$600
2019	$440
1975	$1,025
1976	$930
1979	$995
2015	$570

- In *Alvarez, et al. v. XPO Logistics Cartage, LLC et al.,* United States District Court, Central District of California, No. 2:18-cv-03736-RGK-E, Order re: Motions for Attorneys' Fees, Costs, and Incentive Awards, filed February 8, 2022, a wage and hour class action, the court found the following 2021 hourly rates reasonable as part of its lodestar cross-check:

YEARS OF EXPERIENCE	**RATES**
Sayas Law Firm	
35	$900
17 (Sr. Associate)	$695
Paralegals	$225-$350
Bush Gottlieb	
1980	$975
1989	$900
1994	$850
2012	$575
2014	$525
2016	$475
2018	$425
2020	$375
Law Clerks	$225
Paralegals	$225

- In *The Kennedy Commission v. City of Huntington Beach,* Los Angeles County Superior Court No. 30-2015-00801675, Ruling on Submitted Matter filed July 8, 2021, a writ of mandate action challenging a land use amendment adopted by the City of Huntington Beach, the court found the following hourly rates reasonable (prior to application of a 1.4 lodestar multiplier):

2020 Rates:	**Years of**	**Rates**
	38	$910
	40	$900
	26	$815
	23	$750

	16	$710
	14	$680
	10	$565
	7	$500
	6	$475
	5	$450
	2	$365

In an earlier ruling in the same case, the court found the following hourly rates reasonable for the Plaintiffs' private *pro bono* law firm (prior to application of a 1.4 multiplier) [1]:

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

- In *Rea v. Blue Shield*, Los Angeles County Superior Court No. BC468900, Fee Order filed November 13, 2020, a class action challenging Blue Shield's practices regarding mental health claims, in which the court found that $900 per hour was reasonable for plaintiffs' three lead attorneys, with 35, 37, and 44 years of experience. It also applied a 1.5 multiplier.
- In *Caldera v. State of California,* San Bernardino County Superior Court No. DS1000177, Ruling on Plaintiff's Motion for Attorney's

[1] The initial *Kennedy Commission* fee award was remanded in conjunction with the reversal of the merits. 2017 Cal.App.Unpub.Lexis 7488 (2017).

Fees filed October 23, 2020, an individual Fair Employment and Housing Act case, the court found that $825 per hour was a reasonable hourly rate in the Los Angeles legal marketplace for 26-year attorney's appellate work (before applying a 1.65 lodestar multiplier).

- In *Independent Living Center of S. Cal. v. Kent,* 2020 U.S.Dist.LEXIS 13019 (C.D. Cal. 2020), an action seeking to enjoin the challenging the State's right to alter reimbursement rates for Medi-Cal providers, the court found the following hourly rates reasonable (before applying a 1.5 lodestar multiplier):

2019 Rates:	**Law School Graduation Year**	**Rates**
	1975	$1,025
	1976	$965
	1979	$1,025
	2007	$815
	2011	$800
	2015	$640
	2016	$600
	2019	$440
2018 Rates:	**Law School Graduation Year**	**Rates**
	1975	$1,025
	1976	$930
	1979	$995
	2015	$570

- In *Lavinsky v. City of Los Angeles,* Los Angeles County Superior Court No. BC542245, Fee Award filed October 9, 2019, a class action challenge to a municipal tax, the court found the following hourly rates reasonable (before applying a 3.8 lodestar multiplier for contingent risk, etc.):

YEARS OF EXPERIENCE	RATE
25	$850
29	$800
17	$695
9	$475
5-7	$450
1	$295
Paralegal	$125

- In *Hadsell v. City of Baldwin Park,* Los Angeles County Superior Court No. BC 548 602, Notice of Ruling on Plaintiff's Motion for Attorneys' Fees filed June 25, 2019, the court found the following hourly rates reasonable (before applying a 1.5 multiplier):

CAL BAR ADMISSION DATE	RATE
1987	$1,100
1990	$1,100
2008	$800
2008	$650
2012	$550
2016	$500

- In *Pinter-Brown v. UCLA,* Los Angeles Superior Court No. BC624838, Fee Order filed August 3, 2018, the court found the following 2018 hourly rates reasonable:

CAL BAR ADMISSION DATE	RATE
1990	$1,100
2008	$675
2012	$500
2016	$400
2015	$350
2016	$325
2017	$300

- In *Wishtoyo Foundation et al v. United Water Conservation Dist.,* 2019 U.S.Dist.LEXIS 39927 (C.D. Cal. 2019), an environmental action under the federal Endangered Species Act, the court found the following hourly rates reasonable:

	Bar Admittance or Law School Graduation	2018 Rates
	1986	$840
		$780
		$735
		$720
		$670
		$600
		$425
		$680
	Paralegals	$200-250

- In *Monster, LLC, et al., v. Beats Electronics, LLC et al.*, Los Angeles Superior Court Case No. BC595235 (2017), Order Granting Defendant and Cross-Complainant Beats Electronics, LLC's Motion for Attorneys' Fees and Costs, filed June 27, 2018, a commercial dispute, the court found the following hourly rates reasonable for Beats' attorneys' work on the successful jury trial that

determined the amount of reasonable attorneys' fees Monster would be required to pay as damages:

Boies, Schiller & Flexner	**Bar Admittance or Law School Graduation**	**2016/2017 Rates**
Partners:	1986	$960/$1,049
	2006	$920/$972
	2000	$880
	2001	$880
	2002	$830
	1999	$830
	2004	$740 (2015); $760 (2016)
	2006	$680
	2007	$650/$714
	2009	$600/$800
Associates:	2004	$680
	2009	$610
	2013	$460/$533
	2013	$490
	2010	$630
	2011	$480/$602
	2014-2015	$420
Non-Attorneys Timekeepers:		$190-284

Gibson Dunn & Crutcher	**Bar Admittance or Law School Graduation**	**2017 Rates**
	1987	$852 (through Aug. 2017) $956 (from Sept. 2017)
	2008	$592 (through Aug. 2017) $696 (from Sept. 2017)
	2013	$404 (through Aug. 2017) $600 (from Sept. 2017)
	2015	$520
	2016	$472
	1997	$960
	2006	$736
	1987	$944
Non-Attorneys Timekeepers:		$216-$335

- In *Nozzi v. Housing Authority,* 2018 U.S.Dist.LEXIS 26049 (C.D.

Cal. 2018), tenant class action, the court approved the following hourly rates as reasonable:

Kaye McLane Bednarski & Litt	**Bar Admittance or Law School Graduation**	**2017 Rates**
	1969	$1,150
	1992	$750
	1993	$765
	2008	$730
	Sr. Paralegal	$335
	Jr. Paralegal	$150
	Law Clerk	$200

- In *Monster, LLC, et al., v. Beats Electronics, LLC et al.*, Los Angeles Superior Court Case No. BC595235 (2017), the same commercial dispute listed above, the court found the following 2017 rates to be reasonable for Beats's co-defendants who had obtained relief by summary judgment (see Order Granting Motions for Attorneys' Fees, filed October 12, 2017, p. 2):

	Bar Admittance or Law School Graduation	**2016 Rates (unless otherwise noted)**
Partners:	1966	$1,000 (2015); 1,245 (2016)
	1977	$1,110 (2015)
	1981	$910
	1985	$995
	1992	$875-885
	1995	$910
	2002	$750
Of Counsel:	1976	$705
Associates:	2009	$615 (2015); $660 (2016)
Non-Attorneys Timekeepers:		$380-90

- In *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, the court found the following hourly rates reasonable for the Plaintiffs' private *pro bono* law firm (prior to application of a 1.4 multiplier)[2]:

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

- In *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 lawsuit against the City of Los Angeles by persons with mobility disabilities under the Americans with Disabilities Act and the Rehabilitation Act of 1973 challenging the inaccessibility of the City's sidewalks, the court found the following 2015 hourly rates reasonable:

Law School	**Rates**
1976	$1,115.60
1977 (associate)	700
1981	795
1987	680-775
1993	750
1999	644-695

[2] The *Kennedy Commission* fee award was remanded in conjunction with the reversal of the merits. 2017 Cal.App.Unpub.Lexis 7488 (2017).

2001	625
2003	550
2006	525 —
2007	450
2008	473
2009	450
2010	350-400
2011	300-385
2012	300
2013	300-325
Paralegals and Law	110-250
Case Assistants	220-230
Docket Clerk	230

- In *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, 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

- In *ScripsAmerica, Inc. Ironridge Global LLC et al,* Case No. CV 14-03962-SJO (AGRx) (C.D. Cal.), Order Granting Defendant Ironridge GlobalLLC, John Kirkland, Brendan O'Neill's Motion for Attorney's Fees, filed January 12, 2016 (Dkt. No. 50), a contract dispute, the court found the following 2015 hourly rates reasonable:

Years of Experience	**Rates**
37	$950
11	$700
4	$450
Paralegals	$200-350

- In *Perfect 10, Inc. v. Giganews, Inc.,* 2015 U.S. Dist. LEXIS 54063 (C.D. Cal. 2015), filed March 24, 2015, *affirmed* 847 F.3d 657 (9th Cir. 2017), a copyright infringement action, the court found the following 2015 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	245-290

- In *Rodriguez v. County of Los Angeles,* 96 F.Supp.3d 990 (C.D. Cal. 2014), Order Granting Plaintiffs' Motion for Attorneys' Fees, filed December 29, 2014, *affirmed* 891 F.3d 779 (9th Cir. May 30, 2018), a civil rights action on behalf of five county jail prisoners, the district court found the following hourly rates reasonable, plus a 2.0 lodestar multiplier for merits work performed on the plaintiffs' California cause of action; the entire award was affirmed on appeal:

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

- In *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, 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

- In *Pierce v. County of Orange,* 905 F. Supp. 2d 1017 (C.D. Cal. 2012), a civil rights class action brought by pre-trial detainees, 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

EXHIBIT D

Pearl Decl. - Exhibit D

Rates Charged by Los Angeles Area Law Firms

Ahdoot & Wolfson		
2019 Rates	**Years of Experience**	**Rate**
	25	$850
	29	$800
	17	$695
	9	$475
	5-7	$450
	1	$295
	Paralegal	$125

Arnold & Porter Kaye Scholar LLP		
2021 Rates	**Level**	**Rates**
	Partners	$750-$1,150
	Senior Counsel	$910-$1,280
	Associates	$545-$910
	Paralegals	$390-$405
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		
2020 Rates:	**Years of Experience**	**Rates**
	1975	$950
	2010	$575
	2013	$525

Bush Gottlieb		
2021 Rates:	**Law School Graduation Date**	**Rates**
	1980	$975

	1989	$900
	1994	$850
	2012	$575
	2014	$525
	2016	$475
	2018	$425
	2020	$375
	Law Clerks	$225
	Paralegals	$225
2019 Rates:	**Class Year**	**Rates**
Lawyers:	1980	$900
	1989	$900
	1974	$850
	2002	$725
	2006	$625
	2013	$450
	2014	$425
	2015	$400
	2016	$375
Law Clerks/Support Staff:		$200

Cooley LLP		
2021 Rates:	**Years of Experience**	**Rates**
	27 (Partner)	$1,415
	27 (Special Counsel)	$1,210
2020 Rates	**Years of Experience**	**Rates**
	26 (Partner)	$1,275
	26 (Special Counsel)	$1,140
	12 (Associate)	$1,120
2017 Rates:	**Years of Experience**	**Rates**
	22	$905
2014 Rates:	**Years of Experience**	**Rates**
	31	$1,095
	17	$770
	9	$685
2013 Rates:	**Years of Experience**	**Rates**
	30	$1,035
	16	$710
	8	$645

Crowell & Moring		
2020 Rate:	**Years of Experience**	**Rate**
	27	$1,090

Law Offices of James DeSimone		
2020 Rate:	**Years of Experience**	**Rate**
	33	$1,000
Dordick Law		
2019 Rates:	**Bar Admission Year**	**Rates**
	1987	$1,100

Duane Morris LLP		
2018 Rates:	**Bar Admission Year**	**Rates**
	1973	$1,005
	2008	$605
	2011	$450
	2017	$355
	Sr. Paralegal	$395
2016 Rates:	**Years of Experience**	**Rates**
	43	$880
	41	$880
	26	$720
	25	$695
Galipo, Law Offices of		
2019 Rates:	**Bar Admission Year**	**Rates**
	1989	$1,000

Gibson Dunn & Crutcher LLP		
2021 Rates:	**Years of Experience**	**Rates**
	33	$1,355
	29	$1,185
	5	$905
	Other Staff	$280
2020 Rates:	**Level**	**Rates**
	Senior Partners	$1,395 – 1,525
	Senior Associate	$960
	Mid-level Associate	$740
	Paralegals	$480
2017 Rates:	**Bar Admittance or Law School Graduation**	**Rates**
	1987	$956
	1987	$944
	1997	$960
	2006	$736
	2008	$*592/$696
	2013	$$600
	2015	$520
	2016	$472
Non-Attorney		$216-$335
2016 Rates	**Bar Admittance**	**Rates**
	1987	$852
	2010	$540
	2013	$404
2015 Rates	**Years of Experience**	**Rates**
	37	$1,125

	23	$955
	3	$575

Hadsell, Stormer, Richardson & Renick		
2019 Rates:	**Years of Experience**	**Rates**
	46	$1,150
	17	$750
	10	$575
	7	$500
	6	$475
2015 Rates:	**Years of Experience/Level**	**Rates**
	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

Hagens Berman Sobol Shapiro LLP		
2017 Rates:	**Levels**	**Rates**
	Senior Attorney	$950
	Other Partners	$578-$760
	Associates	$295-$630

Hooper, Lundy & Bookman		
2019 Rates:	**Law School Graduation Year**	**Rates**
	1975	$1,025
	1976	$965
	1979	$1,025
	2007	$815

	2011	$800
	2015	$640
	2016	$600
	2019	$440
2018 Rates:	**Law School Graduation Year**	**Rates**
	1975	$1,025
	1976	$930
	1979	$995
	2015	$570

Jones Day		
2020 Rates:	**Years of Experience e**	**Rates**
	1st	$413.25
2018 Rates:		
	30+	$1,025
2016 Rates:	**Bar Admission Year**	**Rates**
	2001	$900
	2004	$850 (partner)
	2004	$657.70 (assoc.)
	2014	$450
2015 Rates:	**Bar Admission Year**	**Rates**

	2001	$875
	2014	$400

Kaye, McLane, Bednarski & Litt		
2019 Rates:	**Graduation Year**	**Rates**
	1969	$1,200
	1993	$800
	2008	$600-$700
	2006	$700
	Paralegals	$125-360
	Law Clerks	$225
2017 Rates:	**Graduation Year**	**Rates**
	1969	$1,150
	1992	$750
	1993	$765
	2008	$730
	Sr. Paralegal	$335
	Jr. Paralegal	$150
	Law Clerk	$200
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		
2021 Rates:	**Title**	**Rates**
	Partners	$1,085-$1,895
	Associates	$625-$1,195
	Paraprofessionals	$255-$475
2020 Rates:	**Title**	**Rates**
	Partners	$1,075-$1,845
	Associates	$610-$1,165
	Paraprofessionals	$245-$460
2017 Rates:	**Years of Experience**	**Rates**
	20	$1,165
	9	$995
	8	$965
	5	$845
	4	$845

	3	$810
	2	$555

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

Michelman & Robinson LLP		
2018 Rates:	**Bar Admission Date**	**Rates**
	Partners	$995
	Senior Associate	$580
	Associate	$480

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		
2021 Rates:	**Law School Graduation Year**	**Rate**
	2002	$1,200
	2011	$1,075
	2014	$925
	2018	$745
	Paralegal	$295
2020 Rates:	**Law School Graduation Year**	**Rate**
	2002	$1,125
	2011	$975
	2014	$810
	2018	$640
	Paralegal	$275
2018 Rates:	**Years of Practice**	**Rates**
	40	$1,050
	22	$950
	11	$875
	3	$550
	Paralegal	$325
2017 Rates:	**Bar Admission Date**	**Rates**

	2007	$608
	2012	$575
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

Munger, Tolles & Olson		
2021 Rates	**Law School Grad. Year**	**Rate**
	1991	$1,725
	2003	$1,210
	2009	$995
	2013	$1,040
	2015	$995
	2016	$825

	2017	$880
	2018	$805
	Paralegal	$420-475
	Automated Litig. Analyst	$540-570
2020 Rates:		
	1991	$1,610
	2001	$950
	2009	$920
	2016	$725
	Paralegal (42 years' experience)	$345
2016 Rates (unless otherwise noted):	**Bar Admittance or Law School Graduation**	**Rates**
Partners:	1966	$1,000 (2015); 1,245 (2016)
	1977	$1,110 (2015)
	1981	$910
	1985	$995
	1992	$875-885
	1995	$910
	2002	$750
Of Counsel:	1976	$705

Associates:	2009	$615 (2015); $660 (2016)
Non-Attorneys Timekeepers:		$380-90

O'Melveny & Myers		
2019 Rates:	**Level**	**Rate**
	Senior Partner	$1,250
	Partner (1998 Bar Admittee)	$1,050
	3rd Year Associate	$640
	2nd Year Associate	$565
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

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

Paul Hastings LLP		
2020 Rates:	**Years of Experience**	**Rates**
	25	$1,425
	7	$885
	5	$775
	3	$645
	Research assistant	$335
2016 Rates:	**Bar Admission Date**	**Rates**
	1973	$1,175
	1997	$895
	1990	$750
2014 Rates:	**Level**	**Rates**
	Average Partner	$815
	Highest Partner	$900
	Lowest Partner	$750
	Average Associate	$540
	Highest Associate	$755
	Lowest Associate	$350

Pearson Simon & Warshaw LLP		
2019 Rates:	**Years of Experience**	**Rates**
	23-38	$1,150

	10	$900
	Of Counsel	$825
	6	$500
	4	$450
	Paralegals	$225
2018 Rates:	**Years of Experience**	**Rates**
	22-37	$1,050
	9	$650
	Of Counsel	$725
	5	$450
	3	$400
2017 Rates:	**Years of Experience**	**Rates**
	35-36	$1,035
	8	$520
	4	$400
	2	$350

Proskauer Rose LLP		
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		
2018 Rates:	**Law School Graduation Yr.**	**Rates**
	1980	$1,135
	2016	$630
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		
2020 Rates:	**Years of Experience**	**Rates**
	22	$930
	16	$780
	14	$840
	Paralegals	$250

2014 Rates:	**Years of Experience**	**Rates**
	37	$830
	18	$695
	15	$585
	6	$485
	5	$435
2013 Rates:	**Years of Experience**	**Rates**
	Partners	
	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

Schonbrun, DeSimone, Seplow, Harris & Hoffman		
2021 Rates:	**Law School Grad. Yr.**	**Rates**
	1975	$1,025
	1976	$1,000
	1976	$930
	2016	$600
	2016	$450
	2019	$440
2019 Rates:	**Years of Experience**	**Rates**
	43	$1,050
2014 Rates:	**Years of Experience**	**Rates**
	29	$750
	24	$700
2012 Rates:	**Years of Experience**	**Rates**
	27	$695
	22	$630

Shegarian Law		
2018 Rates:	**Years of Experience**	**Rate**
	29	$1,100
	10	$675
	6	$500

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		
2020 Rate:	**Years of Experience**	**Rate**
	42	$1,050
2019 Rate:	**Years of Experience**	**Rate**
	41	$1,000
2015 Rates:	**Years of Experience**	**Rate**
	37	$875

Wilson Sonsini Goodrich & Rosati PC		
2017 Rates:	**Bar Admission Date**	**Rates**
	2000	$950

Winston & Strawn		
2019 Rates:	**Level**	**Rates**
	Partners:	
		$1,515
		$1,245
		$1,105
		$1,025
	Associates:	
		$825
		$660
		$615
2018 Rates:	**Level**	**Rates**
	Partners:	
		$1,445
		$1,185
		$1,050
		$820
	Associates:	
		$765
		$585
	Paralegals:	$170-340
	Litigation Support Mgr.	$275

	Review Attorneys	$85
2017 Rates:	**Level**	**Rates**
	Partners:	
		$1,365
		$1,120
		$990
	Associates:	
		$760
		$690
		$645
		$520
		$495
	Paralegals:	$165-295
2016 Rates:	**Level**	**Rates**
	Partners:	
		$1,290
		$1,095
		$965
		$960
		$885
	Associates:	
		$715

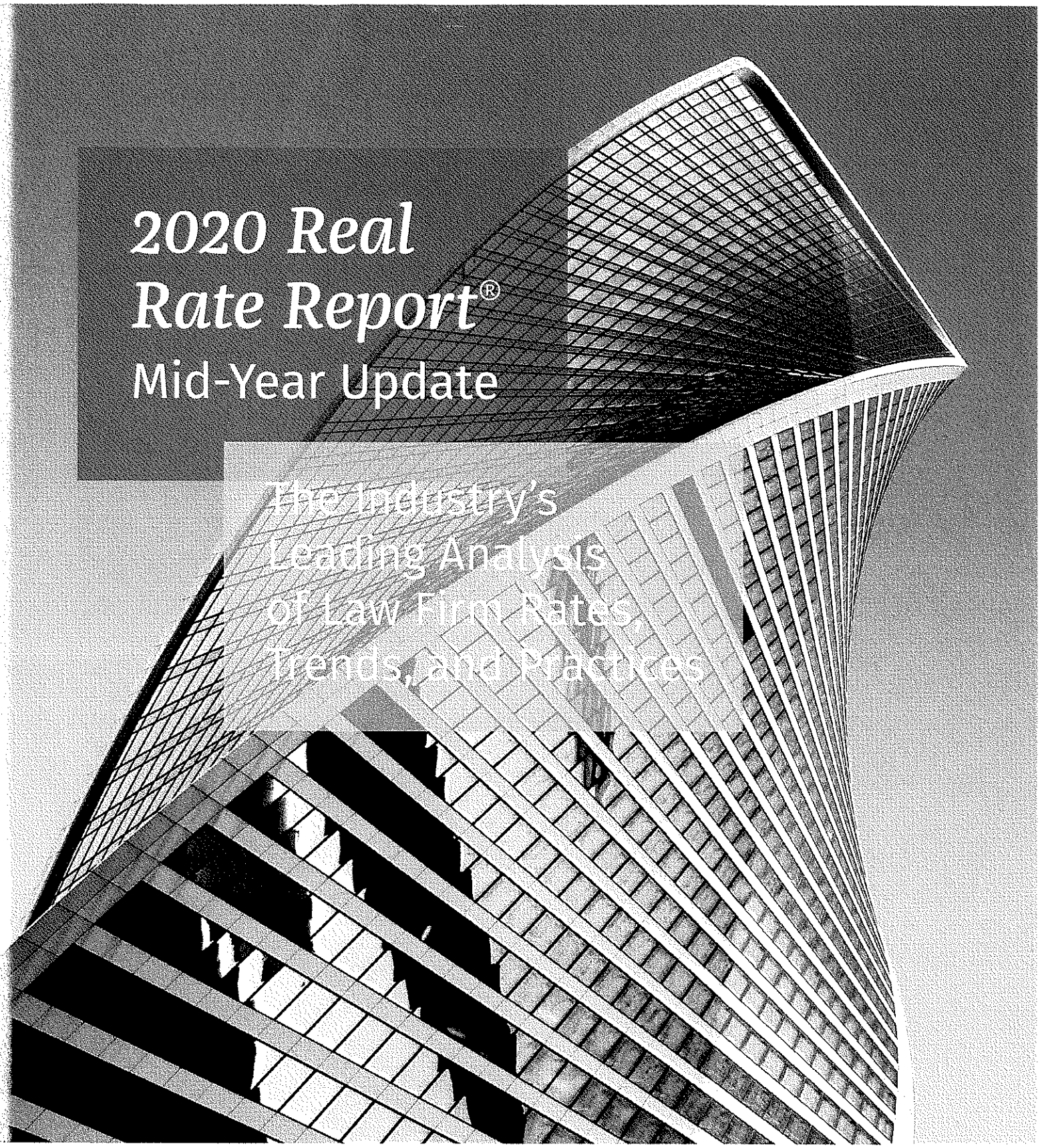
		$615
		$575
		$470
	Paralegals:	$170-280
	Litigation Support Mgr.:	$250

EXHIBIT E

2020 Real Rate Report®

Mid-Year Update

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



Wolters Kluwer

When you have to be right

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Table of Contents - 2020 Real Rate Report

A Letter to Our Readers

Welcome to the Wolters Kluwer's ELM Solutions Real Rate Report®, the industry's leading data-driven benchmark report for lawyer rates.

Welcome to the Wolters Kluwer's ELM Solutions 2020 Mid-Year Real Rate Report®, the industry's leading data-driven benchmark report for lawyer rates. Our Real Rate Report has been a useful data analytics resource to the legal industry since its inception in 2010 and continues to evolve even in the current environment.

The Real Rate Report is powered by Wolters Kluwer's ELM Solutions LegalVIEW® data warehouse, the world's largest source of legal performance benchmark data, which has grown to include over $140 billion in anonymized legal data.

As with past Real Rate Reports, all of the data analyzed are from corporations' and law firms' e-billing and time management solutions. We have included lawyer and paralegal rate data filtered by specific practice and sub-practice areas, metropolitan areas, and types of matters to give legal departments and law firms greater ability to pinpoint areas of opportunity.

So far, 2020 has been an unprecedented year with the global pandemic causing disruption to health, economies, and society. Many industry sectors have been impacted by COVID-19, and the legal industry is no exception. Our business intelligence experts have observed downward but uneven trends in law firm billing activity and intend to continue to track the legal industry response. We strive to make the Real Rate Report a valuable and actionable reference tool for legal departments and law firms.

In our current environment, the need for a reliable and comparative data source for rates has never been more important. As always, we welcome your comments and suggestions on what information would make this publication more valuable to you. We thank you for making Wolters Kluwer's ELM Solutions your trusted partner for legal industry domain expertise, data, and analytics and look forward to continuing to provide market-leading, expert solutions that deliver the best business outcomes for collaboration among legal departments and law firms.

Sincerely,

Jonah Paransky
Executive Vice President and General Manager
Wolters Kluwer's ELM Solutions

Report Use Considerations

2020 Mid-Year Real Rate Report

- Examines law firm rates over time
- Itemizes rates by location, experience, firm size, areas of expertise, industry, and timekeeper role (i.e., partner, associate, and paralegal)
- Identifies variables that drive rates up or down

All the analyses included in the report derive 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 role 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 to modify their pricing approach.

Some key factors[1] that drive rates[2]:

- **Geographic location** - Lawyers in urban and major metropolitan areas tend to charge more when compared with lawyers in rural areas or small towns.
- **Degree of difficulty** - The cost of representation will be higher if the case is particularly complex or time-consuming; for example, if there are a large number of documents to review, many witnesses to depose, and numerous procedural steps, the case is likely to cost more (regardless of other factors like the lawyer's level of experience).
- **Experience and reputation** - A more experienced, higher-profile lawyer is often going to charge more, but absorbing this higher cost at the outset may make more sense than hiring a less expensive lawyer who will likely take time and billable hours to come up to speed on unfamiliar legal and procedural issues.
- **Overhead** - The costs associated with the firm's support network (paralegals, clerks, and assistants), document preparation, consultants, research, and other expenses.

Additional analysis was performed to examine the impact of rates on law firm invoices relative to an e-billing providers' business model. It should be noted that there are several industry-standard business models that e-billing providers use to charge law firms and other legal service providers to submit invoices and perform other transactions through their systems. The three main model types are:

- Client pay, where the corporate client pays a subscription for the matter and spend solution.
- Law firm pay, where the law firm pays a subscription or usage fee based on the invoices submitted.
- Hybrid, which is a combination of a client pay and law firm pay.

1 **Source: 2018 RRR.** Factor order validated in multiple analyses since 2010
2 **David Goguen, J.D., University of San Francisco School of Law (2017) Guide to Legal Services Billing** Retrieved from https://www.lawyers.com/legal-info/research/guide-to-legal-services-billing-rates.html

Report Use Considerations

The data shows that the law firm pay model has become normative in the industry – 85%+ of Wolters Kluwer's ELM Solutions clients' law firms participate in a law firm pay or hybrid model. In addition, 99% of the Am Law 200 law firms participate in at least one law firm pay model paying 1% or more on the invoices submitted, and 97% of the Am Law 200 pay 2%.

The analysis performed then examined law firm rates from firms who participated in one of those law firm pay/hybrid models versus those who are in a client pay model. The analysis showed no statistical difference in rates, suggesting that the business model that the firm participates in does not impact the rates the firm charges to their corporate client.

Effects of COVID-19

Additional analyses were performed to assess any trends and potential effects of COVID-19 on rates and other measures. Across all industries, we see a decline of 7% in the number of new matters being opened. Legal spend is down 5%. Activity varies by industry with spend decreasing only 1% in the technology sector but up to 30% for consumer services.

In some instances, we see more than expected increases in attorney rates. Among the possible reasons for this are:

- Potential opportunistic billing created by the pandemic. Dislocations in the supply chain in some segments of the market which allow firms to charge more for services.
- Law firms may have reduced staff to cut expenses. The data in the mid-year report shows a slight increase in the number of billing partners and a decrease in billing paralegals. Be on guard for opportunistic pricing and weigh your outside counsel relationships accordingly.

Overall, the data in the 2020 Mid-Year Real Rate Report provides corporate counsel with an understanding of the rates they can expect to pay for a given matter type, division, industry, or practice area and offers in-depth analyses on key drivers of rates to help make informed selection decisions. For law firms, it provides a relative benchmark to ensure that pricing for legal services remains competitive.

Wolters Kluwer's ELM Solutions research shows: you can evaluate these rates with confidence they are not affected by e-billing pricing models; you should stay sensitized to potential Covid influences on rates and activity in some markets and guard against overpaying.

Section I: High-Level Data Cuts

Cities

By Matter Type

Q2 2020 -- Real Rates for Partners and Associates **Trend Analysis (Mean)**

City	Matter Type	Role	n	First Quartile	Median	Third Quartile	Q2 2020	Q2 2019	Q2 2018
			49	$317	$400	$483	$413	$419	$386
			35	$190	$251	$321	$264	$268	$264
			57	$383	$441	$525	$446	$426	$413
			31	$236	$262	$301	$276	$263	$269
			57	$319	$353	$385	$368	$344	$338
			57	$135	$225	$251	$202	$236	$182
			28	$297	$353	$483	$375	$347	$350
			11	$281	$300	$378	$350	$292	$312
			12	$145	$208	$404	$265	$225	$248
			14	$304	$345	$365	$368	$349	$359
			82	$373	$443	$514	$456	$454	$409
			80	$275	$308	$340	$306	$294	$270
			109	$385	$430	$532	$458	$445	$443
			100	$225	$277	$320	$283	$279	$259
			15	$150	$150	$150	$170	$170	$206
			21	$250	$360	$563	$429	$391	$356
			19	$247	$280	$313	$284	$273	$261
			27	$300	$400	$495	$432	$490	$482
			22	$236	$292	$337	$281	$289	$289
			11	$235	$250	$250	$272	$286	$268
			14	$215	$250	$362	$297	$251	$269
			387	$425	$660	$940	$694	$673	$650
			478	$350	$535	$740	$548	$524	$501
			583	$564	$795	$1,085	$837	$803	$771
			834	$432	$605	$794	$629	$608	$595
			17	$301	$349	$391	$351	$348	$340
			21	$180	$210	$260	$218	$218	$212
			14	$223	$245	$250	$237	$204	$221
			18	$361	$415	$478	$423	$422	$429
			16	$290	$365	$425	$360	$344	$351
			20	$285	$321	$357	$327	$337	$349
			12	$195	$213	$225	$215	$235	$229

Section I: High-Level Data Cuts

Cities

By Years of Experience

Q2 2020 -- Real Rates for Partners **Trend Analysis (Mean)**

City	Years of Experience	n	First Quartile	Median	Third Quartile	Q2 2020	Q2 2019	Q2 2018
		31	$300	$329	$400	$346	$337	$343
		70	$266	$350	$448	$354	$360	$356
		14	$390	$455	$495	$460	$438	$414
		17	$338	$425	$487	$421	$358	$383
		39	$424	$502	$730	$561	$525	$482
		19	$275	$300	$425	$363	$359	$345
		73	$502	$675	$828	$691	$673	$652
		78	$533	$795	$973	$787	$664	$667
		32	$297	$384	$420	$367	$366	$338
		56	$378	$465	$551	$459	$450	$423
		22	$296	$342	$357	$330	$322	$303
		18	$295	$370	$440	$384	$348	$369
		11	$300	$325	$460	$384	$333	$360
		51	$328	$396	$440	$386	$369	$353
		68	$411	$500	$600	$511	$500	$449
		18	$250	$475	$675	$485	$491	$452
		12	$230	$250	$275	$273	$266	$278
		199	$450	$655	$912	$683	$685	$641
		365	$528	$731	$1,047	$797	$743	$723
		12	$338	$380	$410	$371	$394	$360
		11	$286	$290	$365	$317	$303	$311
		17	$325	$400	$425	$373	$368	$371
		44	$375	$508	$615	$479	$471	$390
		107	$350	$546	$726	$541	$530	$482
		20	$260	$343	$439	$410	$372	$366
		36	$378	$458	$611	$516	$407	$402
		60	$416	$520	$599	$506	$465	$430
		120	$399	$605	$743	$590	$582	$493
		22	$360	$409	$457	$398	$361	$353
		43	$418	$457	$514	$456	$433	$438
		34	$301	$348	$442	$367	$341	$327
		48	$290	$360	$463	$376	$362	$336
		514	$630	$1,010	$1,273	$965	$939	$889
		1126	$598	$949	$1,330	$977	$964	$929

Section I: High-Level Data Cuts

Cities

By Years of Experience

Q2 2020 -- Real Rates for Associates **Trend Analysis (Mean)**

City	Years of Experience	n	First Quartile	Median	Third Quartile	Q2 2020	Q2 2019	Q2 2018
		25	$272	$300	$325	$295	$290	$247
		29	$269	$295	$311	$295	$277	$271
		17	$250	$288	$330	$285	$282	$286
		47	$397	$476	$581	$483	$479	$455
		138	$395	$565	$699	$557	$510	$462
		207	$350	$536	$811	$585	$573	$549
		20	$265	$325	$350	$336	$339	$279
		39	$240	$381	$491	$383	$373	$306
		16	$256	$294	$315	$299	$284	$285
		16	$295	$364	$403	$354	$361	$435
		26	$312	$355	$418	$368	$363	$321
		29	$295	$378	$508	$379	$384	$331
		18	$225	$266	$297	$268	$259	$257
		20	$226	$253	$305	$261	$244	$236
		22	$238	$325	$369	$304	$276	$234
		153	$385	$513	$647	$536	$501	$517
		286	$404	$589	$826	$613	$586	$549
		564	$410	$693	$945	$697	$702	$678
		16	$281	$305	$348	$326	$304	$276
		60	$300	$325	$395	$342	$329	$339
		158	$305	$355	$430	$378	$363	$338
		170	$310	$450	$514	$449	$429	$397
		11	$213	$275	$315	$275	$236	$278
		21	$251	$335	$393	$320	$297	
		36	$275	$355	$425	$345	$327	$317
		40	$265	$356	$474	$372	$349	$335
		14	$251	$285	$309	$277	$264	$299
		45	$293	$336	$388	$336	$310	$321
		51	$332	$415	$458	$389	$359	$366
		15	$350	$417	$450	$393	$381	$330
		15	$200	$224	$245	$222	$203	$185
		11	$231	$290	$378	$314	$324	$313
		33	$288	$365	$545	$412	$419	$453

EXHIBIT F

PEER MONITOR

INSIGHT. ADVANTAGE. COMPETITIVE INTELLIGENCE.

PUBLIC RATES

In a time when the legal market continues to face fluctuating demand and challenges containing expenses, it's critical that your firm stays on top of the latest billing trends and maintains fair, competitive rates while maximizing revenue.

Take Action to Inform Your Firm

Public Rates is a dynamic, web-based billing rate service that gives you anytime access to accurate, court reported, hourly rate data, with details drilling down to the named timekeeper.

It empowers you to quickly and easily slice and analyze rates across user-selected combinations of various attributes, sort targeted record results, view quartile and median rates for searched data, and more.

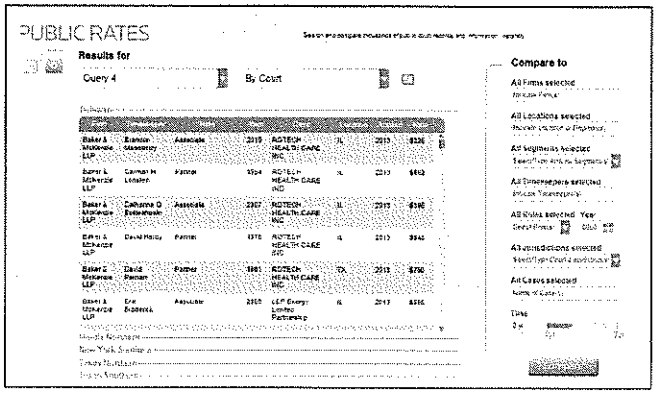
Then Take Your Rate Analysis One Step Further

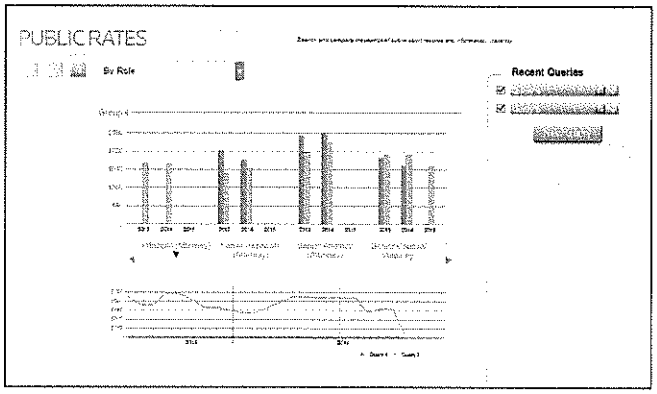
As efficient as it is intuitive, **Public Rates** offers deeper billing evaluation with query comparison that allows for firm-to-firm, case-to-case, or even person-to-person rate examination.

What's more, you can quickly and easily find critical insights with features such as click sorting, query naming, and auto-saved search history.

Use Public Rates to:

- Determine optimal rates and profit opportunities
- Justify rates submitted to courts on fee applications
- Track lawyer performance
- Get pricing transparency in the marketplace





Get Critical, Actionable Data

Search reported hourly rates by:

- Timekeeper
- Year of admission
- Firm
- Segment
- Location
- Jurisdiction
- Role
- Year of filing
- Case
- Historical records as far back as 7 years

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California Rates (January–May 2018)

Title	Professional	Firm	Graduated	Admitted	State	Rate	Hours	Total
Partner	David M. Nemecek	Kirkland & Ellis LLP	2003	2003	CA	$1,395	2.4	$3,348.00
Partner	Leslie A. Plaskon	Paul Hastings LLP	1988	1988	CA	$1,275	260	$331,500.00
Partner	Thomas B. Walper	Munger Tolles & Olson LLC	1980	1980	CA	$1,225	166.7	$204,207.50
Partner	Jeffrey B Greenberg	Latham & Watkins LLP	1996	1996	CA	$1,175	3.3	$3,877.50
Partner	Mark E. McKane	Kirkland & Ellis LLP	1997	1997	CA	$1,175	79.1	$92,942.50
Partner	Paul D Tanaka	Kirkland & Ellis LLP	2003	2003	CA	$1,145	1.1	$1,259.50
Partner	Annie Kim	Proskauer Rose LLP	2004	2004	CA	$1,125	22.1	$24,862.50
Partner	Jonathan Benloulou	Proskauer Rose LLP	2006	2006	CA	$1,125	2.9	$3,262.50
Partner	Robert J Frances	Latham & Watkins LLP	2001	2001	CA	$1,125	1.7	$1,912.50
Partner	Dean A. Ziehl	Pachulski Stang Ziehl Young Jones &	1978	1978	CA	$1,050	73.3	$76,965.00
Partner	James I. Stang	Pachulski Stang Ziehl Young Jones &	1980	1980	CA	$1,050	111.4	$116,970.00
Partner	Alan J. Kornfeld	Pachulski Stang Ziehl Young Jones &	1987	1987	CA	$1,025	78.9	$80,872.50
Partner	Stephen D. Rose	Munger Tolles & Olson LLC	1991	1991	CA	$1,025	63.9	$65,497.50
Partner	Unger Sean	Paul Hastings LLP	2004	2004	CA	$1,025	103.2	$105,780.00
Partner	Stefanie I Gitler	Kirkland & Ellis LLP	2009	2009	CA	$995	225.1	$223,974.50
Partner	Tate Eric A.	Morrison & Foerster LLP	1995	1995	CA	$990	0.3	$297.00
Partner	Michael Esser	Kirkland & Ellis LLP	2009	2009	CA	$965	542.6	$523,609.00
Associate	Campbell Gavin	Kirkland & Ellis LLP	2012	2012	CA	$950	227.7	$216,315.00
Partner	David M. Bertenthal	Pachulski Stang Ziehl Young Jones &	1993	1989	CA	$950	107.7	$102,315.00
Associate	Olsen Katrina	Kirkland & Ellis LLP	2014	2014	CA	$950	4.6	$4,370.00
Partner	Janie F. Schulman	Morrison & Foerster LLP	1987	1987	CA	$925	0.2	$185.00
Associate	Jacob Johnston	Kirkland & Ellis LLP	2013	2013	CA	$905	5	$4,525.00
Partner	Kenneth H. Brown	Pachulski Stang Ziehl Young Jones &	1981	1977	CA	$895	5.9	$5,280.50
Partner	Kevin S. Allred	Munger Tolles & Olson LLC	1986	1986	CA	$875	209.7	$183,487.50
Partner	Knudsen Erik G.	Morrison & Foerster LLP	2007	2007	CA	$875	269.4	$235,725.00
Counsel	Adam Lin	Orrick, Herrington & Sutcliffe LLP	2004	2004	CA	$850	3	$2,550.00
Associate	Austin Klar	Kirkland & Ellis LLP	2013	2013	CA	$845	173	$146,185.00
Associate	Michael Saretsky	Kirkland & Ellis LLP	2015	2015	CA	$835	237.2	$198,062.00
Of Counsel	Harry D. Hochman	Pachulski Stang Ziehl Young Jones &	1987	1987	CA	$825	69.1	$57,007.50
Of Counsel	Lloyd W. Aubry	Morrison & Foerster LLP	1975	1975	CA	$825	1.6	$1,320.00
Partner	Seth Goldman	Munger Tolles & Olson LLC	2002	2002	CA	$825	260.5	$214,912.50
Of Counsel	Victoria A. Newmark	Pachulski Stang Ziehl Young Jones &	1996	1996	CA	$825	1.6	$1,320.00
Of Counsel	Yana S. Johnson	Morrison & Foerster LLP	1999	1999	CA	$825	3.2	$2,640.00
Associate	Austin Klar	Kirkland & Ellis LLP	2013	2013	CA	$810	23.3	$18,873.00
Associate	Cynthia Castillo	Kirkland & Ellis LLP	2015	2015	CA	$810	178.8	$144,828.00
Associate	Kevin Chang	Kirkland & Ellis LLP	2014	2014	CA	$810	8.4	$6,804.00
Of Counsel	Nardali Ali U.	Morrison & Foerster LLP	2008	2008	CA	$795	4.4	$3,498.00
Associate	Ramin Montazeri	Latham & Watkins LLP	2016	2016	CA	$795	10.9	$8,665.50
Associate	Lee Muhyung	Proskauer Rose LLP	2015	2015	CA	$780	37.5	$29,250.00
Of Counsel	Jeffrey L. Kandel	Pachulski Stang Ziehl Young Jones &	1984	1984	CA	$750	10.7	$8,025.00
Of Counsel	Bradley R. Schneider	Munger Tolles & Olson LLC	2004	2004	CA	$735	88.9	$65,341.50
Associate	Curtis Kelly M	Proskauer Rose LLP	2016	2016	CA	$730	39.6	$28,908.00
Associate	Cynthia Castillo	Kirkland & Ellis LLP	2015	2015	CA	$725	30.3	$21,967.50
Associate	Joanna A Gorska	Latham & Watkins LLP	2014	2014	CA	$725	2.4	$1,740.00
Counsel	Elissa A. Wagner	Pachulski Stang Ziehl Young Jones &	2001	2001	CA	$695	5	$3,475.00
Associate	Benjamin Butterfield	Morrison & Foerster LLP	2014	2014	CA	$660	883.2	$582,912.00
Partner	David M. Eaton	Kilpatrick Townsend & Stockton LLP	1996	1996	CA	$660	5.3	$3,498.00
Associate	Ankur Sharma	Kirkland & Ellis LLP	2016	2016	CA	$645	16.4	$10,578.00
Associate	Maxwell Coll	Kirkland & Ellis LLP	2016	2016	CA	$630	15	$9,450.00
Associate	Brashears Travis C	Proskauer Rose LLP	2016	2016	CA	$595	8.3	$4,938.50
Associate	Sadeghi Sam	Paul Hastings LLP	2016	2016	CA	$585	22.9	$13,396.50
Associate	Jenny Pierce	Kirkland & Ellis LLP	2016	2016	CA	$555	1.2	$666.00
Associate	Meg A Webb	Kirkland & Ellis LLP	2017	2017	CA	$555	1.4	$777.00

Associate	Peter E. Boos	Munger Tolles & Olson LLC	2014	2014	CA	$550	88.05	$48,427.50
Associate	Floyd Amani Solange	Morrison & Foerster LLP	2014	2014	CA	$540	3.9	$2,106.00
Associate	Glock Jana	Morrison & Foerster LLP	2015	2015	CA	$540	22.2	$11,988.00
Associate	Kerry C. Jones	Morrison & Foerster LLP	2014	2014	CA	$540	11.5	$6,210.00
Associate	Roumiantseva Dina	Morrison & Foerster LLP	2014	2014	CA	$540	5	$2,700.00
Associate	Scheinok Brittany	Morrison & Foerster LLP	2015	2015	CA	$485	27.2	$13,192.00
Associate	Coleman Matthew	Ropes & Gray LLP	2014	2014	CA	$450	2.5	$1,125.00
Associate	Tobyn Yael Aaron	Morrison & Foerster LLP	2016	2016	CA	$435	26.4	$11,484.00

California Rates (June–December 2018)

Title	Professional	Firm	Graduated	Admitted	State	Rate	Hours	Total
Partner	Kenneth Klee	Klee, Tuchin, Bogdanoff & Stern, LLP	1975	1974	CA	$1,475	46.4	$68,440.00
Partner	Eric Reimer	Milbank Tweed Hadley & McCloy LLP	1987	1987	CA	$1,465	7.9	$11,573.50
Partner	Gregory A. Bray	Milbank Tweed Hadley & McCloy LLP	1984	1984	CA	$1,465	234.1	$342,956.50
Partner	Madden P.C. Rick C	Kirkland & Ellis LLP	1995	1995	CA	$1,445	31.2	$45,084.00
Partner	David M. Nemecek	Kirkland & Ellis LLP	2003	2003	CA	$1,395	2.4	$3,348.00
Partner	Browning P.C. Marc D	Kirkland & Ellis LLP	1998	1998	CA	$1,375	4.2	$5,775.00
Partner	Isaac M Pachulski	Pachulski Stang Ziehl Young Jones &	2014	2014	CA	$1,295	0.7	$906.50
Partner	Walker Elizabeth W	Sidley Austin LLP	1984	1984	CA	$1,250	3.7	$4,625.00
Partner	David Stern	Klee, Tuchin, Bogdanoff & Stern, LLP	1975	1975	CA	$1,245	67.4	$83,913.00
Partner	Michael Tuchin	Klee, Tuchin, Bogdanoff & Stern, LLP	1990	1990	CA	$1,245	191.1	$237,919.50
Partner	Richard M. Pachulski	Pachulski Stang Ziehl Young Jones &	1979	1979	CA	$1,245	274.7	$342,001.50
Partner	Dennis Arnold	Gibson Dunn & Crutcher, LLP	1976	1975	CA	$1,210	65.2	$78,892.00
Partner	Cromwell Montgomery	Gibson Dunn & Crutcher, LLP	1997	1997	CA	$1,205	0.9	$1,084.50
Partner	Oscar Garza	Gibson Dunn & Crutcher, LLP	1990	1990	CA	$1,205	116.1	$139,900.50
Partner	Austin V Schwing	Gibson Dunn & Crutcher, LLP	2000	2000	CA	$1,155	0.7	$808.50
Partner	Douglas Michael Fuchs	Gibson Dunn & Crutcher, LLP	2007	2007	CA	$1,155	53.5	$61,792.50
Partner	Annie Kim	Proskauer Rose LLP	2004	2004	CA	$1,125	11.6	$13,050.00
Partner	Jonathan Benloulou	Proskauer Rose LLP	2006	2006	CA	$1,125	2.9	$3,262.50
Partner	James I. Stang	Pachulski Stang Ziehl Young Jones &	1980	1980	CA	$1,095	63.4	$69,423.00
Partner	Farshad E. More	Gibson Dunn & Crutcher, LLP	2003	2003	CA	$1,080	0.8	$864.00
Partner	Jesse I. Shapiro	Gibson Dunn & Crutcher, LLP	2000	2000	CA	$1,080	10.9	$11,772.00
Partner	David Fidler	Klee, Tuchin, Bogdanoff & Stern, LLP	1998	1997	CA	$1,075	237.9	$255,742.50
Special	Brian Stern	Milbank Tweed Hadley & McCloy LLP	2003	2003	CA	$1,065	7.5	$7,987.50
Special	Haig Maghakian	Milbank Tweed Hadley & McCloy LLP	2002	2002	CA	$1,065	264.8	$282,012.00
Partner	Jesse A. Cripps Jr.	Gibson Dunn & Crutcher, LLP	2011	2011	CA	$1,045	16.2	$16,929.00
Partner	Mehta Anjna	Kirkland & Ellis LLP	2000	2000	CA	$1,045	10.9	$11,390.50
Of Counsel	Richard J. Gruber	Pachulski Stang Ziehl Young Jones &	1982	1982	CA	$1,025	9.1	$9,327.50
Partner	Samuel Newman	Gibson Dunn & Crutcher, LLP	2001	2001	CA	$1,010	326.5	$329,765.00
Partner	Debra I. Grassgreen	Pachulski Stang Ziehl Young Jones &	1992	1992	CA	$995	15.7	$15,621.50
Associate	Jessica Dombroff	Milbank Tweed Hadley & McCloy LLP	2009	2009	CA	$995	13.3	$13,233.50
Partner	Katherine V.A Smith	Gibson Dunn & Crutcher, LLP	2015	2015	CA	$995	0.6	$597.00
Partner	Matthew B Dubeck	Gibson Dunn & Crutcher, LLP	2017	2017	CA	$995	44.1	$43,879.50
Partner	Robert J. Pfister	Klee, Tuchin, Bogdanoff & Stern, LLP	2001	2001	CA	$995	123.3	$122,683.50
Partner	David M. Bertenthal	Pachulski Stang Ziehl Young Jones &	1993	1989	CA	$975	6.5	$6,337.50
Partner	Jeffrey N. Pomerantz	Pachulski Stang Ziehl Young Jones &	1989	1989	CA	$975	66.5	$64,837.50
Associate	Campbell Gavin	Kirkland & Ellis LLP	2012	2012	CA	$950	336.5	$319,675.00
Partner	Henry C. Kevane	Pachulski Stang Ziehl Young Jones &	1986	1986	CA	$950	4.8	$4,560.00
Associate	Olsen Katrina	Kirkland & Ellis LLP	2014	2014	CA	$950	4.6	$4,370.00
Partner	Stanley E. Goldich	Pachulski Stang Ziehl Young Jones &	1980	1980	CA	$925	7	$6,475.00
Associate	Najeh Baharun	Milbank Tweed Hadley & McCloy LLP	2013	2013	CA	$910	28.3	$25,753.00
Partner	David M. Guess	Klee, Tuchin, Bogdanoff & Stern, LLP	2005	2005	CA	$895	84.5	$75,627.50
Partner	Maria Sountas	Klee, Tuchin, Bogdanoff & Stern, LLP	2006	2006	CA	$895	23.2	$20,764.00
Partner	Whitman L. Holt	Klee, Tuchin, Bogdanoff & Stern, LLP	2005	2005	CA	$895	54.7	$48,956.50
Associate	Allison Balick	Gibson Dunn & Crutcher, LLP	2009	2009	CA	$875	5.4	$4,725.00
Associate	Caldon Brendan W	Kirkland & Ellis LLP	2007	2007	CA	$875	1.5	$1,312.50
Associate	Daniel B. Denny	Gibson Dunn & Crutcher, LLP	2005	2005	CA	$875	436.1	$381,587.50
Associate	Douglas G. Levin	Gibson Dunn & Crutcher, LLP	2009	2009	CA	$875	205.2	$179,550.00
Associate	Genevieve G. Weiner	Gibson Dunn & Crutcher, LLP	2007	2007	CA	$875	93.7	$81,987.50
Partner	Maxim B. Litvak	Pachulski Stang Ziehl Young Jones &	1997	1997	CA	$875	89.6	$78,400.00
Associate	Melissa Leigh Barshop	Gibson Dunn & Crutcher, LLP	2006	2006	CA	$875	5	$4,375.00
Associate	Jonathan Schaefler	Gibson Dunn & Crutcher, LLP	2016	2016	CA	$860	1.9	$1,634.00
Partner	Joshua M. Fried	Pachulski Stang Ziehl Young Jones &	1995	1995	CA	$850	74.1	$62,985.00
Of Counsel	Gurule Julian I	Klee, Tuchin, Bogdanoff & Stern, LLP	2007	2007	CA	$825	39.3	$32,422.50

Associate	Ian T. Long	Gibson Dunn & Crutcher, LLP	2015	2015	CA	$820	140	$114,800.00
Associate	Goldberg Zachary	Milbank Tweed Hadley & McCloy LLP	2016	2016	CA	$790	162.4	$128,296.00
Associate	Lee Muhyung	Proskauer Rose LLP	2015	2015	CA	$780	28.2	$21,996.00
Partner	Jamie L. Edmonson	Venable LLP	1996	1996	CA	$765	180.3	$137,929.50
Associate	Tiffany X. Phan	Gibson Dunn & Crutcher, LLP	2013	2013	CA	$760	8.7	$6,612.00
Of Counsel	Erin Gray	Pachulski Stang Ziehl Young Jones &	1992	1991	CA	$750	9.9	$7,425.00
Partner	Justin D. Yi	Klee, Tuchin, Bogdanoff & Stern, LLP	2009	2009	CA	$750	3.9	$2,925.00
Associate	Chapple Catherine L.	Morrison & Foerster LLP	2012	2012	CA	$725	4	$2,900.00
Associate	Jonathan M. Weiss	Klee, Tuchin, Bogdanoff & Stern, LLP	2012	2012	CA	$725	195.4	$141,665.00
Of Counsel	William Ramseyer	Pachulski Stang Ziehl Young Jones &	1980	1980	CA	$725	18.8	$13,630.00
Associate	Sarah A. Carnes	Cooley LLP	2014	2014	CA	$710	146.1	$103,731.00
Associate	Latta R T	Jones Day	2011	2011	CA	$700	194.5	$136,150.00
Associate	Samuel M. Kidder	Klee, Tuchin, Bogdanoff & Stern, LLP	2012	2012	CA	$675	88.6	$59,805.00
Associate	Thomas H Alexander	Gibson Dunn & Crutcher, LLP	2015	2015	CA	$660	23.7	$15,642.00
Associate	Sasha M. Gurvitz	Klee, Tuchin, Bogdanoff & Stern, LLP	2014	2014	CA	$625	114.9	$71,812.50
Associate	Robert J. Smith	Klee, Tuchin, Bogdanoff & Stern, LLP	2016	2016	CA	$600	35.8	$21,480.00
Associate	Brashears Travis C	Proskauer Rose LLP	2016	2016	CA	$595	8.3	$4,938.50
Associate	Matthew S Coe-Odess	Gibson Dunn & Crutcher, LLP	2016	2016	CA	$595	16.9	$10,055.50
Associate	Katherine A Lau	Gibson Dunn & Crutcher, LLP	2017	2017	CA	$525	97.7	$51,292.50
Associate	Tran J L	Jones Day	2015	2015	CA	$525	60.2	$31,605.00
Associate	Nicholas A. Koffroth	Venable LLP	2012	2012	CA	$515	94.9	$48,873.50
Associate	Liu R Q	Jones Day	2015	2015	CA	$475	34.2	$16,245.00
Associate	Stuart B W	Jones Day	2013	2013	CA	$475	208.6	$99,085.00
Associate	Doyle A M	Jones Day	2017	2017	CA	$450	6.5	$2,925.00
Associate	Udenka Honieh	Brown Rudnick LLP	2017	2017	CA	$375	1	$375.00

EXHIBIT 3

BENJAMIN ARMSTRONG

3445 D Street, Lincoln, NE 68510 (402) 217-0067 barmstro11@gmail.com

EDUCATION AND PROFESSIONAL ORGANIZATIONS

Bachelor of Arts in Actuarial Science, University of Nebraska - Lincoln. Cumulative GPA: 3.9

Fellow, Casualty Actuarial Society (FCAS) Member, American Academy of Actuaries (MAAA)

PROFESSIONAL EXPERIENCE

Consumer Watchdog – *Los Angeles, CA (remote)* *Staff Actuary, 2023 - Present*

- Analyze insurer rate filings for accuracy and actuarial soundness, producing independent rate indications as applicable. Participate in rate negotiations between insurers and the California Department of Insurance.
- Prepare actuarial portions of requests for information submitted to insurers to aid in analysis.
- Perform ad hoc research tasks on topics such as catastrophe modeling in insurance ratemaking.

Markel Corporation – *Richmond, VA and Omaha, NE (remote hybrid)* *Senior Actuary, 2022 - 2023*

- Began working 50% on workers' comp duties described below and 50% on reinsurance, including quarterly reserve reviews on a variety of QS and XOL lines of business and presentation of results to executives.
- Led a data visualization optimization team and organized the presentation of their projects to the department. Led an initiative to enhance visibility of the Actuarial department within the company, including development and dissemination of a quarterly newsletter highlighting departmental achievements.

Markel Corporation Workers' Comp Division - *Omaha, NE (remote hybrid)* *Senior Actuarial Analyst, 2017 - 2022*

- In addition to the duties of the previous role, performed an in-depth annual analysis of workers' comp excess-of-loss pricing indications based on internal and industry data.
- Performed extensive data quality testing and troubleshooting during a years-long data migration project.
- Worked closely with external auditors to assess the effectiveness of SOX data quality controls.
- Assumed a key role in the research, selection, development, and implementation of a new software tool for use across the corporation's numerous lines of business. Provided training and support for the entire actuarial department on that new software.
- Assisted with the official response to a significant legal challenge, including preparation of remarks delivered by the Chief Actuary and direct collaboration with internal and external legal counsel.

Actuarial Analyst, 2012 - 2017

- Performed pricing work such as rate indications, rate filings, regulatory compliance support, correspondence with state regulators, and class/territory rate deviation analyses.
- Prepared reports for management on various key metrics, including production, pricing target variances, renewal rate monitors, loss experience, large claim activity, and claim frequency trends.
- Researched workers' comp industry experience and market trends using a variety of sources, such as rating bureau databases, S&P Global Market Intelligence, and state Departments of Insurance.
- Compiled data for the annual statement and worked directly with the statutory reporting team to ensure completeness and accuracy.
- Performed quarterly reserving analyses including data updates, review of loss development patterns, ceded loss analysis, and presented results to an executive audience both in person and virtually.

EXHIBIT 4

Richard Holober
Douglas Heller
CONSUMER FEDERATION OF CALIFORNIA EDUCATION FOUNDATION
273 Delmar Way
San Mateo, CA 94403
holober@consumercal.org
650-307-7033

Advocates for CONSUMER FEDERATION OF CALIFORNIA EDUCATION FOUNDATION

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

Petition to Participate in a Proceeding Other Than a Rate Hearing, REG-2019-00025 COMPLETE PROPERTY AND CASUALTY RATE APPLICATIONS	**CONSUMER FEDERATION OF CALIFORNIA EDUCATION FOUNDATION'S AMENDED PETITION TO PARTICIPATE AND NOTICE OF INTENT TO SEEK COMPENSATION** **[Ins. Code § 1861.10; Cal. Code Regs, tit. 10, §§ 2661.2 and 2661.4]**

Consumer Federation of California Education Foundation (CFCF) hereby requests that it be granted leave to participate in the above captioned proceeding pursuant to California Insurance Code (IC) Section 1861.10, which provides that "[a]ny person may initiate or intervene in any proceeding permitted or established pursuant to this chapter [Chapter 9 of Part 2 of Division 1 of the California Insurance Code] ... and enforce any provision of the article." With this amended petition, specifically in Section VI below and Exhibit B, CFCF provides “the specific issues to be raised and the positions to be taken on each issue to the extent then known” [10CCR§2661.3(b)] by the petitioner. Thus, this amended petition cures the flaw in the original petition that was denied with leave to amend by Commissioner Lara on April 10, 2024.

The proceeding in this matter is a hearing to consider amendments to California Code of Regulations, Title 10, Chapter 5, Subchapter 4.8, Article 3, section 2643.3; Article 4,

section 2644.27; and Article 8, sections 2648.1, 2648.2, and 2648.4, which address the filing of a complete rate application by any insurer desiring to change any rate. The hearing is authorized pursuant to IC Sections 1861.01, 1861.05 and 1861.055, provisions of the Insurance Code that establish the Commissioner's authority to determine whether any rate is excessive, inadequate, unfairly discriminatory or otherwise in violation of Chapter 9. The proceeding concerns, among other related matters, the format and contents of a complete rate application, and potential benefits to insurers, policyholders, the Department, and the public, including consumer representatives, of removing obsolete language, and eliminating potential confusion by clarifying information, including, among other things, the criteria, guidelines, systems, manuals, models and algorithms an insurer utilizes in an application to change any rate. These potential benefits include expediting the Department's processing and review of a rate application to determine whether any insurance rate is excessive, inadequate, or unfairly discriminatory, which is subject to Insurance Code Section 1861.05, making it a proceeding "permitted" and "established" pursuant to the chapter.

The right of CFCF to participate is also authorized pursuant to 10 CCR §2661.1 *et seq*, including §2661.2, which states that "[a]ny person shall be permitted to intervene in any proceeding on any rate application or any proceeding subject to Chapter 9 of Part 2 of Division 1 of the California Insurance Code if the issues to be raised by the intervenor or participant are relevant to the issues of the proceeding." This is a proceeding subject to Chapter 9 of Part 2 of Division 1 of the California Insurance Code. As a recognized representative of consumers in California (see, for example, File No. IE-2022-0001, the July 5, 2022 Order of Insurance Commissioner Ricardo Lara finding that CFCF "represents the interests of consumers"), CFCF will add both expertise and an efficient representation of California property and casualty policyholders who will be affected by this proceeding. The petition shows that:

I. THE PROCEEDING

1. On or about February 23, 2021 Insurance Commissioner Ricardo Lara issued a public invitation to participate in a workshop concerning complete property and casualty insurance rate applications, and a workshop was held on or about April 6, 2021. On or about

February 9, 2024 Commissioner Lara issued a Notice of Proposed Action and Notice of Proposed Hearing to be held on March 26, 2024, an Initial Statement of Reasons, and Text of Regulations (as proposed to be amended) regarding Complete Property and Casualty Rate Applications. The proposed amendments are of critical concern to consumers, and directly affect the ability of consumer representatives, including CFCF, to effectively participate by intervening in rate proceedings. CFCF will testify at this hearing, and if determined following this hearing, through future submissions of material in response to future consideration of the proposed amendments.[1]

II. PETITIONER

2. CFCF is a non-profit 501(c)(3) education and research foundation that advocates for consumer interests. Founded in 1999 as a charitable organization sponsored by the non-profit Consumer Federation of California, the CFCF has been a consumer research, education and advocacy organization for the past 23 years. The central purpose of this organization has been, and continues to be, to serve as an education and research organization, to promote educational programs and public forums in the field of consumer rights and other policy issues that may be of interest to consumers in order to improve the quality of life of all people, to represent consumers and the interests of consumers, including working people, families, retirees, children, utility ratepayers, insurance policyholders and others, for the purpose of participating in administrative, department and commission proceedings, regulatory proceedings, legislative advocacy, public awareness and advocacy campaigns, and litigation within the maximum legal limits allowed of a 501 (c)(3) tax-exempt corporation under Federal and California law.

3. To achieve its consumer advocacy goals, the CFCF maintains officers and

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[1] As this is an amended version of a petition originally submitted prior to the hearing, we have maintained the forward-looking description of the March 26, 2024 hearing in Sections I-IV of the petition, even though it has since passed. As is described in Section V of this petition and clear from the record of the hearing, CFCF did submit written comments and provide oral comments to the Department as this petition indicates it would.

consultants to monitor legislative, regulatory and other public issues affecting California consumers in order to effectively represent consumers and promote or oppose policies and decisions that affect them. The primary business address of Consumer Federation of California Education Foundation is 273 Delmar Way, San Mateo, CA 94403 and the phone number is 650-307-7033. On July 5, 2022, CFCF was deemed eligible (effective June 20, 2022) to seek compensation in CDI proceedings pursuant to CIC section 1861.10 by order of Insurance Commissioner Ricardo Lara. The finding of eligibility renews prior determinations of eligibility and is effective for two years.

III. VERIFICATION OF PARTICIPATION.

4. Consumer Federation of California Education Foundation will submit testimony and fully participate in all aspects of the proceeding. In accordance with 10 CCR §2661.3, CFCF verifies that it will be able to attend and participate in this proceeding without unreasonably delaying this proceeding or any other proceedings before the Insurance Commissioner.

IV. PETITIONER'S INTEREST

5. CFCF's interest in the above captioned proceeding is to ensure that California consumers have access to appropriately priced property and casualty insurance policies and are charged premiums that are not unfairly discriminatory, in accordance with Insurance Code Section 1861.05. Further, we believe that ensuring affordability and availability of insurance requires timely access by the public and consumer representatives to transparent and readily accessible complete rate applications; that California public policy encourages public participation in the rate making process, including through intervention by consumer representatives; and that any amendment of regulations should serve to promote, and should not erode, the participation of the public and consumer representatives in effectuating the consumer protection regulations that guide implementation of Section 1861.05.

V. AMENDED PETITION HEREIN DESCRIBES ISSUES RAISED AND POSITIONS TAKEN IN THE PROCEEDING

6. On March 26, 2024, CFCF submitted to the California Department of Insurance a Petition to Participate and Notice of Intent to Seek Compensation in the above referenced matter. On or About April 10, 2024 the Department of Insurance issued an Order Denying CFCF's Petition to Participate in this proceeding. The Order, signed by Lucy Wang, Deputy Commissioner and Special Counsel, stated that CFCF's Petition failed to comply with California Code of Regulations Title 10 Section 2661.4, because the petition cited no specific issues to be raised or positions to be taken on any issues to the extent known. The Order Denying CFCF's Petition to Participate stated that CFCF had fourteen (14) calendar days to file an Amended Petition to Participate. Herein, as CFCF provided in its timely written and verbal testimony at the Hearing that was held on March 26, 2024, CFCF provides issues it raised regarding the damaging effects of the proposed regulations on: the intervenor process, the rights of consumer representatives to participate fully in rate application proceedings, the capacity of the California Department of Insurance to conduct a complete and timely review of rate applications, the right of insurance policyholders to have a timely and thorough review of rate applications, and the need for insurers to have certainty regarding the completeness of their rate applications.

VI. AS A PARTICIPANT IN THIS PROCEEDING, CFCF WILL DESCRIBE ITS SUPPORT FOR CERTAIN PROPOSED CHANGES, EXPLAIN WHY OTHER CHANGES WILL HARM THE RATEMAKING PROCESS AND DIMINISH CONSUMER REPRESENTATION, AND PROVIDE SUGGESTED CHANGES

7. In its Initial Statement of Reasons, dated February 9, 2024, the Commissioner states that twenty-five years have passed since the Department adopted regulations specifying what materials, information, and documents should be included in a complete rate application, and that the regulations need to be updated to eliminate references to forms that are no longer required. Further, the Department states that the regulations are unclear regarding which documents are required, causing insurer confusion when submitting an application, and that the

Department faces unworkable time restrictions in its initial review of the completeness of a rate application.

8. In the paragraphs below, and in significant detail in the CFCF Comments on CDI REG-2019-00025 COMPLETE PROPERTY AND CASUALTY RATE APPLICATIONS [Exhibit B], CFCF provides specific issues it has raised and will raise and positions it has taken and will take, to the extent they are currently known by the organization's experts and advocates. CFCF's Comments provided in Exhibit B should be considered an integral aspect of this amended petition and considered when assessing compliance of this petition with 10 CCR §2661.4.

9. CFCF will provide the Commissioner with its experience reviewing rate filings and serving as a consumer representative and intervenor in rate proceedings for more than a decade. As a consumer representative and participant in this hearing, CFCF will address the following issues and provide the following positions, among others that it may take over the course of the proceeding that are not yet known to or determined by CFCF experts and advocates:

A) CFCF will share its concern that the methodology by which the Department assessed the need for the changes contemplated in this matter – namely a CDI analysis that found 23 commercial rate applications and one personal lines rate application were rejected among 602 – suggests a radical reworking of the regulations is not necessary.
B) CFCF will highlight that consumer representatives face time limits in determining whether to intervene and may not have sufficient opportunity to review a rate application in a timely fashion if it is initially an incomplete submission.
C) CFCF will concur with the proposed elimination of obsolete forms.
D) CFCF will present its view that the elimination from the regulation of the list of approximately 31 other currently required rate filing forms and references to Filing Instructions and replacement of those references with a reference to the relevant statutes and regulations that govern the prior approval process would increase confusion, decrease transparency and consistency, increase Department workload, and diminish consumer representatives ability to intervene in the rate regulation process.

E) CFCF will explain why the potential for bespoke rate filings by insurers under the proposed regulations will weaken oversight of the market and create conditions for unfair competition.
F) CFCF will provide a detailed description of its process for deciding whether or not to intervene in a rate matter and show how that process relies on the consistency of rate filings across applicants and a familiarity with the forms and instructions prescribed by the current regulation.
G) CFCF will explain that the lack of prescribed forms and consistent filing standards for all carriers will deter other consumer organizations from serving as intervenors.
H) CFCF will express support for the explicit inclusion of other information, including eligibility guidelines and other "criteria, guidelines, systems, manuals, models and algorithms" an insurer uses when making coverage decisions.
I) CFCF will present its view that this rulemaking process should include additional hearings to ensure that the regulation continues to explicitly identify all the necessary forms and instructions required for a complete rate application.
J) CFCF will present the comments attached here as Exhibit B.

VII. INTENT TO SEEK COMPENSATION

10. Pursuant to CIC section 1861.10 and 10 CCR §2661.4, Consumer Federation of California Education Foundation intends to seek compensation in this proceeding. CFCF's estimated budget is attached as Exhibit A. CFCF has based this budget on the technical expertise and regulatory experience needed to address the issues of concern in the proceeding; its best estimate of the amount of time needed to participate in and contribute to the proceeding, taking into account both the amount of time that has already been spent by CFCF staff and consultants and an estimate of time needed to complete the tasks required for participation in a continuation of this potential rulemaking process, as advocated for in this Petition to Participate; CFCF's best estimate of the costs of travel to and from the hearing (for which we presume there to be no cost in light of virtual hearing provisions); and the past experience of CFCF's consultants in similar proceedings. The budget presented includes time spent to prepare CFCF's written comments and presentation during the March 26, 2024 hearing. Consumer Federation of California Education Foundation presents the attached budget as a preliminary estimate and reserves the right to amend the budget as time and other expenses required to participate in this proceeding become more certain, or in its request for final compensation. CFCF will give notice of such modifications as soon as it is practicable and will comply with 10 CCR §2661.3

(d) concerning budget revisions. We believe that this estimated budget is a reasonable reflection of the required staffing level and other expenses for a proceeding such as this.

WHEREFORE, Consumer Federation of California Education Foundation requests that the Insurance Commissioner grant its amended petition to participate in the proceeding.

DATED: April 22, 2024

Respectfully submitted,

Richard Holober
Douglas Heller
Consumer Federation of California
Education Foundation

By: 

Richard Holober
for Consumer Federation of California
Education Foundation

VERIFICATION OF RICHARD HOLOBER IN SUPPORT OF CONSUMER FEDERATION OF CALIFORNIA EDUCATION FOUNDATION'S PETITION TO PARTICIPATE AND NOTICE OF INTENT TO SEEK COMPENSATION

I, Richard Holober, verify:

1. I am the Treasurer of the Consumer Federation of California Education Foundation. If called as a witness, I could and would testify competently to the facts stated in this verification.

2. I personally prepared the pleading titled, "Consumer Federation of California Education Foundation's Petition to Participate and Notice of Intent to Seek Compensation" filed in this matter. All of the factual matters alleged therein are true of my own personal knowledge, or I believe them to be true after I conducted some inquiry and investigation.

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed April 22, 2024 at San Mateo, California.

Richard Holober

EXHIBIT A

PRELIMINARY BUDGET

ITEMS	**ESTIMATED COST**
1. Advocates	
Douglas Heller @ $350 per hour, 15 hours..... • Review and edit petition to participate and subsequent comments; confer with Consumer Federation of California Education Foundation (CFCF) staff regarding proceeding.	$5,250
Richard Holober @ $320 per hour, 30 hours..... • Draft and edit petition to participate; confer with Consumer Federation of California Education Foundation (CFCF) consultant regarding proceeding; conduct research, prepare oral and written comments for Hearing and subsequent hearings; participate in Commissioner's hearing and subsequent hearings; analyze and provide comments and testimony on proposed rules; prepare request for compensation. • Confer with CFCF advocate regarding proceeding; conduct research and analysis in support of CFCF comments; assist in preparation of testimony.	$9,600
2. Travel (presuming entirely virtual proceeding).....	$0
Total Estimated Budget	$14,850.00

EXHIBIT B

Comments of Consumer Federation of California Education Foundation on Proposed REG-2019-00025
COMPLETE PROPERTY AND CASUALTY RATE APPLICATIONS

CONSUMER FEDERATION OF CALIFORNIA EDUCATION FOUNDATION

273 Delmar Way • San Mateo, CA 94403 • (650) 307-7033 • holober@consumercal.org

March 26, 2024

Before the California Insurance Commissioner

RE: REG-2019-00025
COMPLETE PROPERTY AND CASUALTY RATE APPLICATIONS

Comments of Consumer Federation of California Education Foundation on Proposed Regulations

The non-profit Consumer Federation of California Education Foundation is pleased to submit these comments for the consideration of the Department of Insurance in the above-referenced matter.

PURPOSE OF PROPOSED AMENDMENTS TO COMPLETE RATE APPLICATIONS

In its Initial Statement of Reasons, dated February 9, 2024, the Commissioner states that twenty-five years have passed since the Department adopted regulations specifying what materials, information, and documents should be included in a complete rate application, and that the regulations need to be updated to eliminate references to forms that are no longer required.

Further, the Department states that the regulations are unclear regarding which documents are required, causing insurer confusion when submitting an application, and that the Department faces unworkable time restrictions in its initial review of the completeness of a rate application. In combination, these problems may result in avoidable Department rejection of a rate application as incomplete, resulting in delays to insurers having to resubmit an application deemed initially incomplete, as well as potential disputes should an insurer contest the Department's determination that a rate application is incomplete. Additionally, consumer representatives have time limits in determining whether or not to intervene and may not have sufficient opportunity to review a rate application in a timely fashion if it is initially an incomplete submission.

The Initial Statement of Reasons states that in 2022, 602 property and casualty insurers operated in California. In 2023, the Department rejected 24 rate applications after determining that they were not complete. The proposed amendments would have had the most benefit to those 24 applications, had they been in effect, because the Department posits that other insurers are complying with the existing requirements and understand what materials are required on a complete rate application. The Department states that one of the rejected filings concerned a

rate change application for a line of personal insurance. The remaining 23 rejected applications concerned a rate change for lines of commercial insurance. The Department states that the 2023 experience is a "good proxy for what to expect going forward" in each subsequent year, and concludes that the proposed amendments will expedite the processing of approximately 24 rate applications each year.

PROPOSED AMENDMENTS

a) Elimination of obsolete forms

The Initial Statement of Reasons makes several references to amending current regulations to eliminate requirements for insurers to include various forms that are out-of-date and no longer required in a complete rate application. The document identifies four obsolete forms: 1) Filing Checklist (form CA-RA4, 5-1-96 ed.); 2) Line of Business Request for Variance; 3) Complete Rate Application, Form CAR-1, dated January 1994; and 4) Cover Sheet for Re-Filing of Application for Approval of Insurance Rate, Form CAR-RA1, dated May 1, 1993.

b) Replacement of All Other Required Forms with Reference to Insurance Code Requirements

In addition, the proposed amendments eliminate reference to all other forms required for a complete rate application, and replace these forms with a requirement that an insurer provide all information required by Insurance Code Section 1861.05 subdivision (b); the information required by the prior approval regulations (10 CCR §2644.1 - §2644.28); information described in the revised §2648.4, including any and all criteria, guidelines, systems, manuals, models and algorithms, and any proposed changes thereto, that an insurer, agent, broker, or underwriter uses or relies upon to determine the rate, rating rules and coverages for any particular applicant or insured, including optional coverage rates and rules; and a complete and entire copy of any and all written and electronic descriptions of all of the materials described in subdivisions (a) through (c) of this section.

The proposed amendments would eliminate 31 forms that current regulations require in a complete rate application. These include: (1) application for approval (form CA-RA1, 5-1-96 ed.) and duplicate of form CA-RA1 for return copy with self-addressed envelope with sufficient postage to return the duplicate copy of CA-RA1, (2) Rate/Rule/Underwriting Rule Submission Data Sheet (form CA-RA2, 5-1-96 ed.), (3) Line of Business (form CA-RA3, 5-1-96 ed.), (4) Ratemaking Data (form CA-RA5, 5-1-96 ed.), (5) Reconciliation Report (form CA-RA6, 5-1-96 ed.), (6) Additional Data Required by Statute (form CA-RA7, 5-1-96 ed.), (7) Miscellaneous Data (form CA-RA8, 5-1-96 ed.), (8) Filing History (to be labeled Exhibit 1), (9) Rate Level History (to be labeled Exhibit 2), (10) Premium Adjustment Factor (to be labeled Exhibit 3), (11) Premium Trend Factor (to be labeled Exhibit 4), (12) Allocated Loss Adjustment Expense (to be labeled Exhibit 5), (13) Loss Development Factors (to be labeled Exhibit 6), (14) ALAE Development Factors (to be labeled Exhibit 7), (15) Loss Trend, ALAE Trend, and Expense Trend (to be labeled Exhibit 8), (16) Catastrophe Adjustment (to be labeled Exhibit 9), (17) Policy Term Distribution (to be labeled Exhibit 10), (18) Credibility Adjustment (to be labeled

Exhibit 11), (19) Data Availability Report (to be labeled Exhibit 12), (20) Interjurisdictional Expense Allocations (to be labeled Exhibit 13), (21) Unallocated Loss Adjustment Expense (to be labeled Exhibit 14), (22) Other Expense Items (to be labeled Exhibit 15), (23) Ancillary Income (to be labeled Exhibit 16), (24) Federal Income Tax Rate (to be labeled Exhibit 17), (25) Projected Investment Income Ratio (to be labeled Exhibit 18), (26) Loss Reserves, Loss Adjustment Expense Reserves, and Unearned Premium Reserves (to be labeled Exhibit 19), (27) Insurer's Ratemaking Calculations (to be labeled Exhibit 20), (28) Rate Distribution (to be labeled Exhibit 21), (29) Rate Classification Relativities (to be labeled Exhibit 22), (30) New Program (to be labeled Exhibit 23), and (31) Group Filing (to be labeled Exhibit 24). In addition to these forms, the proposed amendments eliminate as a requirement for a complete rate application the insurer's rating rules, rate pages and a summary and explanation of the purpose for the filing. The proposed amendments also eliminate the Filing Instructions (forms CA-IA1 - CA-I8, 5-1-96, ed.) for these forms and exhibits.

The Initial Statement of Reasons states that the use of existing forms adds to a lack of clarity for insurers desiring to include all the elements that are required for a rate application to be accepted by the Department as complete, and that the substitution of references to data and information required under Insurance Code Sections 1861.05, subdivision (b), and Section 2648.4 subdivisions (b) through (e), along with data related to underwriting guidelines, rules and algorithms, without the use of forms to furnish this information, aids an insurer in guaranteeing that a rate application is complete.

ELIMINATION OF OBSOLETE FORMS MAKES SENSE

Government regulations are adopted to effectuate public policy as stated in law. Over the course of time, regulations may become stale. Periodic cleanup of obsolete language in regulations makes them current. Eliminating out-of-date reference to rate applications that were filed in the 1990's removes unnecessary words from the regulation. In addition, references to required forms that may have served a useful purpose in an earlier era, and that are no longer in use because they no longer advance a public policy purpose, should be eliminated to remove any uncertainty regarding whether an insurance rate application lacking these forms is complete. CFCF agrees with elimination of obsolete forms referenced above, provided these forms are no longer germane to the Department's duty to assure that any rate is not excessive, inadequate, or unfairly discriminatory. Additionally, insofar as some exhibits or other forms that remain in use but are referred to by another name or number, it is reasonable to make corrections to the regulations to align the regulation with the current nomenclature.

WHOLESALE ELIMINATION OF SPECIFIC FORMS AND EXHIBITS REQUIREMENTS FROM THE REGULATION UNDERMINES CONSUMER REPRESENTATIVE PARTICIPATION

Voter-enacted Proposition 103 encourages public participation in the ratemaking process. It allows consumer representatives to intervene in the review of rate filings and bring outside expertise and perspective to the rate approval process. Department of Insurance regulations implementing Proposition 103 should be designed with a consideration of their impact on consumer representative

participation through the intervenor process. The Initial Statement of Reasons recognizes this integral component of the law. Its justification for the proposed amendments includes sixteen references to consumer representatives and consumer participation. It argues that because consumer representatives have only 45 days after public notice to determine whether they want to request a hearing on the rate applications, the failure of an insurer to provide all required materials as part of the initially submitted rate application could deprive consumer representatives of sufficient time to review all materials required as part of a complete rate application before the deadline to decide whether to intervene in the rate review process.

In its Initial Statement of Reasons, the Department analyzes only one year of data on initial rate applications rejected as incomplete. It projects that this experience provides a sufficient basis to assume that future years will experience a similar rate of application rejection. The Initial Statement of Reasons lacks context to analyze the significance of these rejections. 602 insurers provide property and casualty insurance in California. Twenty four applications were rejected. It would be helpful to have data on the total number of rate applications that insurers filed in 2023. It would be much more helpful to look at the rate application rejection rate over a longer period, at least a three to five year period. Due to the market disruptions caused by COVID-19, the years between 2020 and 2022 may be anomalous. Many lines of coverage experienced decreased claim activity, skyrocketing insurance profits and, likely, a probable decrease in rate applications, especially in light of the Commissioner's pause on auto insurance rate increase approvals during the early years of the pandemic. A review of the most recent years prior to COVID-19 would likely provide a better basis to understand a longer trend of the rate at which insurance rate applications were rejected as incomplete.

The information presented in the Initial Statement of Reasons does not identify how many different insurers' applications were rejected. It is not uncommon for an insurer to file several applications for rate increases in a calendar year. It would be helpful to know whether the 23 rejected commercial rate applications represent 23 different insurers, or whether a smaller number of insurers made the same errors over and over again in multiple applications filed in 2023. Without that additional information it is not possible to know if 23 separate commercial insurers were confused by the current regulations or if only a handful of insurers ran into difficulties filing complete applications. The 23 instances cited where a commercial line rate application was rejected combined amounted to two million dollars in premium rate increases, or an average rate increase request of $87,000 per rejected rate application.

The 2023 data identifies a single personal insurance rate application that the Department rejected as incomplete. Since 2013, the CFCF and its predecessor organization, the Consumer Federation of California, have successfully intervened in nineteen insurance rate cases. Each case concerned personal insurance. While Proposition 103 provides for consumer representative intervention in rate applications for commercial as well as personal lines of insurance, the actual experience of the past decade, and to the best of our knowledge of the entire history of Proposition 103's intervenor program, the vast majority of consumer representative intervention has related to personal lines of insurance filings. In its Initial Statement of Reasons, the Department identifies a single instance when consumer intervenors' interest in determining whether or not to intervene in a timely manner might have been frustrated by the Department's rejection of an initial rate application as incomplete.

COVID-19 caused the CFCF to focus more of its attention on matters of enforcement against excessive rates. We have the desire to re-engage in participation in rate cases, especially as we hear from consumers suffering under extreme rate increases, even as some carriers are enjoying all-time high stock prices. It is important for the Department to understand the barriers to participation that consumer representatives face and to act in ways that do not make these barriers more insurmountable. These barriers help explain why only two non-profit consumer organizations have a record of participation in rate cases over the past decade, according to documentation provided on the Department website. The Department has acknowledged the benefits to the rate-setting process that consumer representative participation brings. It has also acknowledged that consumer groups have difficulties participating in Proposition 103 rate proceedings. In a January 13, 2017 article in the *Sacramento Bee*, Dan Goodell, assistant chief counsel stated that "we struggle with that" (getting more consumer organizations to participate). "There aren't that many consumer groups that are super-knowledgeable about consumer rate-making or who want to become knowledgeable about consumer rate making."

As we will explain, amendments to the complete application regulation that reduce clarity and consistency in the form of submission of rate filing information will further strain the important and voter-mandated consumer intervention process. First, however, we believe it is important to provide context regarding the intervenor process and, particularly, the barriers to participation that already exist. The intervenor process provides for compensation to consumer organizations and other consumer representatives that make a substantial contribution to the rate decision by providing valuable technical input. Intervenor compensation may occur following the conclusion of a rate case. Throughout the pendency of a rate proceeding, the consumer organization bears all of the costs of participation, which may include payment to staff, consultants, experts, actuaries and attorneys. The timeline for intervention in a rate proceeding is typically one year to eighteen months or longer from the initial screening of a rate application before a determination is made on an intervenor's request for compensation, after which payment to the intervenor may be made.

CFCF is currently awaiting a determination on a request for compensation in a rate proceeding that began when we initially reviewed an insurance rate application on September 29, 2022. On November 3, 2022, CFCF filed its petition to intervene in the matter. Following a protracted process under the Department's control and subject to the response time of the insurer seeking the rate hike, the parties entered into a stipulation to settle the matter on July 31, 2023. On September 5, 2023, CFCF petitioned the Department for intervenor funding for our contribution in this proceeding. On March 21, 2024, the Department issued an Order notifying CFCF of its finding that "all the information that is required [to consider the request] is received" and is now considered "submitted for decision." The order provided no insight into how many additional months the Department may take before it reaches a determination on the merits of our intervenor compensation request. Department regulations require a determination on an intervenor compensation petition within 90 days (10, § 2662.6 (a)). In the instant matter, the Department had a deadline on or about December 5, 2023 to issue its decision. As of this writing, the decision is approximately 111 days overdue. This lengthy delay past the required determination date on an intervenor compensation petition has been standard procedure in our experience as an intervenor for over a decade.

CFCF and other consumer organizations have limited financial resources. Delays in Department processing of intervenor petitions, followed by additional lengthy delays, in violation of Department rules, in determining an intervenor compensation request following the conclusion of the proceeding, militate against consumer representative participation. CFCF would desire to participate in more rate application cases, and the billions of dollars of additional savings to Californians in matters in which consumer organizations intervened serves as a testament to the value of participation. However, the costs we incurred over many months or years before we may receive compensation inhibits our capacity to participate. We have knowledge of the experience of another non-profit consumer representative that successfully intervened in one rate application a decade ago, and subsequently concluded that the esoteric expertise needed along with the length of time before a decision on a potential intervenor compensation award is issued for its intervenor expense made its participation in any other Department rate cases simply unviable.

A substantial barrier to consumer representative intervention is the dearth of actuaries who will participate on the consumer side of insurance rate matters. Over a decade ago, the Department conducted outreach to actuaries and developed a list of consulting actuaries and firms that may work with intervenors. The list currently contains eleven names. Most of the names have not changed for a decade. The public would benefit if the Department renewed its outreach to refresh the list of consulting actuaries. CFCF talked to most of the actuaries who were on the list several years ago. We found that with very few exceptions, these actuaries expected to bill the consumer organization monthly for their services and expected to be paid promptly. Almost none would work in a manner that aligned the timing of their payment with the timing of the intervenor's compensation, should it be awarded, following the conclusion of a proceeding. Over the past decade, CFCF has worked with three actuaries that agreed to partial payment when services are rendered with a balance paid after the proceeding is closed. Despite being paid, however, lengthy delays in receiving balance payments ultimately led two actuarial firms to make the business decision to end their intervenor work.

In order to effectively intervene and make responsible decisions as to when to present a consulting actuary with a rate filing that may be sufficiently problematic as to benefit from our intervention, CFCF developed a protocol for reviewing rate applications that would control our pre-award costs.

We rely on our internal experts to conduct the preliminary review of rate filings. Our experts review dockets of rate applications, looking for certain characteristics that may flag a filing for further inspection. Among these are the size of the rate change requested, the number of policyholders affected, the total amount of the increase sought, and the market share of the insurer. While every policyholder has a right to a fair and legal rate, we do not typically challenge rates if our expected costs would not be substantially smaller than the savings we believe we could achieve, unless we also identify some other illegality or unfairness that demands attention and reform even if there is not as much net savings. After this initial identification of potential impact, we then examine the rate application in more detail.

We review, for example, the rate template summary that every company files with a breakdown of the filing's calculated minimum and maximum permissible rate change by coverage and the rate change the applicant has selected for each coverage. We review the Excluded Expense Ratio data. We use Exhibit 2 to assess whether and how much rates have changed in recent months or years and we use Exhibit 1 to quickly find relevant prior filings that are useful especially when reviewing a proposed rate increase that is on the heels of a recently approved hike. We get a useful, high-level picture of the company's recent experience from the Additional Calendar Year Data Required By Statute template and look for abnormally high or an excess of fees in the Miscellaneous Fees template. We look closely at Exhibit 8, through which the Department demands a systematic evaluation of various potential methods for evaluating the loss trends that will be applied to the calculation of the final rates. When reviewing homeowners' insurance rate changes, we review Exhibit 9, looking for any oddities in the selection of data used to derive a catastrophe adjustment. All of these standard forms are created by the Department, several of them are prescribed by the current regulation, some are not. None of them would be specifically identified in regulation under the proposed rule.

It is only after we have conducted this examination of forms and exhibits that we can reach a preliminary determination that a rate application may be excessive or unfairly discriminatory. Only at that point do we forward the suspect rate application to our actuary for a much more comprehensive examination of the file. The presentation of a rate application in a prescribed set of forms and exhibits is an absolute pre-condition for CFCF's participation in rate cases. It is our understanding that our actuary's more in-depth review of the application also is substantially facilitated by consistency of required forms and exhibits across rate filings.

Rate applications are dense. They include forms and exhibits that usually total hundreds of pages. A filing of that length must be organized into a uniform sequence and format. What deeply concerns CFCF about the proposed regulatory change – not just how it will potentially impact public intervention, but how it may impact the ability of Department staff to adequately and consistently review insurer filings – is that by eliminating, rather than updating, the list of prescribed forms and exhibits that an insurer must submit, there is the potential that insurers will seek to comply with the law and this regulation using bespoke documentation and methods for calculating and presenting its purported rate need. While we recognize that the proposed regulation cites the sections of the regulations that identify the information that must be included, it does not expressly state the format in which it is to be filed.

The proposed amendments appears to give insurers freedom to compose an application in any number of different and potentially obfuscating formats. Consistency in the structure of the application would no longer exist. The 602 insurers would be free to create 602 different application structures, and each insurer would be free to alter its format with each new application. The CFCF and other intervenors would face insurmountable burdens in mapping and deciphering the several hundred pages of an application to conduct its initial determination to flag suspect applications. This would add many hours and substantial additional cost to each initial review.

Consulting actuaries would similarly be burdened in conducting a lengthier and more costly analysis of applications that we forward for their review. Obfuscation in the presentation of applications results in added hours of analysis and substantial added costs, which consulting actuaries may be wary of accepting, given the possibility that some reviews must end at the investigation stage if it is determined that the application is appropriate. The proposed amendments would be burdensome on consumer representatives and would further stifle participation in rate proceedings by nonprofit organizations such as CFCF. It would likely reduce the chances that other consumer representatives would begin to participate in the future.

DEPARTMENT REVIEW AND INSURER CERTAINTY UNDERMINED

Consumer representatives are not the only party that would be adversely impacted by these proposed amendments. While the proposal increases the Department's initial review from fourteen days to thirty days, the Department would be rushed to examine the variety of application formats for completeness on time, or it would be obligated to accept as complete applications should its staff be overwhelmed by the limitless variety of formats that 602 insurers may choose to utilize. This could result in unnecessary Department requests for additional information after it accepted an application as complete due to the complexity of deciphering the application, when the insurer may have provided the information in the application but the Department may not have identified it in the unique and shifting manner that an insurer could furnish it under the proposed amendments. Presenting information in a prescribed set of forms and exhibits simplifies the Department's job of finding and evaluating data. The forms and exhibits that are currently required assist the Department's review. Obscuring the format of the application, which
the amendments enable, would only serve to create delay in the rate review and approval process, which is the opposite outcome of the streamlining rationale behind the amendments.

Insurers may also be adversely impacted by the proposed amendments. Insurers deserve certainty of completeness when filing an application for a rate increase. Given the small number of cases that the Department rejected as incomplete in 2023, it is reasonable to conclude that most insurers have the experience and expertise they need currently to file a complete rate application. An insurance industry publication recently voiced industry concern that the proposed amendments would complicate, rather than simplify, the rate application process. "Insurers say regulations proposed by the California Insurance Commissioner Ricardo Lara add confusion to the vexing rate-filing process they were supposed to improve.... Insurance representatives claim the lack of detail adds more confusion about what they need to file." (*Property Insurance Report,* "California's Proposed Filing Regulations Lack Specificity," February 26, 2024, pages 1 and 12). Moreover, the possibility of individualized approaches to filings could prove competitively harmful to those companies that submit the most transparent and obviously compliant rate applications. It is likely that those most easily scrutinized will be most scrutinized and the benefit of excess will fall to those insurers willing to file most inscrutably.

ADDITIONAL WORKSHOPS AND HEARINGS

CFCF agrees with the elimination of obsolete language and the elimination of reference to forms that are out-of-date that do not provide information germane to the purposes of Proposition 103. We also are very pleased to see that the Department aims to clarify in regulations the requirement to submit eligibility guidelines and other manuals and models used by insurers that impact and are necessary to evaluate the proposed rates (proposed §2648.4 (b) and (c)). But CFCF disagrees with the wholesale repeal of a listing of required forms, exhibits and other data, as described above.

We request that the Department does not finalize the proposed regulation until it has analyzed a larger dataset to establish a more statistically valid determination of the extent of the incomplete rate application problem, after which – with public input – it has restored, updated, and improved the list of specific exhibits, templates, and other forms that must be submitted with every rate filing. Doing so would be in line with the stated goal of crafting amendments to increase the certainty of the completeness of rate applications without undermining consumer representative participation or adversely impacting the Department's capacity to conduct its initial review of the application. Following such workshops and opportunities to comment, in which CFCF expects to participate, the Department would promulgate an edited set of proposed amendments for additional stakeholder comment.

CFCF appreciates the opportunity to provide these comments for the Department's consideration and we look forward to participating in the March 26, 2024 hearing and in any subsequent proceedings that the Department may establish.

Respectfully submitted,

Richard Holober, Treasurer
Consumer Federation of California Education Foundation

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

State of California, City of Sacramento, County of Sacramento

I am employed in the City of Sacramento and County of Sacramento, State of California. I am over the age of 18 years and not a party to the within action. My business address 1225 Eighth Street, Suite 470, Sacramento, CA 95814, and I am employed in the city and county where this service is occurring.

On April 22, 2024 between 2:00 PM and 2:30 PM, I caused service of true and correct copies of the document entitled

CONSUMER FEDERATION OF CALIFORNIA EDUCATION FOUNDATION'S AMENDED PETITION TO PARTICIPATE AND NOTICE OF INTENT TO SEEK COMPENSATION

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

1. If marked FAX SERVICE, by facsimile transmission this date to the FAX number stated to the person(s) named.

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

3. If marked U.S. MAIL or OVERNIGHT or HAND DELIVERED, 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.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on April 22, 2024 at Sacramento, California.

Yarissa Ramirez

signature

SERVICE LIST

SERVICE LIST

Person Served	**Method of Service**
Kathryn Taras Office of the Special Counsel 300 Capitol Mall, 17th Floor Sacramento, CA 95814 Phone: (916) 492-3675 CDIRegulations@insurance.ca.gov Kathryn.Taras@insurance.ca.gov	_____ FAX _____ U.S. MAIL _____ OVERNIGHT MAIL _____ HAND DELIVERED ___X __ EMAIL
Lisbeth Landsman-Smith Elsa Carre Rate Enforcement Bureau 300 Capitol Mall, 17th Floor Sacramento, CA 95814 Tel. No.: (916) 492-3561 Lisbeth.Landsman@insurance.ca.gov Elsa.Carre@insurance.ca.gov Tina.Warren@insurance.ca.gov	_____ FAX _____ U.S. MAIL _____ OVERNIGHT MAIL _____ HAND DELIVERED ___X __ EMAIL
Lucy F. Wang Deputy Commissioner / Special Counsel California Department of Insurance 1901 Harrison Street Oakland, CA 94612 Email: lucy.wang@insurance.ca.gov Tel. No.: 415.538.4377	_____ FAX _____ U.S. MAIL _____ OVERNIGHT MAIL _____ HAND DELIVERED ___X __ EMAIL
Jon Phenix Public Advisor Office of the Special Counsel California Department of Insurance 300 Capitol Mall, 17th Floor Sacramento, CA 95814 Tel. No.: (916) 492-3705 Fax No.: (510) 238-7830 Jon.Phenix@insurance.ca.gov	_____ FAX _____ U.S. MAIL _____ OVERNIGHT MAIL _____ HAND DELIVERED ___X __ EMAIL

EXHIBIT 5

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

June 7, 2023 REG-2023-00010

INVITATION TO WORKSHOP EXAMINING CATASTROPHE MODELING AND INSURANCE

You are invited to participate in the prenotice public discussion. The purpose of these discussions is to provide interested and affected persons an opportunity to present statements or comments regarding contemplated future regulations.

Please note that under the California Public Records Act (Government Code Section 6250, et seq.), your written and oral comments, and associated contact information (e.g., your address, phone number, e-mail, etc.) will become part of the public record and can be released to the public upon request.

Date, Time and Location

Date: July 13, 2023

Time: 1:00 p.m. The virtual workshop shall continue until all in attendance wishing to provide comments have commented, or 5:00 p.m., whichever is earlier.

Location: Link to Register for the Web-based Virtual Format:

https://us06web.zoom.us/webinar/register/WN_aMGujtfRS5GWqZ1EIfMH0g

Attendance. To increase public participation and improve the quality of any regulations that the Commissioner ultimately adopts, interested parties are invited to attend the virtual meeting and offer comment, if they so choose.

The moderated call-in line to be used for the public hearing is accessible to persons with hearing impairment. Persons with sight or hearing impairments are requested to notify one of the contact persons for these discussions (listed below) in order to review available accommodations, if necessary.

Please direct all inquiries regarding these workshops to the contact persons named below.

Statement of the Problem.

Continuing to address climate-intensified wildfire risks to California communities is a high priority for the State of California.

For example, the California State Legislature and Governor have invested approximately $2.7 billion in state funding for wildfire resilience in just the past three years. The Fourth California Climate Assessment, published in 2018, found that, if greenhouse gas emissions continue to rise,

the frequency of extreme wildfires will increase, and the average area burned statewide would grow by 77 percent by 2100. This finding underscores the importance of risk mitigation actions to reduce future losses to communities and homeowners that are exposed to wildfire risks.

Intensified wildfire risk to communities has had consequences for insurance availability and affordability in recent years. For example, devastating California wildfires have contributed to more than $8.5 billion in insurance rate increases requested by companies since 2015. Furthermore, data collected by the California Department of Insurance shows that the annual number of non-renewals by insurance companies is higher for the years 2018-2021 than it was in 2015.

The Department of Insurance has focused a multi-year effort on engaging with consumers and stakeholders as it assesses how new tools can improve risk management, make residential and commercial insurance more accessible and reliable for Californians, and maintain competition and ensure stability in the state's insurance marketplace. In addition, the Department of Insurance has been very clear that benefits to consumers is of utmost importance as it strives to increase the availability of reliable insurance from the admitted market, ensure the long-term sustainability of rates, and incentivize the accurate recognition of wildfire mitigation efforts.

The following actions provide further examples of this multi-year effort. Within weeks of assuming office, Insurance Commissioner Ricardo Lara began meeting with Californians to hear their concerns about what California's devastating wildfires will mean for their ability to find and retain homeowners insurance. In 2019, Commissioner Lara convened the Climate Insurance Working Group with environmental advocates, researchers, wildfire officials, and insurance experts, which focused on producing recommendations to reduce the increasing impacts from climate change, close insurance protection gaps, and manage the risks associated with climate-intensified wildfires, flooding, and extreme heat. In October 2020, Commissioner Lara convened an investigatory hearing on wildfire and insurance, and the evidence and testimony presented at that hearing highlighted that home- and community-based hardening techniques are effective and essential methods to reduce the wildfire risk to lives and property.

Risk management tools, such as catastrophe models, have been a part of previous public testimony. In December 2020, Commissioner Lara held a virtual public meeting and invited testimony from 14 individuals with wildfire expertise and experience, including researchers from the University of California and the Institute for Business and Home Safety, representatives from multiple catastrophe modeling and actuary firms, and experts engaged in community risk mitigation programs. The testimony and presentations described how wildfire mitigation could reduce the spread and risks of future wildfires, and asked whether California consumers could benefit from the use of wildfire catastrophe models in homeowners insurance ratemaking.

As a result of public testimony from wildfire mitigation experts and hearing directly from policyholders in communities throughout the state, Commissioner Lara took action on wildfire mitigation by promulgating his groundbreaking regulation that recognizes and rewards wildfire safety and mitigation efforts made by homeowners and businesses. The rulemaking became operative in October 2022 and was the first-in-the-nation regulation to require insurance companies to provide incentives to consumers under the "Safer from Wildfires" framework created by the Department of Insurance in partnership with several state emergency preparedness agencies.

Furthermore, in 2021, the Commissioner's Climate Insurance Working Group released the first-ever Climate Insurance Report. Among the recommendations, the working group stressed the importance of risk assessment, and one recommendation advised the Insurance Commissioner to hold public meetings specifically on the use of catastrophe models as a tool for estimating catastrophe losses, noting that a public meeting would give the public an opportunity to discuss and assess such policy tools.

For the past 30 years, the use of actual historical catastrophe losses has been the method used for estimating catastrophe adjustments in the California rate-approval process. However, historical losses do not fully account for the growing risk caused by climate change or risk mitigation measures taken by communities or regionally, as a result of local, state, and federal investments. Catastrophe estimates based on historical losses only reflect losses after they occur. As a result of climate-intensified wildfire risk and continued development in the wildland urban interface areas, and recent increased efforts to mitigate wildfire risks, past experience may no longer reflect the current wildfire exposure for property owners and insurance companies.

With a regulatory framework established under Proposition 103 and a reward for mitigation efforts made by homeowners and business owners now in place, Commissioner Lara convenes this workshop as a next step in the thorough evaluation of tools that could help insurance policyholders and insurance companies better anticipate catastrophe losses. Risk assessment tools are an important element for achieving expanded insurance options for current policyholders and those seeking insurance policies. This workshop will examine the use of catastrophe modeling tools in insurance rate approval.

Workshop Focus.

This workshop will focus on exploring the legal questions presented by the use of catastrophe modeling in insurance rate approval, such as how to implement the public inspection requirement of Insurance Code section 1861.07.

Insurance Code section 1861.07 provides: *All information provided to the commissioner pursuant to this article shall be available for public inspection, and the provisions of Section 7929.000 of the Government Code and Section 1857.9 of the Insurance Code shall not apply thereto.*

Although this workshop will not focus on specific regulatory text, participants should be prepared to present comments on the specific questions and subject areas identified below as part of these public discussions. Participants are also invited to submit written statements and are encouraged to provide supporting documents and materials as well.

Public Input Regarding Alternatives.

The Department of Insurance hereby seeks public, academic and stakeholder expertise regarding the legal challenges of incorporating catastrophe models in rate approval. Please provide written or oral comments outlining possible solutions and answers to the "Questions for Discussion," below. Please provide this input regarding alternatives to Jon Phenix, via electronic mail to CDIRegulations@insurance.ca.gov by July 12, 2023.

Questions for Discussion.

- When thinking about incorporating catastrophe models into the rate-level calculation for homeowners and commercial insurance, what is the significance of Insurance Code section 1861.07?

- To what extent can the methodologies, factors, and inner workings of catastrophe models be publicly disclosed in accordance with Section 1861.07 so that the Department can evaluate those models?

- If the Department requires sensitive information in the course of its model review, what are some potential methods of ensuring the Department can adequately review catastrophe models in accordance with Section 1861.07?

- Other states have incorporated alternative methods of structuring model review, such as use of an independent third-party panel. Are there any methods used by other states that would be a viable option in California?

This is Not a Formal Public Hearing on Proposed Regulations.

Please be advised that participation in these prenotice public discussions will be in addition to, and not in substitution for, any participation in any formal rulemaking process that may follow. This invitation to the prenotice public discussions does not constitute a Notice of Proposed Action. Consequently, comments (oral or written) received in connection with these prenotice public discussions may not be included in any record of rulemaking that may follow. Similarly, the Department of Insurance is not required to respond to comments received in connection with the prenotice public discussions. For this reason, if you wish to have comments included in any rulemaking file that may follow, or if you wish to have the Department of Insurance respond to your comments as part of the process by which it adopts this regulation, you must present your comments during the public comment period according to the procedures outlined in any Notice of Proposed Action issued in the future. Again, comments submitted in connection with these prenotice public discussions will not be considered in any subsequent rulemaking proceeding unless they are resubmitted after the Notice of Proposed Action is issued. However, the Commissioner will consider public comments received in these prenotice public discussions as he contemplates any additional regulatory changes that may be proposed in a Notice of Proposed Action.

Contact Persons.

All substantive questions and concerns regarding the contemplated regulations and/or these public discussions should be directed to Jon Phenix, using the contact information below. Please submit any written comments via electronic mail to CDIRegulations@insurance.ca.gov by July 12, 2023.

Logistical Inquiries
Kathryn Taras, Staff Services Manager I
California Department of Insurance
300 Capitol Mall, 16th Floor
Sacramento, CA 95814
Phone: (916) 492-3675
CDIRegulations@insurance.ca.gov

Substantive Inquiries
Jon Phenix, Attorney
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300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Phone: (916) 492-3705
Jon.Phenix@insurance.ca.gov

EXHIBIT 6

July 12, 2023

The Honorable Ricardo Lara
Insurance Commissioner
State of California
300 Capital Mall, Suite 1700
Sacramento, CA 95814

Re: Workshop Examining Catastrophe Modeling and Insurance (REG-2023-00010)

Dear Commissioner Lara:

Polls show a growing concern among Americans about the corporate use of black box models[i] – secret algorithms and Artificial Intelligence – to determine whether people will have access to products and services they require, and at what price. Insurance companies are looking to these same complex and opaque technologies to evade regulations that have kept insurance rates and premiums transparent and justified in California for decades.

Protecting California homeowners, motorists, and small businesses against the reckless use of unjustified secret models is insurance reform Proposition 103, passed by voters 35 years ago after an insurance access crisis nearly identical to the one the industry has created in California over the last five months. Proposition 103 mandates that "no [insurance] rate may be excessive, inadequate or unfairly discriminatory." Its robust, nationally-recognized framework of consumer protections requires transparency, justification, and approval before an insurance company can increase insurance rates. The subject of this workshop is one of the law's principal safeguards against unjustified rates and discriminatory practices: Ins. Code Sec. 1861.07.

Your question today is whether the use of catastrophe models to predict climate risk can comport with California's consumer protection laws mandating that insurance rates be justified through a process of transparent public review and participation. The answer is Yes, and the method is straightforward: Create a public model.

The insurance industry's pursuit of profit has already shifted all of the costs of climate change onto homeowners, by non-renewing policies, increasing premiums, delaying and denying smoke and fire claims, and threatening a wholesale pullout from the state if they do not get their way. Insurers simultaneously refuse to acknowledge or address their own significant contributions to climate change by insuring and investing in fossil fuels. They are now seeking to use private climate models to unjustifiably manipulate rates even higher. This is why

Proposition 103's requirement of public scrutiny and accountability is more necessary than ever.

For insurance companies, climate change is a convenient stalking horse for their real agenda: deregulation of oversight and accountability in California. Private, for-profit catastrophe models serve as a backdoor route to deregulation, because their black box nature makes it impossible for regulators or the public to understand what prices are based on or if they're getting it right.

Yet nothing about a catastrophe model *needs* to be proprietary or secret. A public model that is open to the scrutiny of the public, press and policymakers will keep insurance companies honest by forcing them to adjust their rates based on an impartial and objective analysis of wildfire risk and the impact of loss prevention practices on that risk.

Catastrophe models are not a panacea. A model developed and implemented in a fully transparent way can, however, enable California to better plan for a changing climate. A public model is necessary because the insurance industry's fixation on short term profits is incompatible with the interests of the people who live here.

Ultimately, our focus must be on stability in insurance access and affordability for homeowners by *reducing* the risks posed by climate change. The state's long climate leadership and deep bench of top academics, engineers, scientists and technologists uniquely situate our state to build a public model to serve all Californians.

This testimony discusses:

1) The purpose and legal requirements of Proposition 103 that require transparency, particularly Ins. Code Sec. 1861.07 and the court cases that have upheld that requirement.

2) The opacity of black-box private models.

3) How private catastrophe models' secrecy would derail the ability of regulators and the public to review rates and confirm they are justified.

4) Examples of private models' inconsistency and bias across financial industries.

Secrecy Enabled and Exacerbated the Insurance Crisis in the Mid-1980s That Led to the Passage of Proposition 103

In the mid-1980s, California was struck by a massive insurance crisis, which destabilized the Golden State's economy, punishing consumers and businesses alike with skyrocketing premiums and refusals to sell – just as the industry is doing today. Contemporary independent studies[ii] concluded that the threshold problem was that neither the public nor policymakers

had the ability to assess the validity of the insurance companies' rates and underwriting practices. Specifically, the Insurance Commissioner had no authority to collect adequate information regarding insurance rates and practices, no authority to limit industry profiteering and market destabilizations, and there was no opportunity for members of the public to participate in any regulatory process.

Prop 103 Requires Public Disclosure of Models

Prop 103 declared that: "Enormous increases in the cost of insurance made it both unaffordable and unavailable to millions of Californians" and that the "existing laws inadequately protect consumers and allow insurance companies to charge excessive, unjustified and arbitrary rates."

Insurance Code section 1861.07 requires that "All information provided to the commissioner pursuant to this article [Proposition 103] shall be available for public inspection, and the provisions of Section 6254(d) of the Government Code and Section 1857.9 of the Insurance Code [statutes barring disclosure of industry information] shall not apply thereto."

Section 1861.07 therefore requires public disclosure of any information provided to the Commissioner in connection with review of an insurer's rate application, which must include as required by section 1861.05(b): "all data referred to in Sections 1857.7, 1857.9, 1857.15, and 1864 and such other information as the commissioner may require."

The use of models in insurance matters is subject to 1861.07. The Commissioner's recent wildfire risk mitigation regulations specifically acknowledge that models used to determine a homeowner's risk for purposes of classifying individual structures or estimating losses corresponding to such classifications (Wildfire Risk Scores) must be filed with the Commissioner and made available for public inspection pursuant to 1861.05(b) and 1861.07. (10 CCR §2644.9(f).)

The California Supreme Court Has Confirmed that there are No Exceptions to the Disclosure Requirement.

State Farm has twice challenged the application of 1861.07's disclosure requirement in court. In each case, State Farm claimed that its data are "proprietary in nature" and constitute "trade secret material" that were privileged and exempt from the disclosure mandate of 1861.07.

In a 2004 ruling rejecting State Farm's argument, the California Supreme Court concluded that section 1861.07 set forth a "broad disclosure mandate," finding that it "broadly requires public disclosure of '*[a]ll* information provided to the commissioner pursuant to' article 10." (*State Farm Mut. Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043-1044 (original italics).) It found that "the drafters [of Proposition 103] established a public hearing process for

reviewing insurance rate changes" in order to "enable consumers to permanently unite to fight against insurance abuse." (*Id*. at p. 1045 (quotations and citations omitted).) The Supreme Court rejected State Farm's attempt to withhold "trade secret data." "State Farm may not invoke the trade secret privilege to prevent disclosure of its … data under Insurance Code section 1861.07." (*Id* at pp. 1046-1047.)[iii]

Notwithstanding the California Supreme Court's definitive decision, State Farm once again sued to conceal its financial data in a 2015 hearing on its application for an increase in its homeowners insurance rates, which Consumer Watchdog challenged. Insurance Commissioner Dave Jones rejected State Farm's arguments. State Farm then sued to overturn the Commissioner's decision, but its claims were rejected by the San Diego Superior Court.

The Insurance Commissioner Has Historically Enforced 103's Disclosure Requirement

Since the passage of Proposition 103, California Insurance Commissioners have long defended section 1861.07's absolute disclosure requirement. Commissioners Harry Low and John Garamendi urged the California Supreme Court to reject State Farm's first challenge.

As Commissioner Jones explained in a 2018 brief opposing State Farm's second lawsuit, "the unambiguous language of section 1861.07 requires that all documents and testimony provided to the Commissioner as part of a rate proceeding be open to public inspection."

And, as noted above, Section 2644.9(f) of Insurance Commissioner Lara's recent wildfire risk mitigation regulations requires full disclosure of wildfire risk models:

> Any rating plan, or Wildfire Risk Model submitted to the Commissioner in connection with a complete rate application pursuant to subdivision(c) of this section, or any additional documentation relating to such rating plan or model as may be requested by the Commissioner during the review of any such application, including any records, data, algorithms, computer programs, or any other information used in connection with the rating plan or Wildfire Risk Model used by the insurer which is provided to the Commissioner, shall be available for public inspection pursuant to Insurance Code sections 1861.05, subdivision(b), and 1861.07, regardless of the source of such information, or whether the insurer or the developer of the rating plan or Wildfire Risk Model claims the rating plan or Wildfire Risk Model is confidential, proprietary, or trade secret. Pursuant to Insurance Code section 1855.5, subdivision(a), a Wildfire Risk Model as defined in subdivision(b)(6) of this section that is made available by an advisory organization to its members for use in California shall be filed with the Commissioner and made available for public inspection.

Private Models are in Conflict with Proposition 103's Transparency Requirements

Private modeling firms (and insurers that develop aspects of models in-house) consistently assert intellectual property and trade secret protections that are incompatible with 1861.07's transparency requirements.

The American Academy of Actuaries emphasizes this point: "While the technical documentation of the models is available to users for their general knowledge, some core assumptions are considered proprietary and are not readily accessible to users. A catastrophe model is developed by a group of scientists (meteorologist, seismologist, hydrologist, statisticians, engineers, actuaries, computer scientist, etc.) with specialized knowledge in different fields. It is not an easy task for model users to develop even a basic understanding of the model, as required by U.S. actuaries' standards of practice."[iv]

Descriptive disclosures of the science and engineering that goes into a model and test cases of a model's outputs are too generalized to allow regulators or the public to adequately verify a model's inputs and assumptions or confirm whether its impact on rates is justified.[v]

Insurance Companies Resist Disclosure of Models in their Current Narrow Use in California – for Earthquake Loss Projection

The only case in which insurance companies are allowed to use private catastrophe models to make loss projections for determining overall rates in California is for earthquake (and fire following earthquake) insurance rates. (10 CCR § 2644.4(e).) In 2004 and 2007, Consumer Watchdog challenged the use of the RMS Risk Link 4.3 EQ model used to support earthquake insurance rate increases proposed by two insurers. Over the course of public hearings in those challenges the modeler withheld from the public and regulators – over Consumer Watchdog's objections – critical information needed to review and verify the validity of the model's impact on proposed rates.

Safeco sought a 29.8% rate increase; an Administrative Law Judge (ALJ) and the Insurance Commissioner ultimately approved a 13.2% rate increase after a public hearing. Among many issues raised, Consumer Watchdog's scientific expert found the RMS model over-predicted the frequency of earthquakes in comparison to other models that more closely met the actual historical earthquake experience, including the USGS and California Geological Survey, and the ALJ and the Commissioner agreed.[vi]

The expert testified that the company also failed to disclose a key component of the model that is used to describe the strength of a quake based on soil conditions and distance from the quake's source. It is impossible for an independent scientist to weigh the validity of a model's rate output without full access to such information. The Department of Insurance also did not obtain or review this information.

In a second case challenging GeoVera's proposed 6.8% rate increase, ultimately the parties stipulated to a 0% overall increase approved by an ALJ and the Commissioner. During the proceeding, Consumer Watchdog's actuary sought to verify an area of potential manipulation or inaccuracy that is also a factor in wildfire models: How the model amplified losses post-event. These are the assumptions a model makes about how much a large catastrophic event is likely to increase rebuilding costs beyond current market values - including how it treats inflation, replacement cost and demand surge projections. In the case in question, he estimated the RMS model overstated projected losses by about 30% or more, however the exact amount was unknown due to the company's refusal to disclose its proprietary method of calculating replacement cost values.[vii]

It is easy to see how over-projecting replacement costs leads to excessive or unjustified rates. If such financial assumptions are built into a model, the public and regulators must have full access to evaluate the methodology behind such assumptions and determine if the model's outputs are reasonable and fair.

How Do We Ensure Models Treat Consumers Fairly?

Below we pose just a few of the questions that regulators and the public must be able to ask – the answers to which proprietary catastrophe models hide – to determine whether a model is producing rates that are excessive, inadequate, or unfairly discriminatory:

- A key question about a model's impact on rates concerns the relative weight for each input variable (risk factor) in the model. These weights result from analyses performed within the model based on a dataset used to calibrate the model's initial parameters ("training data"). Depending on a model's construction, small changes to the weights can become highly leveraged, resulting in substantial variability in the model's output. Consumers and their advocates have a legal right to know which risk factors are being used to calculate insurance premiums. They also need to be able to understand the sensitivity of a model's results to changes in risk factor values and their relative weights. Yet details about how a model weights different factors is exactly the kind of information companies protecting a proprietary model will be unwilling to disclose.
- What are the input variables (risk factors) used in the model?
    - Typically, the risk factors selected for use in the final model have a demonstrable causal relationship with the peril being modeled, e.g. vegetation density or proximity to outbuildings for wildfire risk. However, it is entirely possible for risk factors with no obvious causal connection to the peril being modeled to demonstrate a high level of predictive significance. In such cases, the modelers must ascertain whether the seemingly unrelated variable is acting as a proxy for another, more sensible risk factor, or perhaps for a different risk factor that is disallowed due to inherent bias. Regulators and consumer representatives must have the ability to ask the same questions.

- How are elements that tend to fluctuate in value and have a significant impact on model output, such as inflation, demand surge, construction and labor costs, etc., treated in the model?
- What are all data types used in the initial development of the model; what is included in the training data?
    - According to the insurance analytics firm GuideWire,[viii] historically there have been two primary sources of modeling data for wildfires: US Census block groups and US Forest Service vegetation imagery data. GuideWire boasts it has improved on this by using, "30-meter vegetation resolution with cutting-edge geospatial tools to deliver highly accurate assessments of wildfire risk". Generalized selling points such as this are not robust enough to support a model's efficacy in improving the accuracy of the ratemaking process. What data do these "cutting-edge" tools collect and how do they impact the model's assessment of risk?
- How is risk scoring determined for quantitative variables that have multiple components (e.g. Fire station proximity: Physical distance, staffing, average drive duration, complications in an active wildfire scenario, etc.)
- Are broad public policy changes that address climate change and the risk of wildfire -- such as California's plan to achieve Net Zero carbon emissions by 2045,[ix] or the legislatively-mandated multi-billion dollar investments by California utilities in wildfire mitigation[x] -- taken into consideration?
- What about developments that impact insurers' projected financial losses? California law holds utility companies responsible for damage caused by any fire ignited by their equipment, whether found negligent or not. Does the model account for the fact that the insurance industry will not ultimately be responsible for all losses from the fires it predicts? PG&E and Edison made $12.1 billion in insurance subrogation payments for damage from fires the utilities caused in 2017-18, including the massive Camp Fire.[xi] The California Wildfire Fund[xii] was then established by the legislature in 2019 for the purpose of providing a source of money to pay or reimburse participating utility companies (San Diego Gas & Electric, Southern California Edison, and Pacific Gas & Electric) for eligible claims – including those paid as subrogation to insurance companies – that result from a wildfire. The Fund is capitalized by utility companies and ratepayers.
- How does the model control for overfitting? (model output regurgitates historic data vs using historic data to generate unique hypothetical scenarios)
- How much uncertainty is attached to model outputs because of errors in the model inputs and simplifying assumptions?
- How current is the data for elements such as population density, building codes, zoning changes, forest management, etc.?
- Is the model developed on a single company or insurer group's data, or on a broader data set such as industry-wide?

- Can the model be tested against past wildfire events to find out how accurately it predicts them?

Catastrophe Models Produce Inconsistent Results

In materials submitted to regulators documenting its U.S. Wildfire Model, the private modeling firm CoreLogic highlights the imprecision of catastrophe models:

"Modeling insured losses resulting from wildfires is an inherently subjective and imprecise process involving an assessment of information that comes from a number of sources and that may not be complete or accurate. Moreover, total insured loss for certain natural catastrophes may continue to evolve over a period of time. No model is, or could be, an exact representation of reality."[xiii]

In a frank Q&A about the insurance industry's push for catastrophe modeling published by industry consulting firm Milliman, Dag Lohmann, former vice president at modeling giant RMS, now-CEO of KatRisk, LLC, puts it more bluntly:

"Multiple modelers could develop a wildfire model from all the components in current literature, tune the models to reasonably validate with historical data, and ultimately have average annual losses ***2 or 3 times different than each other*** when projecting future losses."

Milliman goes on to argue: "These candid descriptions of variability in catastrophe modeling evoke the thinking of statistician George Box, who quipped that: 'All models are wrong, some are useful.' In other words, a good model can provide users with significant value in spite of outstanding uncertainties as to model precision. ***Model validation, as well as rigorous review of model operations and assumptions, are critical steps in assessing whether this value can be extracted from a cat model, given its intended use.***" [xiv] *[emphasis added]*

The industry itself acknowledges models' accuracy and value must be subject to "rigorous review." The modeler and the insurance industry cannot be the only players with the ability to conduct such reviews. Models protected as trade secrets will prevent verification of their science and their math, and regulators and consumer representatives would be left with inconsistent outputs and uncertainties that can't be explained. Models' mechanisms must be accessible to regulators and the public.

At the Virtual Meeting Regarding Home Hardening and Wildfire Catastrophe Modeling held by the California Department of Insurance on December 10, 2020, Allan Schwartz, Fellow of the Casualty Actuarial Society and a Member of the American Academy of Actuaries, presented testimony that illustrates how this variability manifests in the private earthquake models already in use in California:

"On multiple occasions over the last several years, the models consulted by insurance companies had dramatic differences in the results:

- In a Pacific Specialty Insurance Company rate filing, the leading RMS Model projected Fire Following Earthquake (FFEQ) loss was 263% of the projected FFEQ loss from RMS's leading competitor AIR.[xv]
- In a State Farm filing, the projected loss for Owner, Condo and Tenant coverage from the highest model projections were as much as 368% of the projected FFEQ loss from the lowest model projection.[xvi]
- And in a CSAA rate filing, one model's projection was 237% of another's.[xvii]

Mr. Schwartz questions the reliability of assumptions based on widely different outputs:

"Modelers often state that different models can be expected to give varying results because each modeler can use different assumptions, formula, parameters, and other inputs. While models cannot be expected be give the exact same results, it is reasonable to expect that the results from different models should be within an acceptable range. Results that vary from more than 100% to more than 250% could easily be considered to be outside an appropriate range."

With proprietary models, the CDI and the public are prohibited from looking inside the black box to determine the reason for such discrepancies and the best result.

These model inconsistencies are highlighted throughout financial and environmental regulation.

As stated by the Court of Appeals for the D.C. Circuit in Sierra Club v. Costle, 657 F.2d 298, 332 (D.C. Cir. 1981) (Robb, J.), which was reviewing an econometric model used by the Environmental Protection Agency:

> . . . models, despite their complex design and aura of scientific validity, are at best imperfect and subject to manipulation . . . .The results ultimately are shaped by the assumptions adopted at the outset, and can change drastically for a given set of input data if key assumptions are adjusted even slightly. The accuracy of the model's predictions also hinges on whether the underlying assumptions reflect reality, which is no small feat in this volatile world. (Citations omitted.)

For this reason, courts and regulatory agencies that have accepted computer models as evidence have also demanded that the underlying source data, assumptions, and methodologies be disclosed.[xviii]

Black-Box Models Harm Consumers

Across the economy, automated decisions made by undisclosed proprietary algorithms have become the unseen hand of discrimination, preventing the most vulnerable members of society from achieving important life goals. Credit scores alone have infected every aspect of Americans' personal lives, reflecting and exacerbating systemic racial and financial inequities. Discrimination occurs when people seek a mortgage, apply for a job, credit, school, apartment, or government benefits. Lower income individuals, people of color, women, and other disadvantaged communities are hardest hit by decisions made as a result of black box algorithms.[xix]

ProPublica launched an analysis of algorithmic bias in risk assessment software used to make criminal sentencing, bail and rehabilitation decisions in Broward County, Florida. The software, based on a for-profit company's algorithm, predicted violent crime correctly just 20% of the time, wrongly labeled Black defendants as future criminals twice as often as white defendants, and conversely mislabeled white defendants as low-risk more often than Black defendants.[xx]

University of California Berkeley researchers found that the mortgage lenders charge higher interest rates to Black and Latino borrowers than white borrowers. "The mode of lending discrimination has shifted from human bias to algorithmic bias," said study co-author Adair Morse, a finance professor at the Haas School of Business which published the study. "Even if the people writing the algorithms intend to create a fair system, their programming is having a disparate impact on minority borrowers — in other words, discriminating under the law." The discrimination cost those homebuyers up to half a billion dollars more in interest every year than white borrowers with comparable credit scores.[xxi]

Uber and Lyft pricing algorithms charge a higher price-per-mile for rides that originate in more diverse neighborhoods than they do in more white neighborhoods, according to a study analyzing Chicago transport and census data conducted by George Washington University researchers.[xxii]

The potential bias in opaque catastrophe models is no less damaging to consumers' financial health. A public model will allow for the most rigorous testing to root out bias.

Consumer advocates and progressive lawmakers are battling in state and federal legislative bodies, regulatory agencies and the courts against secret algorithmic manipulation that creates disadvantage across our financial lives. In the insurance space California is ahead of the game because Proposition 103 mandates transparency. Allowing insurance companies to price home insurance behind closed doors would take California backwards.

Financial Industry Climate Prediction Software in Particular Faces Academic Scrutiny for Reliability and Bias

Despite years of warnings that climate change threatens the insurance industry, and despite significant regulatory developments abroad, U.S. and California climate-related supervision and regulation of insurers remains limited. The California Department of Insurance recently required insurers to report their fossil fuel investments, yet insurers' deep exposure to climate risk from fossil fuel underwriting has yet to be acknowledged.[xxiii]

Banking and securities financial regulators have gone farther in incorporating the risks of climate change into oversight. Yet the for-profit models financial companies in particular rely on to make those predictions are full of loopholes, flawed financial incentives, bias and uncertainty that threaten to leave us worse off, rather than better, in imagining the financial impacts of a changing climate.

A forthcoming law review article by Boston School of Law Professor Madison Condon brings together the public interest critique of private models for financial regulation.[xxiv] She writes:

"[A]ctionable and transparent information about our climate-changed future is a public good that the private sector cannot be depended upon to provide equitably or reliably. Further, all private climate services rely on upstream climate data and models that were collected and produced by an enormous network of public institutions. … This Article urges state and federal governments to invest in their own climate services capacity at a scale not currently contemplated. Risk assessments lacking a scientific basis can lead to maladaptation across the economy."

The article is a must-read as California considers how to best respond to a changing climate while protecting insurance consumers. Among its points:

- The secrecy of private models hides uncertainty and error and prevents evaluation by the user and the regulator.
    - An example is the arena of ESG governance, where physical risk scores produced by leading firms have been found to have little correlation with one another.
- Private modeling firms have financial conflicts of interest, with many owned by the very rating agencies whose products rely on their outputs. For example, RMS one of the largest modeling firms is owned by Moodys.
    - Financial conflicts at the ratings agencies was a major topic of scrutiny after the 2008 financial crisis when it became clear they had mispresented the risks of mortgage-backed securities.
- Extreme weather events have disproportionately impacted Black and brown communities. Data bias will mean those communities are also most likely to be affected by models that consider them riskiest, and therefore least profitable to insure.

- Private models are designed to maximize short term profits, given the 1-year term of a standard insurance policy, while a public interest frame for the use of climate models should be mitigating risk, not short-term rate-setting.
- Models privatize the public data they are built on.

A Public Catastrophe Model Would Comply with 1861.07 and Best Protect Californians

A public interest framework for the use of catastrophe models in insurance rating in California would insure the most people at the lowest price while incentivizing homeowners to reduce climate risk. The insurance industry has long pursued the opposite strategy, seeking to weed out homeowners who are more likely to make claims, and the secrecy of the private modeling industry serves as a tool to that end. California has the opportunity to create a public model that instead serves all Californians. A public model would prioritize equity, reliability, affordability, transparency, risk reduction, and accountability.

Sincerely,

Carmen Balber
Executive Director

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[i] Atske, Sara. "Public Attitudes Toward Computer Algorithms | Pew Research Center." *Pew Research Center: Internet, Science & Tech*, 7 July 2020, www.pewresearch.org/internet/2018/11/16/public-attitudes-toward-computer-algorithms.

[ii] In a study commissioned by the California State Assembly, "Insurance in California: A 1986 Status Report for the Assembly (October 1986)," Robert Hunter of the National Insurance Consumer Organization noted the refusal of the insurance industry to disclose data regarding losses and its finances. The "Little Hoover Commission" (The Commission on California State Government Organization and Economy) issued *A Report on the Liability Insurance Crisis in the State of California* in July 1986 noting that, "the Commissioner does not collect, nor have the authority to collect, adequate information regarding insurance rates"; "without good information, sound decision-making is difficult.... Without adequate information, the role of the Insurance Commissioner can only be reactive."

[iii] *State Farm v. Garamendi* also rejected State Farm's argument that the second clause of section 1861.07, which states that two specific statutory exemptions from disclosure do not apply, left intact other exemptions from disclosure under the Public Record Act, such as Government Code section 6254(k), which exempts trade secret information. The court held that, given the inclusive language used in the first clause, those two exemptions "are meant to be examples rather than an exhaustive listing of all those statutory exemptions that are inapplicable." "[T]he language of Insurance Code section 1861.07, when viewed in context, is not ambiguous and, by its terms, requires public disclosure of [State Farm's purported trade secret information]." https://scocal.stanford.edu/opinion/state-farm-v-garamendi-33393

[iv] Cleary, Kay, et al. "Uses of Catastrophe Model Output." American Academy of Actuaries p34, July 2018 https://www.actuary.org/sites/default/files/files/publications/Catastrophe_Modeling_Monograph_07.25.2018.pdf

[v] Actuarial Standard Of Practice "No. 38 – U.S. Wildfire Model." *Corelogic,* Aug. 2018, https://consumerwatchdog.org/wp-content/uploads/2023/07/ASOP-38-Corelogic-CA-Wildfire-Model-State-Farm.pdf

[vi] "In the matter of the Rate Application of: First National Insurance Company of America, SAFECO Insurance Company of America, and SAFECO Insurance Company of Illinois. Direct Written testimony of Dr. David Jackson" *Consumer Watchdog*, Dec. 2022, https://consumerwatchdog.org/wp-content/uploads/2023/07/Safeco-EQ-Redacted-Jackson-DWT1_Redacted-copy.pdf

[vii] "In the Matter of the Rate Application of, Geovera Insurance Company. Direct testimony of Allan I. Schwarts" *Consumer Watchdog*, https://consumerwatchdog.org/wp-content/uploads/2023/07/91_-Redacted-Pre-Filed-Direct-Testimony-of-Allan-I-Schwartz-GeoVera.pdf

[viii] "California Making Waves in Wildfire Insurance Regulation." *Guidewire*, 8 Dec. 2022, https://www.guidewire.com/blog/technology/california-making-waves-in-wildfire-insurance-regulation/

[ix] California, State Of. "California Releases World's First Plan to Achieve Net Zero Carbon Pollution | California Governor." *California Governor*, 16 Nov. 2022, https://www.gov.ca.gov/2022/11/16/california-releases-worlds-first-plan-to-achieve-net-zero-carbon-pollution/

[x] *Wildfire Mitigation Plan*. https://www.pge.com/en_US/safety/emergency-preparedness/natural-disaster/wildfires/wildfire-mitigation-plan.page

[xi] Press Release, *PG&E Executes Definitive Agreement Resolving Insurance Subrogation Claims Relating to 2017 and 2018 Wildfires*, 23 Sep., 2019, https://investor.pgecorp.com/news-events/press-releases/press-release-details/2019/PGE-Executes-Definitive-Agreement-Resolving-Insurance-Subrogation-Claims-Relating-to-2017-and-2018-Wildfires/default.aspx; Press Release, *SCE Resolves All Insurance Subrogation Claims For The Thomas, Koenigstein Fires And Montecito Mudslides*, 23 Sep., 2020, https://newsroom.edison.com/releases/sce-resolves-all-insurance-subrogation-claims-for-the-thomas-koenigstein-fires-and-montecito-mudslides.

[xii] "California Wildfire Fund." https://www.cawildfirefund.com/

[xiii] Actuarial Standard Of Practice "No. 38 – U.S. Wildfire Model." *Corelogic,* Aug. 2018, https://consumerwatchdog.org/wp-content/uploads/2023/07/ASOP-38-Corelogic-CA-Wildfire-Model-State-Farm.pdf

[xiv] "Wildfire Catastrophe Models Could Spark the Changes California Needs." *Milliman*, Oct. 2019, https://www.milliman.com/en/insight/wildfire-catastrophe-models-could-spark-the-changes-california-needs

[xv] SERFF Tracking #: PERR-132375306, State Tracking #: 20-1565, Company Tracking #: PSIC-HO3-CA-2001, Exhibit 9-1

[xvi] SERFF Tracking #: SFMA-131345773, Company Tracking # 18-1196: HO-40602, Exhibit 9, Page 6

[xvii] SERFF Tracking #: WSUN-132609750 State Tracking #: 20-4189 Company Tracking #: CA HO 2021, Exhibit 9

[xviii] Sierra Club v. Costle, 657 F.2d 298, 332 (D.C. Cir. 1981); American Public Gas Association v. Federal Power Commission, 567 F.2d 1016 (D.C. Cir. 1977) Alan Aldous, *Disclosure of Expert Computer Simulations*, VII COMPUTER LAW JOURNAL 51 (1987); John P. Barker, *Taking A Byte Out Of Abusive Agency Discretion: A Proposal For Disclosure In The Use Of Computer Models*, 19 UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM 637 (1986); James A. Wilson, *Methodologies As Rules: Computer Models and the APA*, 20 COLUMBIA JOURNAL OF LAW AND SOCIAL PROBLEMS 168 (1986)Alan Aldous, *Disclosure of Expert Computer Simulations*, VII COMPUTER LAW JOURNAL 51 (1987); John P. Barker, *Taking A Byte Out Of Abusive Agency Discretion: A Proposal For Disclosure In The Use Of Computer Models*, 19 UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM 637 (1986); James A. Wilson, *Methodologies As Rules: Computer Models and the APA*, 20 COLUMBIA JOURNAL OF LAW AND SOCIAL PROBLEMS 168 (1986) https://casetext.com/case/sierra-club-v-costle

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[xxi] Counts, Laura. "Minority Homebuyers Face Widespread Statistical Lending Discrimination, Study Finds." *Haas News | Berkeley Haas*, Nov. 2019, https://newsroom.haas.berkeley.edu/minority-homebuyers-face-widespread-statistical-lending-discrimination-study-finds/

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[xxiii] Press Release "Consumer Watchdog Calls on Federal Insurance Office to Expose Financial, Climate Risks of Insurance Industry's Fossil Fuel Underwriting After California Fails to Act," 21 Nov., 2021, https://consumerwatchdog.org/insurance/consumer-watchdog-calls-federal-insurance-office-expose-financial-climate-risks-insurance/

[xxiv] Condon, Madison. "Climate Services: The Business of Physical Risk." *Social Science Research Network*, RELX Group (Netherlands), Jan. 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4396826

EXHIBIT 7

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

August 30, 2023 REG-2023-00010

INVITATION TO SECOND WORKSHOP EXAMINING CATASTROPHE MODELING AND INSURANCE

You are invited to participate in the prenotice public discussion. The purpose of these discussions is to provide interested and affected persons an opportunity to present statements or comments regarding contemplated future regulations.

Please note that under the California Public Records Act (Government Code Section 6250, et seq.), your written and oral comments, and associated contact information (e.g., your address, phone number, e-mail, etc.) will become part of the public record and can be released to the public upon request.

Date, Time and Location

Date: September 28, 2023

Time: 1:00 p.m. The virtual workshop shall continue until all in attendance wishing to provide comments have commented, or 5:00 p.m., whichever is earlier.

Location: Link to Register for the Web-based Virtual Format:
https://us06web.zoom.us/webinar/register/WN_S0MiAkfeQaei5gJPoKNBwA

Attendance.

The moderated call-in line to be used for the public workshop is accessible to persons with hearing impairment. Persons with sight or hearing impairments are requested to notify one of the contact persons for these discussions (listed below) in order to review available accommodations, if necessary.

Please direct all inquiries regarding these workshops to the contact persons named below.

Statement of the Problem.

Continuing to address climate-intensified wildfire risks to California communities is a high priority for the State of California.

For example, the California State Legislature and Governor have invested approximately $2.7 billion in state funding for wildfire resilience in just the past three years. The Fourth California Climate Assessment, published in 2018, found that, if greenhouse gas emissions continue to rise, the frequency of extreme wildfires will increase, and the average area burned statewide would

grow by 77 percent by 2100. This finding underscores the importance of risk mitigation actions to reduce future losses to communities and homeowners that are exposed to wildfire risks.

Intensified wildfire risk to communities has had consequences for insurance availability and affordability in recent years. For example, devastating California wildfires have contributed to billions of dollars in insurance rate increases requested by companies since 2015. Furthermore, data collected by the California Department of Insurance shows that the annual number of non-renewals by insurance companies is higher for the years 2018-2021 than it was in 2015.

The Department of Insurance has focused a multi-year effort on engaging with consumers and stakeholders as it assesses how new tools can improve risk management, make residential and commercial insurance more available and reliable for Californians, and maintain competition and stability in the state's insurance marketplace. The Department of Insurance has been very clear that benefits to consumers are of utmost importance as it strives to increase the availability of reliable insurance from the admitted market, ensure the long-term sustainability of the market, and incentivize the accurate recognition of wildfire mitigation efforts.

The following actions provide further examples of this multi-year effort. Within weeks of assuming office, Insurance Commissioner Ricardo Lara began meeting with Californians to hear their concerns about what California's devastating wildfires will mean for their ability to find and retain homeowners and commercial insurance. In 2019, Commissioner Lara convened the Climate Insurance Working Group with environmental advocates, researchers, wildfire officials, and insurance experts, which focused on producing recommendations to reduce the increasing impacts from climate change, close insurance protection gaps, and manage the risks associated with climate-intensified wildfires, flooding, and extreme heat. In October 2020, Commissioner Lara convened an investigatory hearing on wildfire and insurance, and the evidence and testimony presented at that hearing highlighted that home- and community-based hardening techniques are effective and essential methods to reduce the wildfire risk to lives and property.

Risk management tools, such as catastrophe models, have been a part of previous public testimony. In December 2020, Commissioner Lara held a virtual public meeting and invited testimony from 14 individuals with wildfire expertise and experience, including researchers from the University of California and the Institute for Business and Home Safety, representatives from multiple catastrophe modeling and actuary firms, and experts engaged in community risk mitigation programs. The testimony and presentations described how wildfire mitigation could reduce the spread and risks of future wildfires, and asked whether California consumers could benefit from the use of wildfire catastrophe models in the rate approval process for homeowners and commercial insurance lines.

As a result of public testimony from wildfire mitigation experts and hearing directly from policyholders in communities throughout the state, Commissioner Lara took action on wildfire mitigation by promulgating his groundbreaking regulation that recognizes and rewards wildfire safety and mitigation efforts made by homeowners and businesses. The rulemaking became operative in October 2022 and is the first-in-the-nation regulation to require insurance companies to provide wildfire safety incentives to consumers under the "Safer from Wildfires" framework created by the Department of Insurance in partnership with several state emergency preparedness agencies.

Furthermore, in 2021, the Commissioner's Climate Insurance Working Group released the first-

ever Climate Insurance Report. Among the recommendations, the working group stressed the importance of risk assessment, and one recommendation advised the Insurance Commissioner to hold public meetings specifically on the use of catastrophe models as a tool for estimating catastrophe losses, noting that a public meeting would give the public an opportunity to discuss and assess such policy tools.

For the past 30 years, the use of actual historical catastrophe losses has been the method used for estimating catastrophe adjustments in the California rate-approval process. However, historical losses do not fully account for the growing risk caused by climate change or risk mitigation measures taken by communities or regionally, as a result of local, state, and federal investments. Catastrophe estimates based on historical losses only reflect losses after they occur. As a result of climate-intensified wildfire risk, continued development in wildland urban interface areas, and recent increased efforts to mitigate wildfire risks, past experience may no longer aptly reflect the current wildfire exposure for property owners and insurance companies.

With a regulatory framework established under Proposition 103 and a reward for mitigation efforts made by homeowners and business owners now in place, Commissioner Lara convened a public virtual workshop in July as a next step in the thorough evaluation of tools that could help insurance policyholders and insurance companies better anticipate catastrophe losses. Risk assessment tools are an important element for achieving expanded insurance options for current policyholders and those seeking insurance policies. The Department also seeks to meet the requirements for public inspection of risk assessment tools that may be relied upon by insurers in their rate filings while recognizing that private companies maintain proprietary information in a competitive marketplace. Accordingly, the workshop last month focused on exploring the legal questions presented by the public inspection requirement of Insurance Code section 1861.07.

The Commissioner convenes this workshop to further examine the use of catastrophe modeling tools in the insurance rate approval process and to understand how such tools can be used for not just wildfire but other perils.

Workshop Focus.

This workshop will focus on understanding how the use of catastrophe modeling in the rate approval process to develop an aggregate catastrophe adjustment and aggregate losses will impact insurance availability and affordability over time and how the Department can ensure the integrity of model projections upon implementation. The workshop will explore, among other issues, the review of models by experts, the remedy when models produce different results, and the data being used within the models to generate aggregate loss projections.

Although this workshop will not focus on specific regulatory text, participants should be prepared to present comments on the specific questions and subject areas identified below as part of these public discussions. Participants are also invited to submit written statements and are encouraged to provide supporting documents and materials as well.

Public Input Regarding Alternatives.

The Department of Insurance hereby seeks public, academic, and stakeholder expertise regarding the use of catastrophe models in the rate approval process. Please provide written or oral comments outlining possible solutions and answers to the “Questions for Discussion,” below. Please provide

this input regarding alternatives to Jon Phenix, via electronic mail to CDIRegulations@insurance.ca.gov by September 27, 2023.

Questions for Discussion.

IMPACT ON INSURANCE MARKETPLACE

- How would the use of probabilistic catastrophe models to develop aggregate losses in the rate approval process impact insurance availability, affordability, and rate stability over time? Explain in detail whether the use of such models would increase the short-term and long-term availability of insurance to Californians in high-risk wildfire areas at reasonable rates.

- How would catastrophe models account for wildfire mitigation and risk-reduction strategies (including mitigation efforts already identified in Title 10, California Code of Regulation, Section 2644.9) being undertaken by governments, communities, and consumers in California?

MODEL REVIEW

- What kinds of experts would best assist the Department in reviewing and determining the appropriateness of catastrophe models during the rate approval process?

- What information related to catastrophe models should the Commissioner require in order to allow the model to be used in setting rates? What information related to a catastrophe model is necessary for the Department to evaluate as part of a complete rate application?

- If a catastrophe model has already been reviewed by the Department and other parties as part of a proceeding, but the model is subsequently updated or otherwise changed, how should the Department ensure that the prior review of the model is still sufficient? What additional information will need to be submitted for review of the revised model?

MODEL IMPLEMENTATION

- The Department currently authorizes the use of models to develop aggregate projected earthquake losses. If models are used to develop catastrophe losses for other perils (e.g., wildfire and flood), how should the process to review and use such modeled losses in rate filings be similar or different from the use of modeled earthquake losses?

- Given that different models' estimates of aggregate projected losses from the same portfolio of risks may be dramatically different (e.g., projected losses from one model may be 100% higher than the other), how can the Department best assess the accuracy and reliability of using modeled catastrophe losses?

- How is the data collected and published under Insurance Code section 929 currently being used and/or expected to be used going forward by catastrophe modelers, insurers, and other stakeholders such as local and state government, fire officials, and researchers? What additional types of data would modelers and insurers find helpful for the Department to

collect going forward, related to wildfire or other perils?

- If the Department were to make available a public catastrophe model for all insurers to use in the rate approval process, what are some components that would be necessary to make the model useful for insurers?

This is Not a Formal Public Hearing on Proposed Regulations.

Please be advised that participation in these prenotice public discussions will be in addition to, and not in substitution for, any participation in any formal rulemaking process that may follow. This invitation to the prenotice public discussions does not constitute a Notice of Proposed Action. Consequently, comments (oral or written) received in connection with these prenotice public discussions may not be included in any record of rulemaking that may follow. Similarly, the Department of Insurance is not required to respond to comments received in connection with the prenotice public discussions. For this reason, if you wish to have comments included in any rulemaking file that may follow, or if you wish to have the Department of Insurance respond to your comments as part of the process by which it adopts this regulation, you must present your comments during the public comment period according to the procedures outlined in any Notice of Proposed Action issued in the future. Again, comments submitted in connection with these prenotice public discussions will not be considered in any subsequent rulemaking proceeding unless they are resubmitted after the Notice of Proposed Action is issued. However, the Commissioner will consider public comments received in these prenotice public discussions as he contemplates any additional regulatory changes that may be proposed in a Notice of Proposed Action.

Contact Persons.

All substantive questions and concerns regarding the contemplated regulations and/or these public discussions should be directed to Jon Phenix, using the contact information below. Please submit any written comments via electronic mail to CDIRegulations@insurance.ca.gov by September 27, 2023.

Logistical Inquiries
Kathryn Taras, Staff Services Manager II
California Department of Insurance
300 Capitol Mall, 16th Floor
Sacramento, CA 95814
Phone: (916) 492-3675
CDIRegulations@insurance.ca.gov

Substantive Inquiries
Jon Phenix, Attorney
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300 Capitol Mall, 17th Floor
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Phone: (916) 492-3705
CDIRegulations@insurance.ca.gov

EXHIBIT 8

Testimony of Carmen Balber, Executive Director
Consumer Watchdog
Second Workshop Examining Catastrophe Modeling and Insurance (REG-2023-00010)
September 28, 2023

The Insurance Commissioner's rush to satisfy the demand of the insurance industry for permission to use algorithms and black box models to set home, renter and property insurance rates has, at least so far, neglected his obligation under California law to conduct a serious and objective inquiry.

The Department has collected no data to show that catastrophe models would improve the availability or affordability of insurance in California, and the industry has no obligation to follow through on the promise of expanded coverage the Commissioner announced last week. In fact, as Consumer Watchdog has noted in prior comments, the exact opposite is happening in other states where models may be used. In Florida, for example, rates are 2-3 times higher on average than they are in California, and five times as many homeowners have been forced to resort to Florida's version of the FAIR Plan because no other insurers will sell to them.

The use of models would have profound consequences for Californians, but to date none of the controversial issues surrounding catastrophe modelling have been independently investigated, much less addressed, by the Department.

1. Conflicts of Interest. Financial conflicts of interest at the largest publicly-traded catastrophe modeling companies should bar their use by insurance companies in California. The Department has not acknowledged or investigated these serious financial conflicts.
   Top catastrophe modeler RMS is owned by insurance ratings firm Moody's. The largest shareholder of Moody's RMS is Berkshire Hathaway, through the Warren Buffet-owned insurance companies National Indemnity Co. and GEICO. Wall Street financial services companies The Vanguard Group and BlackRock Inc., which manage hundreds of billions in assets for insurance clients, are the top shareholders in the other modelling industry giant, Verisk Analytics. Vanguard and BlackRock are also the second and third largest shareholders of Moody's. Both RMS and Verisk have lobbied to allow the use of secret catastrophe models to set rates. See further documentation of these financial conflicts at RMS and Verisk, including shareholder disclosures, beginning on pg 6.

2. Accuracy. The insurance industry and its Wall Street vendors insist that models and Artificial Intelligence will better predict the likelihood of catastrophes. But there has

been no data call or other effort by the Department of Insurance to objectively det ermine whether that has been true in other states in the nation where private comput er models are in use. Similarly, there has been no effort to determine the rate impact on consumers within or outside high-risk areas. Consumer Watchdog has presented evidence that the computer models in use today are flawed, inaccurate and unable to predict extreme weather events and the expected losses that will arise. Neither the insurance industry nor the firms that market such models have presented any empirical evidence of their accuracy.

3. Fairness. It is beyond dispute that algorithms have been determined to reflect bias, with potentially discriminatory impact that would violate the Unruh Civil Rights Act and provisions of the Insurance Code. Consumer Watchdog has marshalled some of the voluminous academic commentary to that point. The insurance industry and the modelling firms have presented no independent evidence to the contrary. The Department has made no effort to independently investigate the question.

4. Transparency. Proposition 103 requires full public disclosure in the rate setting process, as we have previously testified and as the Commissioner is well aware. For that reason, Consumer Watchdog and other organizations have proposed the establishment of a *public* model. The Department recently asked Consumer Watchdog and a number of other organizations to answer a series of questions directed exclusively at the Department's legal obligation to provide public disclosure of models. These answers were discussed on a video conference call on September 11, 2023. Our written responses are attached, and the transparency question – including the legal precedents upholding the law's requirements – is extensively addressed in our previous comments, attached here.

These issues must be thoroughly investigated and addressed by the Department during the upcoming public notice and comment process. Public workshops that simply pit industry lobbyists against independent consumer advocates, *while the actual policy decisions are made in secret backroom deals with the Commissioner*, do not satisfy state prerequisites for a valid regulation.

For the last five years, Consumer Watchdog's actuaries, experts and lawyers have worked to address the use of models in the context of the Wildfire Mitigation Regulations, in this proceeding, and in a number of rate proceedings in which insurance companies have sought to use models without adequate disclosure for underwriting purposes to determine what individual homeowners pay. The modeling companies have consistently refused to provide substantive information about how their models operate, let alone the full transparency mandated by Proposition 103. This proceeding is your opportunity to finally get it right and ensure full transparency in the use of models in California so home and condo owners can force insurers to justify why they are being priced out of the insurance market, or being refused coverage at all.

Consumer Watchdog Answers to CDI Questions re wildfire CAT models:

1. If the Insurance Commissioner allows insurers to use probabilistic catastrophe models to predict losses for ratemaking purposes, how does the Commissioner also ensure that consumers are fully represented in that process?

   Response: Proposition 103 requires that the ratemaking process be conducted in public and authorizes consumers to participate without qualification in the ratemaking process. By definition, the use of models impacts the rate setting process. Enforcing that statutory mandate requires that consumers and their representatives be provided full access to the information they require in order to assess the accuracy, fairness and rate impact of models, including model inputs and algorithms, and access to the model itself to test its output. The Commissioner must enforce that voter mandate, in whatever context models are utilized.

2. What safeguards should the Commissioner institute if he allows insurers to use probabilistic catastrophe models for loss prediction?

   Response: The safeguards of public scrutiny, public participation, full disclosure, and the prohibition against rates that are "excessive, inadequate or otherwise in violation of [Proposition 103]" are established by Proposition 103. They are not subject to the Commissioner's discretion. As Consumer Watchdog has pointed out in previous testimony, the insurance companies and the Wall Street modeling firms have stated they will not comply with these transparency requirements. That is why Consumer Watchdog and other organizations have proposed that CDI establish a fully public model. If the insurance companies really need to use models, and are not simply looking for a way to charge excessive rates, they should be willing to accept a public model.

3. What kinds of benefits and expertise would consumer representatives bring to the process of reviewing cat models?

   Response: The same benefits and expertise that they bring to any other proceeding before the agency concerning Proposition 103: an independent and objective evaluation of whether the model is biased, inaccurate, or subject to the influence of the insurance company that is paying for it or the owners of the modeling company, and would therefore lead to "excessive, inadequate or unfairly discriminatory" rates.

4. What difficulties might consumer groups experience in participating in model review?

   Response: The same difficulties the CDI would have: the need for additional resources, which Proposition 103 ensures the Commissioner can obtain (Section 12979) and which consumer representatives are entitled to obtain through the public participation process (1861.10(b)).

5. How would consumer groups compensate for any lack of in-house expertise that they might suffer from?

   Response: Like CDI - by recruiting the expertise and hiring outside experts when necessary.

6. Third-party modelers have expressed concern that the inner workings of their models must be kept confidential and subject to trade secret protection. How would consumer groups balance

these third-party modelers' concerns, with Prop 103's mandate that information and materials provided to the Commissioner as part of ratemaking must be made publicly available?

Response: Nothing in the law permits the Commissioner to "balance" the concerns of the insurance industry or its vendors with the unequivocal transparency requirements of Proposition 103, as the California Supreme Court has made clear, that all information submitted to the commissioner must be publicly available (1861.05, 1861.07).

7. Historically, intervenors have been willing to enter into stipulated protective orders for discovery purposes in Prop 103 rate hearings, and defer confidentiality and sealing issues for only those materials and information that are submitted into evidence as part of the public record.

   Response: Information that is submitted to the Commissioner pursuant to Prop 103 must be made public and there are no confidentiality or sealing issues to decide. Deferring confidentially issues to the end of the process deprives the public of their statutory right to review the information *before* a decision is made.

8. Would consumer groups be willing to engage in a similar process for purposes of expert review of models, e.g., participate confidentially in an exploratory process to review a model with a subsequent determination of what, if anything, about that model should be made public, if the model is used for rating purposes?

   Response: Information about how a model impacts consumers' insurance rates cannot be limited to members of the public who participate in expert review. That process deprives the public, including journalists, the opportunity to contemporaneously examine and comment upon a model. The Commissioner must obey the transparency requirements of California law, not devise procedures to evade it.

9. What kinds of information and data should the Commissioner require third-party modelers to produce in a confidential discovery process, for all parties to thoroughly review the model?

   Response: Proposition 103 does not permit a "confidential" process.

10. What kind of information and data regarding the model should the Commissioner require third-party modelers to make public as part of a rate application, in order for the Commissioner to determine that a model is appropriate to be used to predict losses for ratemaking purposes? What is the distinction between these two types of data?

    Response: Absent full disclosure of a model's inputs, algorithm, and output, neither the Department nor the public will be able to verify the accuracy, fairness and impact on premiums.

11. Insurance companies have stated that allowing them to use probabilistic cat models to predict loss for rating purposes would encourage them to increase the availability of coverage for high-risk properties in the WUI. What other avenues are available to the Insurance Commissioner to encourage or require insurance companies to increase coverage availability in high-risk areas?

    Response: Unverified promises by insurance companies cannot support a regulatory change. The Commissioner should not trust the insurance companies' statements that they will increase

the availability of coverage in high-risk areas if the Commissioner accedes to their demands, whether the demand is models, the pass-thru of reinsurance expenses, or any other insurance demand. Placating insurance companies should not be the goal of Insurance Commissioner Lara in this proceeding, nor should cat modelling be authorized in order to accomplish the entirely different goal of requiring insurance companies to end the shortages they have created. Companies are currently allowed to use cat models in earthquake ratemaking, but that has not led to more insurers offering earthquake coverage. Companies in other states are allowed to use cat models, yet that has not stemmed the availability crisis facing places like Florida. Before subjecting Californians to the problematic use of algorithms, the Commissioner should independently investigate the use of models in other states: require all insurance companies to publicly disclose the wildfire cat models they have deployed in other states for the preceding five years in order to determine whether (1) the models accurately predicted risk and (2) whether there remains an availability crisis in those states. Many states where models are in use, such as Florida, are currently experiencing availability and affordability crises in the home and property insurance markets.

A critical way to ensure all Californians have access to coverage is reducing the risk that Californians' homes burn. The Department has passed regulations requiring discounts for homeowners who meet home hardening and brush clearance standards, or live in protected FireWise communities, yet six months after insurers began submitting filings with their discount proposals just one has been approved. The Department should focus on implementing meaningful mitigation discounts for homeowners.

Financial conflicts of interest at the largest publicly-traded catastrophe modeling companies should bar their use by insurance companies in California.

Ownership of the publicly-traded black-box catastrophe modelling companies – by Wall Street, financial rating, and insurance companies - raises multiple financial conflicts.

Catastrophe Model Top Investors

Catastrophe Modeling Co.	Owner	Stockholders > 5%	Percentage of Shares
RMS	Moody's	Berkshire Hathaway (Warren Buffett, National Indemnity and GEICO)	13.47%
		The Vanguard Group	7.53%
		BlackRock Inc.	7.07%
		TCI Fund Management	5.03%
Verisk Analytics (formerly AIR Worldwide)		The Vanguard Group	11.10%
		BlackRock Inc.	8.10%

- Wall Street financial firms The Vanguard Group and BlackRock Inc. are the largest investors in Verisk Analytics and the second and third-largest investors in RMS. Vanguard and BlackRock make their money by managing clients' investments and handle billions in insurance industry assets. BlackRock reports managing $403 billion in general account assets on behalf of insurance companies and "has a dedicated team of insurance portfolio managers, relationships managers, actuaries, and strategies to deliver the breadth of BlackRock's global resources." Vanguard's asset management for insurance accounts site touts its "deep industry knowledge and 19 NAIC-rated fixed income ETFs" ... "We're well suited to help insurers, whether your needs are short or long term." The companies' management fees will increase if insurers' investable revenue increases because the RMS and Verisk models recommend excessive premium increases.

- Insurers also have reason to back private models to stay in the good graces of Vanguard and BlackRock, which manage extensive investment portfolios from pensions and other industries that can be directed towards, or away from, the insurance industry.

- Berkshire Hathaway insurance companies, 13.47% shareholder in Moody's which owns RMS, can increase their revenues by imposing higher insurance rates if the RMS model is manipulated to over-predict climate risk.

- The companies' ownership also creates traditional pressures on insurance companies to buy and use private models, as opposed to supporting a public model. For example, Moody's ownership of RMS creates pressure on insurance companies to purchase the RMS model because they are dependent on Moody's for good credit ratings. Moody's has the power to downgrade the financial rating of a company that does not use its catastrophe model, or any private model.

Name	Shares Beneficially Owned (1)		Number of Shares Subject to Options Which Are or Become Exercisable Within 60 Days of December 31 (2)	Number of RSUs That Vest Within 60 Days of December 31 Stock Units and Dividend Equivalents (3)	Total Beneficial Ownership	Stock Units (4)	Percentage of Shares Outstanding (5)
Jorge A. Bermudez	19,956		0	598			*
Thérèse Esperdy	2,396		0	604			*
Robert Fauber	50,237		78,257	3,561			*
Vincent A. Forlenza	5,059		0	604		478	*
John J. Goggins	12,892		22,604	970			*
Kathryn M. Hill	17,367		0	604			*
Lloyd W. Howell, Jr.	620		0	604			*
Mark Kaye	885		10,969	1,674			*
Raymond W. McDaniel, Jr.	206,238	(6)	276,748	821			*
Jose M. Minaya	0		0	732		102	*
Leslie F. Seidman	9,247		0	598			*
Zig Serafin	480		0	598			*
Stephen Tulenko	3,335		6,391	1,067			*
Bruce Van Saun	6,906		0	604			*
Michael West	5,821		8,944	979			*
All current directors and executive officers as a group (16 people)	342,215		405,296	14,958		580	*
Berkshire Hathaway, Inc. Warren E. Buffett, National Indemnity Company, GEICO Corporation, Government Employees Insurance Company, 3555 Farnam Street, Omaha, Nebraska 68131	24,669,778	(7)(8)					13.47%
The Vanguard Group 100 Vanguard Blvd., Malvern, Pennsylvania 19355	13,793,180	(9)					7.53%
BlackRock Inc. 55 East 52nd Street, New York, New York 10055	12,949,795	(10)					7.07%
TCI Fund Management Limited Christopher Hohn, 7 Clifford Street, London, W1S 2FT, United Kingdom	9,212,287	(11)					5.03%

* Represents less than 1% of the outstanding Common Stock.

Principal Shareholders

The following table contains information regarding each person we know of that beneficially owns more than 5% of our Common Stock. The information set forth in the table below and in the related footnotes was furnished by the identified persons to the SEC.

Name and address	Shares of Common Stock Beneficially Owned	
	Number of Shares	Percentage of Class
The Vanguard Group 100 Vanguard Blvd. Malvern, PA 19355	17,321,853(1)	11.1%
BlackRock, Inc. 55 East 52nd Street New York, NY 10055	12,707,776(2)	8.1%

(1) As of December 31, 2022, based on a Schedule 13G/A Information Statement filed with the SEC on February 9, 2023 by The Vanguard Group ("Vanguard"). The Schedule 13G/A reported that Vanguard has sole voting power as to 0 shares of our Common Stock and sole dispositive power as to 16,667,102 shares of our Common Stock.

(2) As of December 31, 2022, based on a Schedule 13G/A Information Statement filed with the SEC on February 3, 2023 by BlackRock, Inc. ("BlackRock"). The Schedule 13G/A reported that BlackRock has sole voting power as to 11,576,440 shares of our Common Stock and sole dispositive power as to 12,707,776 shares of our Common Stock.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information regarding the ownership of CoreLogic Common Stock as of March 29, 2021 by the persons or groups of stockholders who are known to us to be the beneficial owners of more than 5% of our shares of CoreLogic Common Stock as of March 29, 2021 (using the number of shares outstanding on this date for calculating the percentage). The information regarding beneficial owners of more than 5% of CoreLogic Common Stock is based solely on public filings made by such owners with the SEC.

Name of Beneficial Owner	Amount and Nature of Beneficial Ownership	Percent of Class
The Vanguard Group(1)	6,816,293	9.2%
BlackRock, Inc.(2)	6,435,505	8.7%
Pentwater Capital Management LP(3)	3,850,000	5.2%

(1) Share count is based on a Form 13F-HR filed February 12, 2021, reporting beneficial ownership as of December 31, 2020. According to a Schedule 13G/A filed February 10, 2021, as of December 31, 2020, these securities are owned by The Vanguard Group, a registered investment adviser with shared voting power with respect to 52,684 shares, sole dispositive power with respect to 6,698,562 shares and shared dispositive power with respect to 117,731 shares. The address of the principal business office of the reporting entity is 100 Vanguard Boulevard, Malvern, Pennsylvania 19355.

(2) Share count is based on a Form 13F-HR filed February 5, 2021, reporting beneficial ownership as of December 31, 2020. According to a Schedule 13G/A filed January 29, 2021, as of December 31, 2020, BlackRock, Inc. is a parent holding company with sole voting power with respect to 6,176,633 shares and sole dispositive power with respect to 6,435,505 shares, reporting on behalf of certain related subsidiaries. The address of the principal business office of the reporting entity is 55 East 52nd Street, New York, New York 10055.

(3) Share count is based on a Schedule 13D filed February 18, 2021, reporting beneficial ownership as of February 16, 2021. According to such Schedule 13D, Pentwater Capital Management LP is a registered investment adviser with sole dispositive power with respect to 3,850,000 shares. The address of the principal business office of the reporting entity is 1001 10th Avenue South, Suite 216, Naples, Florida 34102.

July 12, 2023

The Honorable Ricardo Lara
Insurance Commissioner
State of California
300 Capital Mall, Suite 1700
Sacramento, CA 95814

Re: Workshop Examining Catastrophe Modeling and Insurance (REG-2023-00010)

Dear Commissioner Lara:

Polls show a growing concern among Americans about the corporate use of black box models[i] – secret algorithms and Artificial Intelligence – to determine whether people will have access to products and services they require, and at what price. Insurance companies are looking to these same complex and opaque technologies to evade regulations that have kept insurance rates and premiums transparent and justified in California for decades.

Protecting California homeowners, motorists, and small businesses against the reckless use of unjustified secret models is insurance reform Proposition 103, passed by voters 35 years ago after an insurance access crisis nearly identical to the one the industry has created in California over the last five months. Proposition 103 mandates that "no [insurance] rate may be excessive, inadequate or unfairly discriminatory." Its robust, nationally-recognized framework of consumer protections requires transparency, justification, and approval before an insurance company can increase insurance rates. The subject of this workshop is one of the law's principal safeguards against unjustified rates and discriminatory practices: Ins. Code Sec. 1861.07.

Your question today is whether the use of catastrophe models to predict climate risk can comport with California's consumer protection laws mandating that insurance rates be justified through a process of transparent public review and participation. The answer is Yes, and the method is straightforward: Create a public model.

The insurance industry's pursuit of profit has already shifted all of the costs of climate change onto homeowners, by non-renewing policies, increasing premiums, delaying and denying smoke and fire claims, and threatening a wholesale pullout from the state if they do not get their way. Insurers simultaneously refuse to acknowledge or address their own significant contributions to climate change by insuring and investing in fossil fuels. They are now seeking to use private climate models to unjustifiably manipulate rates even higher. This is why

Proposition 103's requirement of public scrutiny and accountability is more necessary than ever.

For insurance companies, climate change is a convenient stalking horse for their real agenda: deregulation of oversight and accountability in California. Private, for-profit catastrophe models serve as a backdoor route to deregulation, because their black box nature makes it impossible for regulators or the public to understand what prices are based on or if they're getting it right.

Yet nothing about a catastrophe model *needs* to be proprietary or secret. A public model that is open to the scrutiny of the public, press and policymakers will keep insurance companies honest by forcing them to adjust their rates based on an impartial and objective analysis of wildfire risk and the impact of loss prevention practices on that risk.

Catastrophe models are not a panacea. A model developed and implemented in a fully transparent way can, however, enable California to better plan for a changing climate. A public model is necessary because the insurance industry's fixation on short term profits is incompatible with the interests of the people who live here.

Ultimately, our focus must be on stability in insurance access and affordability for homeowners by *reducing* the risks posed by climate change. The state's long climate leadership and deep bench of top academics, engineers, scientists and technologists uniquely situate our state to build a public model to serve all Californians.

This testimony discusses:

1) The purpose and legal requirements of Proposition 103 that require transparency, particularly Ins. Code Sec. 1861.07 and the court cases that have upheld that requirement.

2) The opacity of black-box private models.

3) How private catastrophe models' secrecy would derail the ability of regulators and the public to review rates and confirm they are justified.

4) Examples of private models' inconsistency and bias across financial industries.

Secrecy Enabled and Exacerbated the Insurance Crisis in the Mid-1980s That Led to the Passage of Proposition 103

In the mid-1980s, California was struck by a massive insurance crisis, which destabilized the Golden State's economy, punishing consumers and businesses alike with skyrocketing premiums and refusals to sell – just as the industry is doing today. Contemporary independent studies[ii] concluded that the threshold problem was that neither the public nor policymakers

had the ability to assess the validity of the insurance companies' rates and underwriting practices. Specifically, the Insurance Commissioner had no authority to collect adequate information regarding insurance rates and practices, no authority to limit industry profiteering and market destabilizations, and there was no opportunity for members of the public to participate in any regulatory process.

Prop 103 Requires Public Disclosure of Models

Prop 103 declared that: "Enormous increases in the cost of insurance made it both unaffordable and unavailable to millions of Californians" and that the "existing laws inadequately protect consumers and allow insurance companies to charge excessive, unjustified and arbitrary rates."

Insurance Code section 1861.07 requires that "All information provided to the commissioner pursuant to this article [Proposition 103] shall be available for public inspection, and the provisions of Section 6254(d) of the Government Code and Section 1857.9 of the Insurance Code [statutes barring disclosure of industry information] shall not apply thereto."

Section 1861.07 therefore requires public disclosure of any information provided to the Commissioner in connection with review of an insurer's rate application, which must include as required by section 1861.05(b): "all data referred to in Sections 1857.7, 1857.9, 1857.15, and 1864 and such other information as the commissioner may require."

The use of models in insurance matters is subject to 1861.07. The Commissioner's recent wildfire risk mitigation regulations specifically acknowledge that models used to determine a homeowner's risk for purposes of classifying individual structures or estimating losses corresponding to such classifications (Wildfire Risk Scores) must be filed with the Commissioner and made available for public inspection pursuant to 1861.05(b) and 1861.07. (10 CCR §2644.9(f).)

The California Supreme Court Has Confirmed that there are No Exceptions to the Disclosure Requirement.

State Farm has twice challenged the application of 1861.07's disclosure requirement in court. In each case, State Farm claimed that its data are "proprietary in nature" and constitute "trade secret material" that were privileged and exempt from the disclosure mandate of 1861.07.

In a 2004 ruling rejecting State Farm's argument, the California Supreme Court concluded that section 1861.07 set forth a "broad disclosure mandate," finding that it "broadly requires public disclosure of '*[a]ll* information provided to the commissioner pursuant to' article 10." (*State Farm Mut. Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043-1044 (original italics).) It found that "the drafters [of Proposition 103] established a public hearing process for

reviewing insurance rate changes" in order to "enable consumers to permanently unite to fight against insurance abuse." (*Id*. at p. 1045 (quotations and citations omitted).) The Supreme Court rejected State Farm's attempt to withhold "trade secret data." "State Farm may not invoke the trade secret privilege to prevent disclosure of its … data under Insurance Code section 1861.07." (*Id* at pp. 1046-1047.)[iii]

Notwithstanding the California Supreme Court's definitive decision, State Farm once again sued to conceal its financial data in a 2015 hearing on its application for an increase in its homeowners insurance rates, which Consumer Watchdog challenged. Insurance Commissioner Dave Jones rejected State Farm's arguments. State Farm then sued to overturn the Commissioner's decision, but its claims were rejected by the San Diego Superior Court.

The Insurance Commissioner Has Historically Enforced 103's Disclosure Requirement

Since the passage of Proposition 103, California Insurance Commissioners have long defended section 1861.07's absolute disclosure requirement. Commissioners Harry Low and John Garamendi urged the California Supreme Court to reject State Farm's first challenge.

As Commissioner Jones explained in a 2018 brief opposing State Farm's second lawsuit, "the unambiguous language of section 1861.07 requires that all documents and testimony provided to the Commissioner as part of a rate proceeding be open to public inspection."

And, as noted above, Section 2644.9(f) of Insurance Commissioner Lara's recent wildfire risk mitigation regulations requires full disclosure of wildfire risk models:

> Any rating plan, or Wildfire Risk Model submitted to the Commissioner in connection with a complete rate application pursuant to subdivision(c) of this section, or any additional documentation relating to such rating plan or model as may be requested by the Commissioner during the review of any such application, including any records, data, algorithms, computer programs, or any other information used in connection with the rating plan or Wildfire Risk Model used by the insurer which is provided to the Commissioner, shall be available for public inspection pursuant to Insurance Code sections 1861.05, subdivision(b), and 1861.07, regardless of the source of such information, or whether the insurer or the developer of the rating plan or Wildfire Risk Model claims the rating plan or Wildfire Risk Model is confidential, proprietary, or trade secret. Pursuant to Insurance Code section 1855.5, subdivision(a), a Wildfire Risk Model as defined in subdivision(b)(6) of this section that is made available by an advisory organization to its members for use in California shall be filed with the Commissioner and made available for public inspection.

Private Models are in Conflict with Proposition 103's Transparency Requirements

Private modeling firms (and insurers that develop aspects of models in-house) consistently assert intellectual property and trade secret protections that are incompatible with 1861.07's transparency requirements.

The American Academy of Actuaries emphasizes this point: "While the technical documentation of the models is available to users for their general knowledge, some core assumptions are considered proprietary and are not readily accessible to users. A catastrophe model is developed by a group of scientists (meteorologist, seismologist, hydrologist, statisticians, engineers, actuaries, computer scientist, etc.) with specialized knowledge in different fields. It is not an easy task for model users to develop even a basic understanding of the model, as required by U.S. actuaries' standards of practice."[iv]

Descriptive disclosures of the science and engineering that goes into a model and test cases of a model's outputs are too generalized to allow regulators or the public to adequately verify a model's inputs and assumptions or confirm whether its impact on rates is justified.[v]

Insurance Companies Resist Disclosure of Models in their Current Narrow Use in California – for Earthquake Loss Projection

The only case in which insurance companies are allowed to use private catastrophe models to make loss projections for determining overall rates in California is for earthquake (and fire following earthquake) insurance rates. (10 CCR § 2644.4(e).) In 2004 and 2007, Consumer Watchdog challenged the use of the RMS Risk Link 4.3 EQ model used to support earthquake insurance rate increases proposed by two insurers. Over the course of public hearings in those challenges the modeler withheld from the public and regulators – over Consumer Watchdog's objections – critical information needed to review and verify the validity of the model's impact on proposed rates.

Safeco sought a 29.8% rate increase; an Administrative Law Judge (ALJ) and the Insurance Commissioner ultimately approved a 13.2% rate increase after a public hearing. Among many issues raised, Consumer Watchdog's scientific expert found the RMS model over-predicted the frequency of earthquakes in comparison to other models that more closely met the actual historical earthquake experience, including the USGS and California Geological Survey, and the ALJ and the Commissioner agreed.[vi]

The expert testified that the company also failed to disclose a key component of the model that is used to describe the strength of a quake based on soil conditions and distance from the quake's source. It is impossible for an independent scientist to weigh the validity of a model's rate output without full access to such information. The Department of Insurance also did not obtain or review this information.

In a second case challenging GeoVera's proposed 6.8% rate increase, ultimately the parties stipulated to a 0% overall increase approved by an ALJ and the Commissioner. During the proceeding, Consumer Watchdog's actuary sought to verify an area of potential manipulation or inaccuracy that is also a factor in wildfire models: How the model amplified losses post-event. These are the assumptions a model makes about how much a large catastrophic event is likely to increase rebuilding costs beyond current market values - including how it treats inflation, replacement cost and demand surge projections. In the case in question, he estimated the RMS model overstated projected losses by about 30% or more, however the exact amount was unknown due to the company's refusal to disclose its proprietary method of calculating replacement cost values.[vii]

It is easy to see how over-projecting replacement costs leads to excessive or unjustified rates. If such financial assumptions are built into a model, the public and regulators must have full access to evaluate the methodology behind such assumptions and determine if the model's outputs are reasonable and fair.

How Do We Ensure Models Treat Consumers Fairly?

Below we pose just a few of the questions that regulators and the public must be able to ask – the answers to which proprietary catastrophe models hide – to determine whether a model is producing rates that are excessive, inadequate, or unfairly discriminatory:

- A key question about a model's impact on rates concerns the relative weight for each input variable (risk factor) in the model. These weights result from analyses performed within the model based on a dataset used to calibrate the model's initial parameters ("training data"). Depending on a model's construction, small changes to the weights can become highly leveraged, resulting in substantial variability in the model's output. Consumers and their advocates have a legal right to know which risk factors are being used to calculate insurance premiums. They also need to be able to understand the sensitivity of a model's results to changes in risk factor values and their relative weights. Yet details about how a model weights different factors is exactly the kind of information companies protecting a proprietary model will be unwilling to disclose.
- What are the input variables (risk factors) used in the model?
    - Typically, the risk factors selected for use in the final model have a demonstrable causal relationship with the peril being modeled, e.g. vegetation density or proximity to outbuildings for wildfire risk. However, it is entirely possible for risk factors with no obvious causal connection to the peril being modeled to demonstrate a high level of predictive significance. In such cases, the modelers must ascertain whether the seemingly unrelated variable is acting as a proxy for another, more sensible risk factor, or perhaps for a different risk factor that is disallowed due to inherent bias. Regulators and consumer representatives must have the ability to ask the same questions.

- How are elements that tend to fluctuate in value and have a significant impact on model output, such as inflation, demand surge, construction and labor costs, etc., treated in the model?
- What are all data types used in the initial development of the model; what is included in the training data?
    - According to the insurance analytics firm GuideWire,[viii] historically there have been two primary sources of modeling data for wildfires: US Census block groups and US Forest Service vegetation imagery data. GuideWire boasts it has improved on this by using, "30-meter vegetation resolution with cutting-edge geospatial tools to deliver highly accurate assessments of wildfire risk". Generalized selling points such as this are not robust enough to support a model's efficacy in improving the accuracy of the ratemaking process. What data do these "cutting-edge" tools collect and how do they impact the model's assessment of risk?
- How is risk scoring determined for quantitative variables that have multiple components (e.g. Fire station proximity: Physical distance, staffing, average drive duration, complications in an active wildfire scenario, etc.)
- Are broad public policy changes that address climate change and the risk of wildfire -- such as California's plan to achieve Net Zero carbon emissions by 2045,[ix] or the legislatively-mandated multi-billion dollar investments by California utilities in wildfire mitigation[x] -- taken into consideration?
- What about developments that impact insurers' projected financial losses? California law holds utility companies responsible for damage caused by any fire ignited by their equipment, whether found negligent or not. Does the model account for the fact that the insurance industry will not ultimately be responsible for all losses from the fires it predicts? PG&E and Edison made $12.1 billion in insurance subrogation payments for damage from fires the utilities caused in 2017-18, including the massive Camp Fire.[xi] The California Wildfire Fund[xii] was then established by the legislature in 2019 for the purpose of providing a source of money to pay or reimburse participating utility companies (San Diego Gas & Electric, Southern California Edison, and Pacific Gas & Electric) for eligible claims – including those paid as subrogation to insurance companies – that result from a wildfire. The Fund is capitalized by utility companies and ratepayers.
- How does the model control for overfitting? (model output regurgitates historic data vs using historic data to generate unique hypothetical scenarios)
- How much uncertainty is attached to model outputs because of errors in the model inputs and simplifying assumptions?
- How current is the data for elements such as population density, building codes, zoning changes, forest management, etc.?
- Is the model developed on a single company or insurer group's data, or on a broader data set such as industry-wide?

- Can the model be tested against past wildfire events to find out how accurately it predicts them?

Catastrophe Models Produce Inconsistent Results

In materials submitted to regulators documenting its U.S. Wildfire Model, the private modeling firm CoreLogic highlights the imprecision of catastrophe models:

"Modeling insured losses resulting from wildfires is an inherently subjective and imprecise process involving an assessment of information that comes from a number of sources and that may not be complete or accurate. Moreover, total insured loss for certain natural catastrophes may continue to evolve over a period of time. No model is, or could be, an exact representation of reality."[xiii]

In a frank Q&A about the insurance industry's push for catastrophe modeling published by industry consulting firm Milliman, Dag Lohmann, former vice president at modeling giant RMS, now-CEO of KatRisk, LLC, puts it more bluntly:

"Multiple modelers could develop a wildfire model from all the components in current literature, tune the models to reasonably validate with historical data, and ultimately have average annual losses ***2 or 3 times different than each other*** when projecting future losses."

Milliman goes on to argue: "These candid descriptions of variability in catastrophe modeling evoke the thinking of statistician George Box, who quipped that: 'All models are wrong, some are useful.' In other words, a good model can provide users with significant value in spite of outstanding uncertainties as to model precision. ***Model validation, as well as rigorous review of model operations and assumptions, are critical steps in assessing whether this value can be extracted from a cat model, given its intended use.***" [xiv] *[emphasis added]*

The industry itself acknowledges models' accuracy and value must be subject to "rigorous review." The modeler and the insurance industry cannot be the only players with the ability to conduct such reviews. Models protected as trade secrets will prevent verification of their science and their math, and regulators and consumer representatives would be left with inconsistent outputs and uncertainties that can't be explained. Models' mechanisms must be accessible to regulators and the public.

At the Virtual Meeting Regarding Home Hardening and Wildfire Catastrophe Modeling held by the California Department of Insurance on December 10, 2020, Allan Schwartz, Fellow of the Casualty Actuarial Society and a Member of the American Academy of Actuaries, presented testimony that illustrates how this variability manifests in the private earthquake models already in use in California:

"On multiple occasions over the last several years, the models consulted by insurance companies had dramatic differences in the results:

- In a Pacific Specialty Insurance Company rate filing, the leading RMS Model projected Fire Following Earthquake (FFEQ) loss was 263% of the projected FFEQ loss from RMS's leading competitor AIR.[xv]
- In a State Farm filing, the projected loss for Owner, Condo and Tenant coverage from the highest model projections were as much as 368% of the projected FFEQ loss from the lowest model projection.[xvi]
- And in a CSAA rate filing, one model's projection was 237% of another's.[xvii]

Mr. Schwartz questions the reliability of assumptions based on widely different outputs:

"Modelers often state that different models can be expected to give varying results because each modeler can use different assumptions, formula, parameters, and other inputs. While models cannot be expected be give the exact same results, it is reasonable to expect that the results from different models should be within an acceptable range. Results that vary from more than 100% to more than 250% could easily be considered to be outside an appropriate range."

With proprietary models, the CDI and the public are prohibited from looking inside the black box to determine the reason for such discrepancies and the best result.

These model inconsistencies are highlighted throughout financial and environmental regulation.

As stated by the Court of Appeals for the D.C. Circuit in Sierra Club v. Costle, 657 F.2d 298, 332 (D.C. Cir. 1981) (Robb, J.), which was reviewing an econometric model used by the Environmental Protection Agency:

> . . . models, despite their complex design and aura of scientific validity, are at best imperfect and subject to manipulation . . . .The results ultimately are shaped by the assumptions adopted at the outset, and can change drastically for a given set of input data if key assumptions are adjusted even slightly. The accuracy of the model's predictions also hinges on whether the underlying assumptions reflect reality, which is no small feat in this volatile world. (Citations omitted.)

For this reason, courts and regulatory agencies that have accepted computer models as evidence have also demanded that the underlying source data, assumptions, and methodologies be disclosed.[xviii]

Black-Box Models Harm Consumers

Across the economy, automated decisions made by undisclosed proprietary algorithms have become the unseen hand of discrimination, preventing the most vulnerable members of society from achieving important life goals. Credit scores alone have infected every aspect of Americans' personal lives, reflecting and exacerbating systemic racial and financial inequities. Discrimination occurs when people seek a mortgage, apply for a job, credit, school, apartment, or government benefits. Lower income individuals, people of color, women, and other disadvantaged communities are hardest hit by decisions made as a result of black box algorithms.[xix]

ProPublica launched an analysis of algorithmic bias in risk assessment software used to make criminal sentencing, bail and rehabilitation decisions in Broward County, Florida. The software, based on a for-profit company's algorithm, predicted violent crime correctly just 20% of the time, wrongly labeled Black defendants as future criminals twice as often as white defendants, and conversely mislabeled white defendants as low-risk more often than Black defendants.[xx]

University of California Berkeley researchers found that the mortgage lenders charge higher interest rates to Black and Latino borrowers than white borrowers. "The mode of lending discrimination has shifted from human bias to algorithmic bias," said study co-author Adair Morse, a finance professor at the Haas School of Business which published the study. "Even if the people writing the algorithms intend to create a fair system, their programming is having a disparate impact on minority borrowers — in other words, discriminating under the law." The discrimination cost those homebuyers up to half a billion dollars more in interest every year than white borrowers with comparable credit scores.[xxi]

Uber and Lyft pricing algorithms charge a higher price-per-mile for rides that originate in more diverse neighborhoods than they do in more white neighborhoods, according to a study analyzing Chicago transport and census data conducted by George Washington University researchers.[xxii]

The potential bias in opaque catastrophe models is no less damaging to consumers' financial health. A public model will allow for the most rigorous testing to root out bias.

Consumer advocates and progressive lawmakers are battling in state and federal legislative bodies, regulatory agencies and the courts against secret algorithmic manipulation that creates disadvantage across our financial lives. In the insurance space California is ahead of the game because Proposition 103 mandates transparency. Allowing insurance companies to price home insurance behind closed doors would take California backwards.

Financial Industry Climate Prediction Software in Particular Faces Academic Scrutiny for Reliability and Bias

Despite years of warnings that climate change threatens the insurance industry, and despite significant regulatory developments abroad, U.S. and California climate-related supervision and regulation of insurers remains limited. The California Department of Insurance recently required insurers to report their fossil fuel investments, yet insurers' deep exposure to climate risk from fossil fuel underwriting has yet to be acknowledged.[xxiii]

Banking and securities financial regulators have gone farther in incorporating the risks of climate change into oversight. Yet the for-profit models financial companies in particular rely on to make those predictions are full of loopholes, flawed financial incentives, bias and uncertainty that threaten to leave us worse off, rather than better, in imagining the financial impacts of a changing climate.

A forthcoming law review article by Boston School of Law Professor Madison Condon brings together the public interest critique of private models for financial regulation.[xxiv] She writes:

"[A]ctionable and transparent information about our climate-changed future is a public good that the private sector cannot be depended upon to provide equitably or reliably. Further, all private climate services rely on upstream climate data and models that were collected and produced by an enormous network of public institutions. … This Article urges state and federal governments to invest in their own climate services capacity at a scale not currently contemplated. Risk assessments lacking a scientific basis can lead to maladaptation across the economy."

The article is a must-read as California considers how to best respond to a changing climate while protecting insurance consumers. Among its points:

- The secrecy of private models hides uncertainty and error and prevents evaluation by the user and the regulator.
    - An example is the arena of ESG governance, where physical risk scores produced by leading firms have been found to have little correlation with one another.
- Private modeling firms have financial conflicts of interest, with many owned by the very rating agencies whose products rely on their outputs. For example, RMS one of the largest modeling firms is owned by Moodys.
    - Financial conflicts at the ratings agencies was a major topic of scrutiny after the 2008 financial crisis when it became clear they had mispresented the risks of mortgage-backed securities.
- Extreme weather events have disproportionately impacted Black and brown communities. Data bias will mean those communities are also most likely to be affected by models that consider them riskiest, and therefore least profitable to insure.

- Private models are designed to maximize short term profits, given the 1-year term of a standard insurance policy, while a public interest frame for the use of climate models should be mitigating risk, not short-term rate-setting.
- Models privatize the public data they are built on.

A Public Catastrophe Model Would Comply with 1861.07 and Best Protect Californians

A public interest framework for the use of catastrophe models in insurance rating in California would insure the most people at the lowest price while incentivizing homeowners to reduce climate risk. The insurance industry has long pursued the opposite strategy, seeking to weed out homeowners who are more likely to make claims, and the secrecy of the private modeling industry serves as a tool to that end. California has the opportunity to create a public model that instead serves all Californians. A public model would prioritize equity, reliability, affordability, transparency, risk reduction, and accountability.

Sincerely,

Carmen Balber
Executive Director

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[i] Atske, Sara. "Public Attitudes Toward Computer Algorithms | Pew Research Center." *Pew Research Center: Internet, Science & Tech*, 7 July 2020, www.pewresearch.org/internet/2018/11/16/public-attitudes-toward-computer-algorithms.

[ii] In a study commissioned by the California State Assembly, "Insurance in California: A 1986 Status Report for the Assembly (October 1986)," Robert Hunter of the National Insurance Consumer Organization noted the refusal of the insurance industry to disclose data regarding losses and its finances. The "Little Hoover Commission" (The Commission on California State Government Organization and Economy) issued *A Report on the Liability Insurance Crisis in the State of California* in July 1986 noting that, "the Commissioner does not collect, nor have the authority to collect, adequate information regarding insurance rates"; "without good information, sound decision-making is difficult.... Without adequate information, the role of the Insurance Commissioner can only be reactive."

[iii] *State Farm v. Garamendi* also rejected State Farm's argument that the second clause of section 1861.07, which states that two specific statutory exemptions from disclosure do not apply, left intact other exemptions from disclosure under the Public Record Act, such as Government Code section 6254(k), which exempts trade secret information. The court held that, given the inclusive language used in the first clause, those two exemptions "are meant to be examples rather than an exhaustive listing of all those statutory exemptions that are inapplicable." "[T]he language of Insurance Code section 1861.07, when viewed in context, is not ambiguous and, by its terms, requires public disclosure of [State Farm's purported trade secret information]." https://scocal.stanford.edu/opinion/state-farm-v-garamendi-33393

[iv] Cleary, Kay, et al. "Uses of Catastrophe Model Output." American Academy of Actuaries p34, July 2018 https://www.actuary.org/sites/default/files/files/publications/Catastrophe_Modeling_Monograph_07.25.2018.pdf

[v] Actuarial Standard Of Practice "No. 38 – U.S. Wildfire Model." *Corelogic,* Aug. 2018, https://consumerwatchdog.org/wp-content/uploads/2023/07/ASOP-38-Corelogic-CA-Wildfire-Model-State-Farm.pdf

[vi] "In the matter of the Rate Application of: First National Insurance Company of America, SAFECO Insurance Company of America, and SAFECO Insurance Company of Illinois. Direct Written testimony of Dr. David Jackson" *Consumer Watchdog*, Dec. 2022, https://consumerwatchdog.org/wp-content/uploads/2023/07/Safeco-EQ-Redacted-Jackson-DWT1_Redacted-copy.pdf

[vii] "In the Matter of the Rate Application of, Geovera Insurance Company. Direct testimony of Allan I. Schwarts" *Consumer Watchdog*, https://consumerwatchdog.org/wp-content/uploads/2023/07/91_-Redacted-Pre-Filed-Direct-Testimony-of-Allan-I-Schwartz-GeoVera.pdf

[viii] "California Making Waves in Wildfire Insurance Regulation." *Guidewire*, 8 Dec. 2022, https://www.guidewire.com/blog/technology/california-making-waves-in-wildfire-insurance-regulation/

[ix] California, State Of. "California Releases World's First Plan to Achieve Net Zero Carbon Pollution | California Governor." *California Governor*, 16 Nov. 2022, https://www.gov.ca.gov/2022/11/16/california-releases-worlds-first-plan-to-achieve-net-zero-carbon-pollution/

[x] *Wildfire Mitigation Plan*. https://www.pge.com/en_US/safety/emergency-preparedness/natural-disaster/wildfires/wildfire-mitigation-plan.page

[xi] Press Release, *PG&E Executes Definitive Agreement Resolving Insurance Subrogation Claims Relating to 2017 and 2018 Wildfires*, 23 Sep., 2019, https://investor.pgecorp.com/news-events/press-releases/press-release-details/2019/PGE-Executes-Definitive-Agreement-Resolving-Insurance-Subrogation-Claims-Relating-to-2017-and-2018-Wildfires/default.aspx; Press Release, *SCE Resolves All Insurance Subrogation Claims For The Thomas, Koenigstein Fires And Montecito Mudslides*, 23 Sep., 2020, https://newsroom.edison.com/releases/sce-resolves-all-insurance-subrogation-claims-for-the-thomas-koenigstein-fires-and-montecito-mudslides.

[xii] "California Wildfire Fund." https://www.cawildfirefund.com/

[xiii] Actuarial Standard Of Practice "No. 38 – U.S. Wildfire Model." *Corelogic,* Aug. 2018, https://consumerwatchdog.org/wp-content/uploads/2023/07/ASOP-38-Corelogic-CA-Wildfire-Model-State-Farm.pdf

[xiv] "Wildfire Catastrophe Models Could Spark the Changes California Needs." *Milliman*, Oct. 2019, https://www.milliman.com/en/insight/wildfire-catastrophe-models-could-spark-the-changes-california-needs

[xv] SERFF Tracking #: PERR-132375306, State Tracking #: 20-1565, Company Tracking #: PSIC-HO3-CA-2001, Exhibit 9-1

[xvi] SERFF Tracking #: SFMA-131345773, Company Tracking # 18-1196: HO-40602, Exhibit 9, Page 6

[xvii] SERFF Tracking #: WSUN-132609750 State Tracking #: 20-4189 Company Tracking #: CA HO 2021, Exhibit 9

[xviii] Sierra Club v. Costle, 657 F.2d 298, 332 (D.C. Cir. 1981); American Public Gas Association v. Federal Power Commission, 567 F.2d 1016 (D.C. Cir. 1977) Alan Aldous, *Disclosure of Expert Computer Simulations*, VII COMPUTER LAW JOURNAL 51 (1987); John P. Barker, *Taking A Byte Out Of Abusive Agency Discretion: A Proposal For Disclosure In The Use Of Computer Models*, 19 UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM 637 (1986); James A. Wilson, *Methodologies As Rules: Computer Models and the APA*, 20 COLUMBIA JOURNAL OF LAW AND SOCIAL PROBLEMS 168 (1986)Alan Aldous, *Disclosure of Expert Computer Simulations*, VII COMPUTER LAW JOURNAL 51 (1987); John P. Barker, *Taking A Byte Out Of Abusive Agency Discretion: A Proposal For Disclosure In The Use Of Computer Models*, 19 UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM 637 (1986); James A. Wilson, *Methodologies As Rules: Computer Models and the APA*, 20 COLUMBIA JOURNAL OF LAW AND SOCIAL PROBLEMS 168 (1986) https://casetext.com/case/sierra-club-v-costle

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[xxi] Counts, Laura. "Minority Homebuyers Face Widespread Statistical Lending Discrimination, Study Finds." *Haas News | Berkeley Haas*, Nov. 2019, https://newsroom.haas.berkeley.edu/minority-homebuyers-face-widespread-statistical-lending-discrimination-study-finds/

[xxii] Lu, Donna. "Uber and Lyft Pricing Algorithms Charge More in Non-white Areas." *New Scientist*, 22 June 2020, https://www.newscientist.com/article/2246202-uber-and-lyft-pricing-algorithms-charge-more-in-non-white-areas/

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[xxiv] Condon, Madison. "Climate Services: The Business of Physical Risk." *Social Science Research Network*, RELX Group (Netherlands), Jan. 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4396826

EXHIBIT 9

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

March 14, 2024 REG-2023-00010

INVITATION TO WORKSHOP REGARDING CATASTROPHE MODELING AND RATEMAKING

The California Department of Insurance ("Department") will conduct a workshop to discuss the following contemplated changes: (1) amending California Code of Regulations, Title 10, Chapter 5, Subchapter 4.8, Article 4, Sections 2644.4, 2644.5, 2644.8, and 2644.27, and adding to Article 4 new Section 2644.4.5; and (2) amending California Code of Regulations, Title 10, Chapter 5, Subchapter 4.9, Article 3, Section 2651.1 and adding new Article 3.1, Section 2651.10. The purpose of the contemplated changes is to allow property and casualty insurers to use catastrophe models for purposes of ratemaking.

You are invited to participate in the workshop discussions. The purpose of this discussion is to provide interested and affected persons an opportunity to present statements or comments regarding the contemplated regulations.

Date, Time and Location

Date: April 23, 2024

Time: 2:00 p.m. The virtual workshop shall continue until all in attendance wishing to provide comments have commented, or 5:00 p.m., whichever is earlier.

Location: Link to Register for the Web-based Virtual Format:

https://us06web.zoom.us/webinar/register/WN_5qoIrbAmRdqzrunzpjpblw

Attendance. To increase public participation and improve the quality of any regulations that the Commissioner ultimately adopts, interested parties are invited to attend the virtual meeting and offer comment, if they so choose.

Please note that under the California Public Records Act (Government Code section 6250, et seq.), your written and oral comments, and associated contact information (e.g., your address, phone number, e-mail, etc.) become part of the public record and may be released to the public upon request.

The telephonic call-in line to be used for the public hearing is accessible to persons with hearing impairment. Persons with sight or hearing impairments are requested to notify the logistical contact person for these discussions (listed below) in order to review available accommodations, if necessary.

Please direct all inquiries regarding the workshop to the contact persons named below.

Regulation Text. For purposes of promoting discussion, draft texts of the proposed regulatory changes are attached. Participants should be prepared to present specific comments on the attached draft regulation texts during the public discussions. Participants are also invited to submit written statements and are encouraged to provide supporting documents and materials as well.

The draft regulation text attached here concerns the portion of Commissioner Lara's Sustainable Insurance Strategy pertaining to catastrophe modeling. This draft text addresses, among other things, the use of catastrophe modeling in the rate approval process, the transparency requirement of Insurance Code section 1861.07, and the incorporation of wildfire safety measures.

Public Input Regarding Alternatives. In connection with this workshop discussion, the Department hereby seeks public input regarding alternatives to the contemplated regulations.

Please provide written or oral comments outlining any alternatives that would secure the same benefits as the contemplated regulations allowing property and casualty insurers to use catastrophe models in support of rate applications. The anticipated benefits of the contemplated regulations include, without limitation, the following:

- Improving pricing accuracy and rate stability by allowing insurers to use additional tools to assess prospective exposure to catastrophe losses in their rate calculations.
- Promoting availability of insurance in areas that have been underserved by improving pricing accuracy and encouraging a more competitive market.
- Promoting fairness as models can more timely account for risk mitigation trends as a result of risk mitigation actions taken at community and property levels.
- Encouraging uniformity and consistency in insurance ratemaking by allowing the use of scientifically, computationally, and actuarially sound models to project catastrophe losses in property and casualty lines, a practice allowed in other states.
- Increasing openness and transparency in business and government by establishing a procedure to allow for thorough investigation of a model to determine what information and data is pertinent to using that model in ratemaking.
- Clarifying and expediting the review of modeled catastrophe loss projections and overall rate review process by establishing the role of a Model Advisor to direct a new procedure specified by these regulations and make determinations as to what constitutes required model information in a rate application. Without this procedure, model disputes would likely occur during the rate application, potentially leading to lengthy delays in the rate review and approval process.
- Standardizing the usage of nonmodeled losses to streamline the rate review approval process, minimize disputes, and allow for the more focused review and faster approval of rate applications.

For each suggested alternative, please provide analysis and supporting information in your comments detailing the economic impact on entities that would be subject to or affected by the

contemplated regulations. Please provide this input regarding alternatives to the contact for substantive inquiries, using the contact information below, by April 23, 2024.

This is Not a Formal Public Hearing on Proposed Regulations. Please be advised that participation in this workshop will be in addition to, and not in substitution for, any participation in any formal rulemaking process that may follow. This invitation to the workshop does not constitute a Notice of Proposed Action. Consequently, comments (oral or written) received in connection with this workshop discussion might not be included in any record of rulemaking that may follow. Similarly, the Department is not required to respond to comments received in connection with the workshop discussion. For this reason, if you wish to have comments included in any rulemaking file that may follow, or if you wish for the Department to respond to your comments as part of the process by which it adopts this regulation, you must present your comments during the public comment period according to the procedures outlined in any Notice of Proposed Action.

Again, comments submitted in connection with this discussion will not be considered in any subsequent rulemaking proceeding unless they are resubmitted after the Notice of Proposed Action is issued. However, the Commissioner will consider public comments received in this workshop discussion when contemplating regulatory changes that may be proposed in a Notice of Proposed Action.

Contact Persons. All substantive questions and concerns regarding the contemplated regulations and/or these public discussions should be directed to Jon Phenix, using the contact information below. Please submit any written comments via electronic mail to CDIRegulations@insurance.ca.gov by April 23, 2024.

Logistical Inquiries
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STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
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WORKSHOP DRAFT TEXT OF REGULATION

CATASTROPHE MODELING AND RATEMAKING

March 14, 2024 **REG-2023-00010**

Title 10. Investment
Chapter 5. Insurance Commissioner
Subchapter 4.8 Review of Rates
Article 4. Determination of Reasonable Rates

Amend Section 2644.4. Projected Losses.

(a) Unless projected losses are based on catastrophe models as permitted pursuant to subdivision (d) of this Section 2644.4, ~~P~~projected losses means the insurer's historic noncatastrophe losses per exposure, adjusted by catastrophe adjustment, as prescribed in section 2644.5, by loss development, as prescribed in ~~s~~Section 2644.6, and by loss trend, as prescribed in ~~s~~Section 2644.7.

(b) Projected losses shall be calculated by applying the loss development and loss trend factor separately to data from each accident -year, report year or policy year, as applicable, in the recorded period.

(1) For occurrence policies, projected losses shall be calculated on an accident-year basis. ~~However,~~

(2) ~~f~~For claims-made policies, projected losses shall be calculated on a report-year basis.

(3~~e~~) For mechanical breakdown and similar insurance as defined in subdivision (b) of Section 2642.7~~policies providing multi-year coverage, such as mechanical breakdown~~, projected losses may be calculated on a policy-year basis.

(c~~d~~) For professional liability and errors and omissions coverage, the insurer shall, in lieu of the computation of projected losses specified in ~~s~~Sections 2644.5 through 2644.7, tender an alternative computation of projected losses, which the Commissioner shall approve if the Commissioner finds the projection to have been made in the most actuarially sound ~~actuarial~~ manner. ~~Nothing in this section precludes the Commissioner from requiring the additional filing of~~The insurer shall also provide projected losses computed in the manner specified in ~~s~~Sections 2644.5 through 2644.7 and in any other manner as may be required by the Commissioner.

(d) For the earthquake, flood, or any other line of insurance for which projected losses are permitted to be modeled pursuant to subdivision (c) of Section 2644.4.5, projected losses may be based on catastrophe models.

~~(e) For the earthquake line of business and for the fire following earthquake exposure in other lines, projected losses and defense and cost containment expenses may be based on complex catastrophe models using geological and structural engineering science and insurance claim expertise. The use of such models shall conform to the standards of practice as set forth by the Actuarial Standards Board and the applicant shall have the burden of proving, by a preponderance of the evidence, that the model is based upon the best available scientific information for assessing earthquake frequency, severity, damage and loss, and that the projected losses derived from the model meet all applicable statutory standards.~~

Adopt Section 2644.4.5. Use of Catastrophe Models.

(a) Permitted uses.

(1) For the earthquake and flood lines, projected annual aggregate losses may be based on catastrophe models.

(2) The catastrophe adjustment for the fire following earthquake exposure, and for terrorism exposure, in lines other than earthquake and flood may be based on projected annual aggregate losses derived from catastrophe models.

(b) Wildfire exposure.

The catastrophe adjustment for wildfire exposure in lines of insurance other than earthquake and flood may be based on catastrophe models.

(c) Additional lines or exposures.

(1) In addition to the permissible uses of catastrophe models specified in subdivisions (a) and (b) of this Section 2644.4.5, at the Commissioner's discretion, models may be used in cases where limited historic insurance data is available:

(A) To project annual aggregate losses in lines of insurance other than those specified in subdivision (a)(1) of this section, or

(B) To determine the catastrophe adjustment for exposures to perils other than those specified in subdivision (a)(2) or (b) of this section.

(2) The Commissioner may allow modeling for such additional lines or exposures only if, taking into account the circumstances under which, and the conditions pursuant to which, modeling for the additional line or coverage in question is to be permitted, it is in the Commissioner's judgment reasonably foreseeable that permitting modeling would serve two or more of the following purposes of Proposition 103:

(A) Protecting consumers from arbitrary insurance rates and practices.

(B) Encouraging a competitive insurance marketplace.

(C) Ensuring that insurance is fair, available and affordable to all Californians.

(3) In the event the requirement of subdivision (c)(2) of this section is satisfied, the Commissioner's decision as to whether to allow modeling for additional lines or exposures shall be based upon the following factors:

(A) The degree to which the peril is newly recognized as a peril for ratemaking purposes.

(B) The degree to which a model is likely to be reliable for ratemaking purposes.

(C) The extent to which any historical insurance data is unavailable.

(D) The degree to which available historical insurance data is not predictive of future costs.

(d) Under no circumstances, however, will modeling be permitted for the reason that an individual company lacks data that is otherwise available.

(e) Catastrophe models shall be run on the insurer's in-force business as of the end of the most recent year in the recorded period.

(f) The use of catastrophe models shall conform to the standards of practice as set forth by the Actuarial Standards Board, and the applicant shall have the burden of demonstrating that

(1) the model is based upon what in the Commissioner's assessment is the best available scientific information for assessing frequency, severity, damage and loss,

(2) the applicant's use of its selected model(s) produces the most actuarially sound estimate of projected catastrophe losses,

(3) the projected losses derived from the model meet all applicable statutory, regulatory and other legal standards, and

(4) the model incorporates what in the Commissioner's assessment is the best available scientific information on risk mitigation at the property, community, and landscape scales, including risk mitigation initiated by local and regional utility companies.

(g) This section is hereby expressly included within the range of regulations sections specified in subdivision (a) of Section 2648.4, notwithstanding that this section's adoption is subsequent in time to the adoption of, or the effectiveness of any amendments to, Section 2648.4.

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805.

Amend Section 2644.5. Catastrophe Adjustment.

In those insurance lines and coverages where catastrophes occur, the actual catastrophic losses of any one ~~accident~~ year in the recorded period are replaced by an adjustment based on the average annual loss generated from one or more catastrophe models as described in Section 2644.4.5, or an adjustment based on a multi-year, long-term average of catastrophe losses net of actual and anticipated salvage and subrogation recoveries, as described in subdivision (b) of this section, or

except as prohibited in subdivision (e) of this section a combination of the methods specified in subdivisions (a) and (b).~~:~~

(a) For fire following earthquake, wildfire, and terrorism exposures in any line of insurance, an insurer may include an adjustment based on the average annual loss generated from one or more catastrophe models. The use of such models shall comply with the requirements set forth in subdivision (e) of Section 2644.4.5. Further, the average annual loss may be adjusted to include a provision for defense and cost containment expenses (DCCE), either by applying a historical ratio of noncatastrophe DCCE to noncatastrophe loss or by applying a historical ratio of catastrophe DCCE to catastrophe loss.

(b) In any event, an insurer may project its catastrophe adjustment~~loading~~ based on a multi-year, long-term average of catastrophe ~~claims~~losses and DCCE, net of actual and anticipated salvage and subrogation recoveries. Catastrophe adjustment for perils other than those that are permitted to be modeled under subdivision (a) of this section or pursuant to subdivision (c) of Section 2644.4.5 must be based on such multiyear long-term average.

(1) For residential and commercial property lines, the adjustment shall be based on the average of the ratio of ultimate catastrophe losses and DCCE to amount of insurance years (AIY). For private passenger and commercial automobile physical damage, the adjustment shall be based on the average of the ratio of ultimate catastrophe losses and DCCE to ultimate noncatastrophe losses and DCCE.

(2) The number of years over which the average shall be calculated shall be at least 20 years for ~~homeowners multiple peril fire,~~residential and commercial property lines and at least 10 years for private passenger, and commercial, auto physical damage. Where the insurer does not have enough years of data, or has a limited amount of data for years for which it does have data, the insurer's data shall be supplemented by appropriate data for those years. The number of years over which the average shall be calculated for any other line with catastrophe exposure that is permitted under this subdivision (b) to have a catastrophe adjustment shall be based on the most actuarially sound assumptions. There shall be no catastrophe adjustment for private passenger, or commercial, auto liability.

(c) Regardless of which method is used for catastrophe adjustment, insurers shall submit all of the following, based on the data aggregation method used for the recorded period, whether the recorded period is expressed in terms of accident years, policy years or report years, through the most recent year of the recorded period:

(1) The insurer's history, by year, of California catastrophe losses, displayed separately for paid losses, case-incurred losses and Incurred But Not Reported (IBNR) reserves.

(2) The insurer's history, by year, of California noncatastrophe losses, displayed separately for paid losses, case-incurred losses and IBNR reserves.

(3) The insurer's history, by year, of California catastrophe Defense and Cost Containment Expenses (DCCE), displayed separately for paid DCCE, case-incurred DCCE and IBNR reserves.

(4) The insurer's history, by year, of California noncatastrophe DCCE, displayed separately for paid DCCE, case-incurred DCCE and IBNR reserves.

(5) The insurer's history, by year, of California received salvage and subrogation recoveries. Subrogation recoveries shall include the proceeds of any actual sale or divestiture of subrogation rights.

(6) The insurer's history, by year, of California anticipated salvage and subrogation recoverables. Subrogation recoverables shall include the reasonably foreseeable proceeds of any anticipated sale or divestiture of subrogation rights.

(7) The insurer's history, by year, of California AIY for residential and commercial property lines.

(8) For residential and commercial property lines, the insurer's projected AIY for the policy effective period. The trend factor that is used to project AIY shall be based on the exponential curve of best fit. Insurers shall file the most recent 27 quarters of company-specific AIY and earned exposure data. The insurer shall file its rate change application using the single data period for AIY and, as specified in section 2644.7, premium and loss trend, which data period the insurer determines to be the most actuarially sound. The Commissioner may require the use of an alternative data period if the Commissioner determines that use of such alternative data period is the most actuarially sound approach. No additional trend shall apply to the catastrophe adjustment.

(9) For private passenger and commercial auto physical damage, the insurer's projected ultimate noncatastrophe losses for the most recent year in the recorded period, as determined by the application of Sections 2644.6 and 2644.7.

(10) The insurer's current definition of catastrophe and the period of time it has used such definition.

(11) The insurer's definition of wildfire and the period of time it has used such definition.

(12) The name of any major event or events contributing to the year's catastrophic losses, for instance, the "Cedar Fire," and the peril or perils associated with those losses.

(d) The catastrophe adjustment shall reflect any changes between the insurer's historical and prospective exposure to catastrophe due to a change in ~~the~~:

(1) Law, including but not limited to statutes, case law, regulations, ordinances and building codes;

(2) The insurer's coverage or other policy terms; or

(3) The insurer's mix of business. ~~There shall be no catastrophe adjustment for private passenger auto liability.~~

(e) For any individual peril, projected aggregate catastrophe losses cannot be based upon a combination of modeled and historical losses associated with that peril.

(f) Catastrophe adjustment, whether based on modeled or nonmodeled losses as prescribed by 2644.5(a) or (b) above, shall apply as a single annual projection once all other adjustments to loss have been made. The catastrophe adjustment shall be expressed as a dollar amount of catastrophe losses per earned exposure, where earned exposure is taken from the most recent year of the recorded period.

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi*~~,~~ (1994) 8 Cal.4th 216 ~~(1994)~~. Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805.

Amend Section 2644.8. Projected Defense and Cost Containment Expenses.

(a) The meaning of the term "~~P~~projected defense and cost containment expenses (DCCE)" ~~means~~includes both the company's noncatastrophe historic costs ~~per exposure~~ associated with the defense and cost containment of noncatastrophe claims, ~~adjusted for catastrophes,~~ developed and trended in the manner described in ~~s~~Sections ~~2644.5,~~ 2644.6 and 2644.7, and the company's costs associated with the defense and cost containment of catastrophe claims, as prescribed in Section 2644.5.

(1) DCCE associated with noncatastrophe losses shall be developed:

(A) separately from losses;

(B) with losses; or

(C) as a ratio to losses.

(2) DCCE associated with noncatastrophe losses shall be trended:

(A) separately from losses; or

(B) with losses.

(3) Any provision for DCCE associated with catastrophe losses shall be determined in accordance with subdivisions (a) and (b) of Section 2644.5.

(b) ~~Defense and cost containment expenses may be added to losses for loss development and trend or may be developed using ratios of defense and cost containment expenses to losses.~~ The insurer shall provide its data separately for loss and DCCE, and demonstrate that its selections of development and trend for DCCE ~~is~~are the most actuarially sound selections.

(c) The projected DCCE shall be reflected per exposure for purposes of subdivision (a)(1)(A) of Section 2644.2 and subdivision (a)(1)(A) of Section 2644.3.

(d~~c~~) For professional liability and errors and omissions coverage, the insurer shall tender an alternative computation of projected ~~defense and cost containment expenses~~DCCE, which the Commissioner shall approve if the Commissioner finds the projection to have been made in the most actuarially sound ~~actuarial~~ manner. The insurer shall also provide projected DCCE in a manner specified in subdivisions (a) through (c) of this Section 2644.8 and in any other manner as may be required by the Commissioner. ~~Nothing in this section precludes the Commissioner~~

~~from requiring the additional filing of projected defense and cost containment expenses computed in the manner specified in sections (a) and (b).~~

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi*~~,~~ (1994) 8 Cal.4th 216 ~~(1994)~~. Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805.

Amend Section 2644.27. Variance Request.

(a) A request that the maximum permitted earned premium or minimum permitted earned premium should be adjusted is referred to as a "variance request."

(b) Requests for variances shall be filed with the Rate Regulation Branch, together with the insurer's complete rate application. All such variance requests shall specifically:

(i) identify each and every variance request;

(ii) identify the extent or amount of the variance requested and the applicable component of the ratemaking formula;

(iii) set forth the expected result or impact on the maximum and minimum permitted earned premium that the granting of the variance will have as compared to the expected result if the variance is denied; and

(iv) identify the facts and their source justifying the variance request and provide the documentation supporting the amount of the change to the component of the ratemaking formula.

(c) Requests for variances shall be filed at the same time as the insurer's complete rate application to which it applies or after the filing of the complete rate application and before any final determination regarding that application. Public notice of all variance requests shall be provided as set forth in-Insurance Code sections 1861.05, subdivision (c), and 1861.06.

(d) A variance request shall be deemed approved sixty days after public notice unless:

(i) a consumer or a consumer's representative requests a hearing within forty-five days of public notice and the Commissioner grants the hearing, or determines not to grant the hearing and issues written findings in support of that decision, or

(ii) the Commissioner on the Commissioner's own motion determines to hold a hearing.

(e) Variance requests shall be determined in conjunction with the related complete rate application or rate hearing thereon.

(f) The following are the valid bases for requesting a variance:

(1) That the insurer should be allowed relief from the efficiency standard for bona fide loss-prevention and loss-reduction activities as set forth below.

(A) The insurer meeting the qualifications set forth below may obtain an increase in the applicable efficiency standard by the amount of its "Allocated

Costs" for its Special Investigations Unit ("SIU") expense for the most recent year. The term SIU as used in this section has the same meaning as that term has in Section 2698.30, subdivision (p). The term "Allocated Costs" means those costs set forth in subsection (iii) and attributable to investigations of claims made on the line of insurance subject to Insurance Code section 1861.05, subdivision (b) for which the variance is sought.

(i) An insurer may recover its "Allocated Costs" for its SIU expenses only in its approved rate filing for the line of insurance affected by the SIU investigation costs.

(ii) Affiliated insurers who utilize the same SIU unit may recover the portion of their "Allocated Costs" for their SIU expenses attributable to investigations of claims made on the line of insurance in the rate application only in one approved rate application for the line affected by the Allocated SIU costs. The term "Affiliated Insurers" has the same meaning as that term has in Insurance Code section 1215.

(iii) The only recoverable SIU expenses are those expended for investigators whose sole duties are investigation of insurance fraud, software dedicated solely to analysis of data for indications of insurance fraud, training of employees whose sole duty is the investigation of fraud and equipment to be used solely by the insurer's SIU. The recoverable expenses do not include the costs of employing or other costs for adjustors or underwriters.

(iv) The only recoverable SIU expenses are for SIU's dedicated to investigation of insurance fraud within the State of California or for the portion of an SIU's operations within California. The burden of demonstrating the amount of SIU expenses, and that those expenses are for the investigation of insurance fraud within the State of California, is the insurer's.

(v) An insurer may recover the "Allocated Costs" of retaining an independent contractor to perform SIU services as described in sub-paragraph (iii). The variance shall be calculated by multiplying the fees paid for the independent agency with whom the insurer contracts by the percentage of referrals of claims made on the line of insurance for which the rate application and variance application are made and that the contracted agency investigates in California on behalf of the insurer seeking the variance.

(vi) No expense that is included within the Defense and Cost Containment Expense portion of an insurer's complete rate application can be included in whole or in part as the basis for a variance based on SIU expenses. The terms "Defense and Cost Containment Expense" or "DCCE" when used with regard to any variance have the same meaning as those terms have in Section 2644.23, subdivision (c).

(vii) An insurer that asserts that payments to: (1) an independent contractor; or (2) an SIU owned by an Affiliated Insurer; or (3) an SIU independent of an insurer, but which is owned directly or indirectly, in whole or part by the insurer applying for a variance or by an Affiliated Insurer, shall in its variance request, provide the Department of Insurance with documentation showing the costs of investigation for the purported "Allocated Costs" claimed in the variance request. The payments constituting the basis for the variance must be *bona fide* payments for investigation of individual cases of suspected insurance fraud. It shall be the burden of the insurer to demonstrate that the costs are *bona fide* costs for investigation of insurance fraud in the State of California.

(B) An insurer meeting the qualifications set forth below will be allowed to recover its expenses for the most recent year for dedicated loss prevention programs such as brush clearance, driver education, risk management, hazard mitigation or accident prevention. Loss prevention expenses do not include SIU expenses under subsection (A).

(i) An insurer may recover its "Allocated Costs" for its loss prevention expenses only in its approved rate for the line of insurance affected by the loss prevention expenses.

(ii) The insurer must provide documentation detailing the loss prevention program, what additional costs are being incurred and what losses are being prevented.

(iii) Recoverable loss prevention expenses are those expended for employees whose duties are loss prevention, software dedicated to loss prevention, and equipment to be used for loss prevention. Recoverable loss prevention expenses do not include the routine and customary costs of marketing or employing underwriters or adjusters.

(iv) The only loss prevention expenses recoverable are for loss prevention programs dedicated to loss prevention in the State of California or for the portion of the program within California. The burden of demonstrating the amount of loss prevention costs, and that those costs are expended for loss prevention in the State of California, is on the insurer.

(2) That the insurer should be allowed relief from the efficiency standard due to any or all of the following:

(A) Higher quality of service, as demonstrated by objective measures of consumer satisfaction; or

(B) Demonstrated superior service to underserved communities, as defined in Section 2646.6; or

(C) Significantly smaller or larger than average California policy premium, including any applicable fees. These fees include but are not limited to: policy

fees, installment fees, endorsement fees, inspection fees, cancellation fees, reinstatement fees, late fees, SR-22, and other similar charges.

(3) That the insurer should be authorized leverage factor different from the leverage factor determined pursuant to Section 2644.17 on the basis that the insurer either writes at least 90% of its direct earned premium in one line or writes at least 90% of its direct earned premium in California and its mix of business presents investment risks different from the risks that are typical of the line as a whole. The leverage factor shall be adjusted by multiplying it by 0.85. The surplus ratio in Section 2644.22 shall likewise be divided by 0.85. If an insurer writes at least 90% of its direct earned premium in one line and writes at least 90% of its direct earned premium in California, the insurer will only be authorized one leverage factor adjustment of 0.85.

(4) That the insurer should be granted relief from operation of the efficiency standard for a line of insurance in which the insurer has never previously written over $1 million in earned premiums annually and in which the insurer has made or is making a substantial investment in order to enter the market. Any such request shall be accompanied by a proposed amortization schedule to distribute the start-up investment.

(5) That the minimum permitted earned premium should be lowered on the basis of the insurer's certification, and the Commissioner's finding, that the rate will not cause the insurer's financial condition to present an undue risk to its solvency and will not otherwise be in violation of the law.

(6) That the insurer's financial condition is such that its maximum permitted earned premium should be increased in order to protect the insurer's solvency. Any application for authorization under this subsection shall include:

(A) A showing of the insurer's condition, based on generally accepted standards such as the National Association of Insurance Commissioners' Insurance Regulatory Information System;

(B) A plan to restore the financial condition;

(C) A showing that, consistent with the claimed condition, the insurer has reduced or foregone dividends to stockholders or policyholders; and

(D) A plan to reduce rates once the insurer's condition is restored, in order to compensate consumers for excessive charges.

(7) That the insurer should be granted relief from using its in-force business as specified in subdivision (e) of Section 2644.4.5 because the insurer’s in-force exposures do not reflect the insurer’s prospective exposure to risk, such that the modeled catastrophe adjustment in subdivision (a) of Section 2644.5 does not produce the most actuarially sound result.

(8~~7~~) That the loss development formula in Section 2644.6 does not produce an actuarially sound result because

(A) There is not enough data to be credible;

(B) There are not enough years of data to fully calculate the development to ultimate;

(C) There are changes in the insurer's reserving or claims closing practices that significantly affect the data; ~~or~~

(D) There are changes in coverage or other policy terms that significantly affect the data; ~~or~~

(E) There are changes in the law that significantly affect the data; or

(F) There is a significant increase or decrease in the amount of business written or significant changes in the mix of business.

(9~~8~~) That the trend formula in Section 2644.7 does not produce the most actuarially sound result because

(A) There is a significant increase or decrease in the amount of business written or significant changes in the mix of business;

(B) There are not enough years of data to calculate the trend factor;

(C) There is a significant change in the law affecting the frequency or severity of claims;

(D) It can be shown that a trend calculated over a period of at least 4 quarters other than a period permitted pursuant to Section 2644.7, subdivision (b) is more reliable prospectively;

(E) There are changes in the insurer's claims closing practices that significantly affect the data; or

(F) There are changes in coverage or other policy terms that significantly affect the data.

(10~~9~~) That the maximum permitted earned premium would be confiscatory as applied. This is the constitutionally mandated variance articulated in *20th Century v. Garamendi* (1994) 8 Cal.4th 216 which is an end result test applied to the enterprise as a whole. Use of this variance requires a hearing pursuant to 2646.4.

(g) If there is more than one actuarial analysis of a variance, each of which is based on reliable data and utilizes methods which are shown by qualified expert evidence to be generally accepted as sound by the actuarial community and the appropriate methods for the particular variance, then the variance shall be granted, denied or calculated utilizing the actuarial proposition that results in the soundest actuarial result.

(h) Notwithstanding any other section of these regulations, the aggregate total adjustment to the efficiency standard for all variances combined shall not exceed the difference between the insurer’s most recent year total expense ratio excluding defense and cost containment expenses and the efficiency standard.

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805.

Title 10. Investment
Chapter 5. Insurance Commissioner
Subchapter 4.9. Rules of Practice and Procedure for Rate Proceedings
Article 3. Definitions

Amend: Section 2651.1. Definitions

The following definitions shall apply to Subchapter 4.9.

***

(m) "Pre-application required information determination" or "PRID" means a nonadjudicative determination the California Department of Insurance issues before an insurer submits a complete rate application and that specifies all information and data regarding a model that are required to be provided to the Commissioner as part of a complete rate application that relies upon the model for purposes of requesting a proposed rate change pursuant to Insurance Code section 1861.05.

(n) "Pre-application required information determination procedure" or "PRID procedure" means a nonadjudicative procedure before the California Department of Insurance that takes place before an insurer submits a complete rate application and the purpose of which is to determine all information and data regarding a model that are required to be provided to the Commissioner as part of a complete rate application that relies upon the model for purposes of requesting a proposed rate change pursuant to Insurance Code section 1861.05.

(o) The term "model" means any simplified representation of relationships among real world variables, entities, responses, actions, or events using appropriate statistical, financial, economic, mathematical, non-quantitative, or scientific concepts and equations, or any combination thereof, and that consists of three components: one or more information input components, which deliver data and assumptions to the model; one or more processing components, which transform input into output; and one or more results components, which translate the output into useful business information. Types of models include, without limitation, "catastrophe risk models," "complex catastrophe models," "probabilistic catastrophe models," "third-party models," "wildfire models," "wildfire risk models," "risk models," and models referencing other perils; the meaning of the term "model" also includes without limitation a "Wildfire Risk Model" as described in Section 2644.9, subdivision (b)(6)(A).

(p) "Required model information" means all required information and data regarding a model, that the Commissioner requires to be submitted as part of a complete rate application that relies upon the model, because such information and data will aid the

Commissioner in determining whether the model is reliable to perform the functions for which an insurer proposes to use the model, for purposes of the Commissioner's evaluation of a complete rate application.

(q) "Complete rate application" means an application submitted by an insurer desiring to change any property and casualty rate pursuant to Insurance Code section 1861.05 and shall include without limitation all required model information and all information and data specified in Section 2648.4, regardless of whether such information and data is included in its initial complete rate application submission or is subsequently submitted as part of the rate proceeding, including without limitation in response to requests for further information and data by the Department.

(r) "Public information" means all information provided to the Commissioner as part of a complete rate application submitted pursuant to article 10 of division 1, part 2, chapter 9 of the Insurance Code.

(s) "Confidential PRID information" means information, data, testimony, evidence, hearings, briefs, pleadings, correspondence, discovery, working papers, and other material created or exchanged for purposes of a PRID procedure, and that are not included in any complete rate application subsequently submitted or otherwise provided to the Commissioner.

(t) "Model Advisor" means the person within the Department of Insurance who oversees a PRID procedure.

NOTE: Authority cited: Sections 1850.4, 1861.01, 1861.05, and 1861.07, Insurance Code; Sections 11415.50 and 11415.60, Government Code; and *20th Century v. Garamendi*, 8 Cal.4th 216 (1994). Reference: Sections 1077.3, 1850.4, 1861.01, 1861.05, 1861.07, 1861.08, 1861.10, 12919, Insurance Code; Sections 7922.630, 7929.000, 11415.50, 11415.60, 11507.6, 11507.7, and 11513, Government Code; Sections 350, 351, 352, and 1040, Evidence Code; *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805; and *State Farm Mutual Automobile Ins. Co. v. Garamendi*, 32 Cal.4th 1029 (2004).

Adopt: Article 3.1. Pre-Application Required Information Determination ("PRID") Procedure

Adopt: Section 2651.10.

(a) For purposes of determining appropriate rates for a property and casualty line of business, the Commissioner requires insurers seeking to rely upon modeled information, including without limitation modeled financial projections such as aggregate catastrophe loss projections and other types of projected losses, to submit all required model information as part of a complete rate application. Required model information shall include, without limitation, information that demonstrates the model uses established concepts, data, equations, and principles, as well as best available scientific information and data, insurance claims expertise, and other assumptions appropriate for the risk or peril being modeled.

(b) The purpose of a pre-application required information determination procedure or PRID procedure shall be for the Department of Insurance to issue a PRID that specifies all required model information to be included in a complete rate application that relies upon the model.

(c) Required model information specified in a PRID shall be provided to the Commissioner and shall be public information when an insurer subsequently submits a complete rate application to the Commissioner that relies upon the model.

(d) Confidential PRID information shall not be public information and shall be considered to be information received in official confidence by the Department of Insurance. Accordingly, confidential PRID information shall not be subject to disclosure in response to requests pursuant to the California Public Records Act (commencing with Government Code section 7920.000).

(e) Any person may initiate or intervene in a PRID procedure before the Department of Insurance, by following the procedure set forth in Section 2661.4 and shall be eligible for compensation pursuant to Insurance Code section 1861.10 and Sections 2661.1 through 2662.8. The Model Advisor shall have discretion to grant or deny a request to initiate or intervene in a PRID procedure within 10 days after receipt of the request. The Model Advisor shall publicly notice a PRID procedure within 15 days after granting a request to initiate a PRID procedure.

(f) Within 15 days after a PRID procedure has been initiated, or 15 days after a petition to intervene in a PRID procedure has been ruled upon, whichever date is later, all parties to a PRID procedure under this section shall enter into a stipulated nondisclosure agreement governing the treatment of all confidential PRID information. The agreement shall specify, at a minimum, that (1) the representatives of the parties that participate in the PRID procedure shall not share any confidential PRID information with any other person, including without limitation persons employed by the same party but not involved in the PRID procedure; and (2) the parties that participate in the PRID procedure shall return or destroy all confidential PRID information within an agreed-upon length of time after a PRID has been issued. After all parties have entered into the agreement, the parties shall submit a stipulation and proposed protective order based upon the parties' nondisclosure agreement to the Model Advisor for review. No later than 10 days after the stipulation and proposed protective order have been received by the Model Advisor, the Model Advisor shall determine whether there is a significant public interest in the non-disclosure of confidential PRID information, and, upon a finding there is, enter an order thereon. Following the conclusion of the PRID procedure, the Model Advisor shall retain jurisdiction to enforce the terms of the protective order.

(g) The Commissioner shall delegate authority to oversee a PRID procedure and issue a pre-application required information determination to the Model Advisor. The Model Advisor is authorized to hire outside consultant(s) with relevant knowledge and subject matter expertise to assist in determining required model information.

(h) To the extent not otherwise specified herein, the Model Advisor may, without limitation: control the course of the PRID procedure; grant or deny a petition to initiate or intervene in the PRID procedure; administer oaths; issue subpoenas; rule on motions to compel discovery; receive evidence and testimony; upon notice, hold appropriate conferences before and during the procedure; rule upon procedural objections or motions; receive offers of proof; hear argument; and fix the time and place for the filing of any briefs.

(i) During a PRID procedure, all parties may propound discovery on the owner of the model to provide information and data regarding the model, including the production of documents and testimony. The parties shall not otherwise engage in discovery.

(j) During a PRID procedure, any party may proffer expert testimony and cross-examine other parties' experts regarding the reliability of the model and what constitutes required model information.

(k) The terms of the nondisclosure agreement notwithstanding, the inclusion of any required model information in a subsequent complete rate application proceeding shall make such information public information.

(l) In a complete rate application that is submitted by an insure subsequent to a PRID procedure, any person may rely upon the PRID to determine what is required model information. A PRID shall be valid in any complete rate application proceeding through the two-year anniversary date of its issuance provided that the model has not been updated, amended, altered, or changed in any way subsequent to the issuance of the PRID. The validity of a PRID shall be determined as of the date of the submission of the complete rate application relying upon the PRID.

(m) In the event a model is updated, amended, altered, or changed in any way subsequent to the issuance of a PRID but prior to the submission of a complete rate application using or relying upon the model as updated, amended, altered, or changed in any way, then (1) the original PRID is no longer valid for purposes of determining required model information, and (2) any party may initiate or intervene in, pursuant to this Section, a subsequent PRID procedure limited to the issue of whether and how the prior PRID should be updated, amended, altered, or changed in any way.

(n) The PRID procedure shall stand submitted when the Model Advisor closes the record. The Model Advisor shall issue a final pre-application required information determination that specifies all required model information within 15 days after the PRID procedure is submitted.

(o) As an alternative to issuing a PRID, the Model Advisor may issue a declination to specify a set of required model information after a PRID procedure, if the Model Advisor determines that there is no set of required model information that could reasonably be relied upon to support the use and inclusion of any of the modeled financial projections, modeled catastrophe adjustments, modeled projected losses, or any other type of modeled

loss outputs and projections for purposes of reviewing an insurer's complete rate application. In the event the Model Advisor declines to specify a set of required model information, any insurer may still seek to rely upon the model in a subsequent complete rate application but shall publicly produce any information and data the Commissioner requires regarding that model as part of the complete rate application.

(p) At any time prior to the Model Advisor issuing a PRID, the parties to a PRID procedure may stipulate to a set of required model information. The parties shall submit any such stipulation and a proposed set of required model information to the Model Advisor for review. No later than 15 days after submission of the stipulation and proposed set of required model information, the Model Advisor shall determine whether the proposed required model information satisfies the standards set forth herein and issue an order either adopting or declining to adopt the proposed set of required model information as the PRID for that model.

(q) A PRID shall be subject to judicial review in accordance with Insurance Code sections 1858.6 and 1861.09. For purposes of judicial review, a declination by the Model Advisor shall not be considered a final decision.

(r) Any Department costs associated with a PRID procedure shall be construed to be administrative and operational costs arising from the provisions of article 10 of division 1, part 2, chapter 9 of the Insurance Code.

NOTE: Authority cited: Sections 1858.6, 1861.01, 1861.05, 1861.07, 1861.09, and 1861.10, Insurance Code; Sections 7922.630, 7927.705, 11415.50 and 11415.60, Government Code; and *20th Century v. Garamendi*, 8 Cal.4th 216 (1994). Reference: Sections 7, 1077.3, 1858.6, 1861.01, 1861.05, 1861.07, 1861.08, 1861.09, 1861.10, 12919, and 12921, Insurance Code; Sections 7922.630, 7929.000, 11415.50, 11415.60, 11507.6, 11507.7, and11513, Government Code; Sections 350, 351, 352, and 1040, Evidence Code; *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805; and *State Farm Mutual Automobile Ins. Co. v. Garamendi*, 32 Cal.4th 1029 (2004).

EXHIBIT 10

Comments of Consumer Watchdog
Third Workshop Regarding Catastrophe Modeling and Ratemaking (REG-2023-00010)
April 23, 2024

INTRODUCTION

Too many Californians are struggling to obtain and afford insurance on their most significant investment, their homes. Insurance companies are hiking rates, freezing new sales, non-renewing policies and exercising increasing control over decisions about where Californians can and cannot afford to live. The insurance industry blames climate change for their destabilization of the home insurance market and the rising costs being imposed on consumers. They claim California's voter approved consumer protections against price gouging prevent them from assessing the risk of wildfires. Yet insurance companies are turning a blind eye to the significant investments being made by communities and individual property owners to reduce wildfire risk and build resiliency.

A homeowner who recently contacted Consumer Watchdog lives in a Firewise community and has spent thousands of dollars to trim trees, clear underbrush and install hardscape near her property. She is one of the 30,000 individual policyholders State Farm recently announced it would non-renew without consideration of these significant reductions in her wildfire risk.

Insurance companies similarly fail to acknowledge the billions of dollars California, and even the private utilities, have invested in wildfire resilience and forest management to protect communities. That spending directly benefits the insurance industry by reducing the risk they will have to pay large claims in the wake of wildfires.

The industry's solution is the use of black-box catastrophe models to determine how much people will have to pay for insurance. But allowing insurers to use catastrophe models will not solve this crisis. The evidence is clear from states that already allow the use of models. In Florida where catastrophe models have long been in use, home insurance rates are 2-3 times higher than California, insurers have left the state in droves, and Florida's insurance company of last resort has five times the number of policyholders as our FAIR Plan.

Climate-driven weather events have undoubtedly increased, and models used in the right way can help insurance companies better gauge changing climate risk. Yet models are notoriously inaccurate, inconsistent and contain biases that threaten to restore redlining and other notorious discriminatory practices. Catastrophe models will simply be tools for insurance companies to charge more unless California mandates transparency into how they impact prices, imposes rules of the road requiring review and approval of their design and use, and

requires that insurance companies use them to provide consumers and communities with actionable information about their own climate risk.

A public model – **with no need to keep data secret** – would best serve these goals.

We have urged the Commissioner to take this path by supporting the creation of a public California Wildfire Catastrophe Model. The state of Florida launched its public hurricane model in 2007. California's long climate leadership and deep bench of leading academics, engineers, climate scientists and computing experts strongly position the state to create a public model to serve all Californians. A public model would enable us to bake equity, transparency, and accountability into its design and empower consumers and communities to understand and act on their own climate risk. This is the best way to ensure models serve more than the profit motives of the insurance industry and the models' Wall Street owners.

The CDI's proposed catastrophe modeling regulations are instead designed to facilitate the use of black box models by giving in to the demands of the private modeling companies to keep their products secret.

The proposed regulations set up an NDA-protected pseudo review of models that will not enable regulators or the public to confirm insurance companies' use of models is pricing insurance fairly. The regulation does not comply with the insurance consumer protections mandated by the voters in Proposition 103: Public review and justification of everything that goes into an insurance company's prices.

Unaccountably higher premiums will be the result.

Regulations on catastrophe modeling with robust consumer protections would:

- Be fully transparent in accordance with Proposition 103's requirement for public disclosure of catastrophe models.
- Mandate a substantive review and approval of models.
- Identify uniform standards against which a model's reliability and its rate impact will be evaluated.
- Enable regulators and the public to access a model to test both its design, and its impact on a specific insurance company's rate.
- Require all companies disclose the same information for consistent results.
- Require diverse and independent academic and scientific input.
- Preserve participants' due process rights under the APA.

Instead, the proposed catastrophe modeling regulation:

- Uses nondisclosure agreements and closed-door hearings to keep catastrophe model information secret.
- Does not require review or approval of a model's accuracy. Hamstrings approval of a model's impact on rates by withholding model and other needed information from rate review.
- Contains no standards by which to judge a model's validity, and nominal vague standards for a model's impact on rates.
- Does not enable access to a model, or require testing of a model's design or rate impact.
- Contains no guidelines for minimum information to be made public, allowing disclosures to be different for every model.
- Creates no independent panel of experts to review and approve models.
- Exempts model oversight from due process protections under the APA.
- Makes participation by each modeling company voluntary.

By bending over backwards to keep models secret, the proposed regulation will fail to determine if models are reliable, ensure consumers and communities are given the credit they deserve for wildfire mitigation efforts, or confirm models accurately reflect the changing climate risk.

Below we provide greater detail about each of these concerns.

I. PUBLIC TRANSPARENCY: The proposed regulation conflicts with Proposition 103's public disclosure requirement.

Transparency is key to confirming that insurance companies have justified their requests for rate increases. Insurance Code section 1861.07 states that: "All information provided to the commissioner pursuant to this article [Proposition 103] shall be available for public inspection, and the provisions of Section 6254(d) of the Government Code and Section 1857.9 of the Insurance Code [statutes barring disclosure of information the industry considers trade secrets or proprietary] shall not apply thereto."

Section 1861.07 therefore requires public disclosure of any information provided to the Commissioner in connection with review of an insurer's rate application. The creation of a process designed to segregate information about a model to prevent public disclosure is a clear violation of the law.

The California Supreme Court has confirmed that there are no exceptions to the disclosure requirement.[1]

[1] *State Farm Mut. Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043-1044

Mandatory NDAs and sealing the record prioritize secrecy.

The proposed regulation intentionally moves model review out of the public eye in order to exempt models from Proposition 103's transparency requirements. Everyone would be required to sign a nondisclosure agreement (NDA) to participate in model oversight and gain access to information about a model.

The broad NDAs mandated in **proposed Section 2651.10(f)** directly contravene the transparency at the heart of successful rate oversight in California. They center the regulation around preserving secrecy in a key aspect of policyholders' rates, a direct violation of Section 1861.07's disclosure mandate.

Proposed Sections 2651.10(d) and 2651.1(s) also purport to shield the entire administrative record created in the new NDA-protected process from public view (including all evidence, testimony, briefs, pleadings, discovery, and other materials), except the information that is determined to be required to submitted as part of a complete rate application. Such a blanket sealing of the administrative record violates Section 1861.07 requiring that all information submitted to the Commissioner pursuant to Prop 103 shall be made publicly available; and it conflicts with the public disclosure mandates in civil court rules, which presume that court records are open unless required by law to be confidential (see, e.g., Cal. Rules of Court, rule 2.550, 2.551).

As a result, any member of the public, including consumers, lawmakers and journalists, who was not a party to the proceeding (did not sign an NDA) would be barred from accessing any documents, data, legal filings or other information presented.

NDAs will prevent the public from understanding how technology shapes their lives.

Polling by the Pew Research Center finds the public has enormous concerns about the fairness and acceptability of using algorithms to make decisions with important real-world consequences.[2] Across the economy, decisions by algorithms and Artificial Intelligence are creating disadvantage and inequities in Americans' financial lives. The public has a right to understand what's impacting decisions about their futures, but the NDAs mandated by this draft will make certain those decisions will be opaque and the insurance industry unaccountable.

Some of the many questions raised by the proposed regulation's reliance on NDA secrecy include:

[2] Atske, Sara. "Public Attitudes Toward Computer Algorithms | Pew Research Center." *Pew Research Center: Internet, Science & Tech*, 7 July 2020, www.pewresearch.org/internet/2018/11/16/public-attitudes-toward-computer-algorithms.

- What happens when participants disagree on the terms of the NDA? Can an organization that represents consumers be forced to agree to whatever restrictive terms the modeler demanded simply in order to participate?

- If a public interest organization learns of a key flaw in a model, but that information is held secret as part of the PRID, can the organization use that knowledge during rate review when an insurance company seeks to use the model? If an NDA prevents public interest organizations from using the information they learn to challenge an excessive rate, or from sharing their analysis of a model with the public, public participation in a PRID is meaningless and rate review will be severely restricted.

- The proposed regulation specifically bars sharing of information *within* an organization. Could an attorney for an organization that is a participant in a PRID report back to their organization's president about the proceedings? Could a participating reporter report back to their editor? A legislative staffer to their boss?

- Will an organization be barred from publicly discussing their views based on information kept secret by the NDA? A common NDA restriction is to prohibit discussing its terms. Can a list of the data deemed confidential be shared? A description of that data? A critique of the confidentiality decision?

- Would the NDA bar an individual policyholder who was never party to a PRID proceeding from accessing data that an insurance company uses to set their rates?

- A hypothetical scenario that illustrates how an NDA requirement will keep critical information about a model inaccessible:

> A key question about a model's impact on rates concerns the relative weight for each input variable (risk factor) in the model. These weights result from analyses performed within the model based on a dataset used to calibrate the model's initial parameters ("training data"). Depending on a model's construction, small changes to the weights can become highly leveraged, resulting in substantial variability in the model's output. Consumers and their advocates have a legal right to know which risk factors are being used to calculate insurance premiums. They also need to be able to understand the sensitivity of a model's results to changes in risk factor values and their relative weights. Yet details about how a model weights different factors is exactly the kind of information companies protecting a proprietary model are likely to be unwilling to disclose, because it is the kind of information competitors could use to try copying their model.

The proposed regulation also does not set out any baseline requirements about what must be disclosed about every model. This means that the concealed and public data will be different

for every model based on how restrictive of an NDA the model's Wall Street owner is able to demand.

II. ACCOUNTABILITY AND EFFICIENCY: The proposed regulation does not require review or approval of catastrophe models.

The Department has suggested this proposal is intended to require review of proposed models, with full public participation in that process. The current text of the proposed regulation does not require or achieve either.

The regulation splits the Department's model oversight function into three separate phases: first, a superficial, closed-door inquiry into the model; second, a mini-proceeding – also with no public scrutiny – during which the Commissioner will determine that an insurance company's application is "complete" (the subject of a separate regulation the Commissioner has proposed); and, third, the public rate review process required by Proposition 103, in which an insurance company would seek to use the model to justify requests to change its rates.

The first consideration of a proposed model would be during the newly-created "PRID" process.

The text of **Proposed Section 2651.1(n)** states the purpose of a "Pre-application required information determination procedure," or "PRID" procedure is to: "determine all information and data regarding a model that are required to be provided to the Commissioner as part of a complete rate application that relies upon the model for purposes of requesting a proposed rate change pursuant to Insurance Code section 1861.05." In other words, the stated purpose of the PRID as defined in the draft regulation is solely to determine what insurance companies and their modelers must disclose about their model publicly when an insurance company that wants to use the model applies for a rate change under Proposition 103.

This definition is repeated in **Proposed Section 2561.10(b)**.

The new Model Advisor is charged with one job: completing the PRID. The Advisor's only explicit responsibility, and the only product of a PRID, is a determination about what information a modeler may keep confidential, and what information an insurance company must disclose in a complete rate application.

The rest of the PRID proceeding – all the evidence collected that the Model Advisor determines is not necessary to disclose – will be kept secret, preventing non-participants from ever knowing what occurred behind closed doors.

Allowing participants in the PRID to ask questions about a model seems to be contemplated in **Proposed Section 2651.10(i)**, which refers to discovery requests, testimony and evidence. **Proposed Section 2651.10(j)** goes as far as suggesting that parties participating in a PRID may offer expert testimony "regarding the reliability of a model." The proposed regulation gives the Model Advisor a long list of other responsibilities, but neither Section **2651.10(j)**, **(i)**, or any

other provision charges the Model Advisor with considering that testimony, let alone making a determination about a model's reliability and safety. Nor does the regulation state that the Model Advisor has the responsibility to review a model, whether for accuracy, bias, or the validity of the science. The Model Advisor is granted no authority to reject or approve a model. With no regulatory mandate for the PRID to reach a conclusion beyond what information to share, participants who represent consumers would be denied the opportunity to argue a model should be rejected.

Indeed, standards by which a model would be challenged and judged by the Model Advisor are absent. Basic scrutiny of a model's functionality – such as bias testing, or comparison of the model's projections to past events – is not mentioned.

Catastrophe model inconsistency and the importance of testing.

The regulation does not define any rubric for evaluating or testing models. There are no guidelines for determining whether a model is reliable, accurate, unbiased, or based on the best available science and data. This omission means that even if the Department amended the proposed regulation to require model review and approval, the standards for that review could vary widely from model to model.

As former RMS vice president Dag Lohmann, now-CEO of KatRisk, LLC, put it:

"Multiple modelers could develop a wildfire model from all the components in current literature, tune the models to reasonably validate with historical data, and ultimately have average annual losses ***2 or 3 times different than each other*** when projecting future losses."

"…a good model can provide users with significant value in spite of outstanding uncertainties as to model precision. ***Model validation, as well as rigorous review of model operations and assumptions, are critical steps in assessing whether this value can be extracted from a cat model, given its intended use.***" [3] *[emphasis added]*

The American Academy of Actuaries similarly emphasizes the difficulties of model testing:

> "While the technical documentation of the models is available to users for their general knowledge, some core assumptions are considered proprietary and are not readily accessible to users. A catastrophe model is developed by a group of scientists (meteorologist, seismologist, hydrologist, statisticians, engineers, actuaries, computer scientist, etc.) with specialized knowledge in different fields. It is not an easy task for model users to develop even a basic understanding of the model, as required by U.S. actuaries' standards of practice."[4]

[3] "Wildfire Catastrophe Models Could Spark the Changes California Needs." *Milliman*, Oct. 2019, https://www.milliman.com/en/insight/wildfire-catastrophe-models-could-spark-the-changes-california-needs

[4] Cleary, Kay, et al. "Uses of Catastrophe Model Output." American Academy of Actuaries p34, July 2018 https://www.actuary.org/sites/default/files/files/publications/Catastrophe_Modeling_Monograph_07.25.2018.pdf

Even Florida, better-known for passing industry-friendly legislation than consumer protection, requires review and approval of public and private catastrophe models.

A 2022 article examining the design and implementation of the Florida Public Hurricane Loss Model, "FPHLM," details how system evaluation is critical to ensuring the effectiveness and reliability of the model. The authors identify "multiple quantitative and qualitative evaluation methods" that are "presented to ensure the correctness, usability and robustness of FPHLM."

Comparing modeled insured losses from specific storm events with actual insured losses from claims data is the primary method of FPHLM evaluation identified. Such a test enables confirmation that actual results and model results have no statistically significant differences. It is also one way to test bias. In the tests presented in the paper, 51% of actual losses were higher than modeled losses, and 49% were lower, suggesting the model is unbiased.[5]

In addition, the authors perform a sensitivity analysis that shows how FPHLM modeled losses due to the hurricane peril vary with changes to parameters such as deductible amount, year built, number of stories, and construction type. Analyses like this of the sensitivity of loss estimates to various characteristics are critical in ensuring the equitable application of a catastrophe model's output values. Californians must also be able to perform sensitivity analyses to evaluate any model being considered for use in rating the wildfire peril. In order to do that, unfettered access to the model itself would be necessary to ascertain exactly how modeled loss amounts are impacted by user-controlled changes to input parameters.

Although the state of Florida allows the use of private catastrophe models in addition to the public model, it also requires private models to be approved by an independent commission that tests the models' reliability before they are approved for use.

In 1995 the Florida Legislature created the Florida Commission on Hurricane Loss Projection Methodology. The Commission conducts on-site testing of private catastrophe models (the public FPHLM model is also tested) and is charged "with adopting findings relating to the accuracy or reliability of particular methods, principles, standards, models, or output ranges used to project hurricane losses, flood losses, and probable maximum loss calculations."

The Commission's November 2023 report on activities contains **174 pages of specific standards the Commission uses to determine whether a model is acceptable for use** by insurance companies in Florida.[6] These are the types of standards that must be developed in California so consumers can be confident the models are fair.

[5] Tao Y, Wang T, Sun A, Hamid SS, Chen S-C, Shyu M-L. Florida public hurricane loss model: Software system for insurance loss projection. *Softw: Pract Exper.* 2022;52(7):1736-1755. doi:10.1002/spe.3086

[6] Florida Commission on Hurricane Loss Projection Methodology. Hurricane Standards Report of Activities as of November 1, 2023. https://fchlpm.sbafla.com/media/532jql0c/2023-hurricane-roa.pdf

However once model information is sanitized through an NDA-protected PRID process, regulators and the public will be incapable of verifying their science or their math, and regulators and consumer representatives will be left with inconsistent outputs and uncertainties that cannot be explained. By limiting access to the model and information about the model the draft regulation forecloses such testing.

Other than bowing to the demands for secrecy from the insurance companies and the Wall Street firms that sell them models, how will this process enable consumer representatives and the Department staff to effectively assess the accuracy and safety of a model? It won't.

No standards and variable disclosures will result in ad hoc review.

The lack of uniform standards in the proposed regulation for model approval, or review of a model's impact on a rate, sets up bespoke oversight in which every company's rate application will be treated differently.

One of the reasons why California consumers, homeowners, renters and small businesses have benefitted from fair and reasonable rates under Proposition 103 is that a highly detailed set of regulations govern the ratemaking process and apply to every insurance company. The staff of the Department are obligated by law to apply those rules uniformly.

10 CCR § 2643.1 requires the Insurance Commissioner to use "a single, consistent methodology" to evaluate insurers' rates.

The California Supreme Court has confirmed that Proposition 103 requires uniform regulation of insurance companies. (*20th Century Insurance Co. v. Garamendi* (1994) 8 Cal.4th 216, 312.) (See also Order Adopting Proposed Decision, *In re American Healthcare Indemnity Company*, File No. PA02025379, July 24, 2003, p. 8.) Uniform rules of the road are not only a protection for consumers against unfair and arbitrary rates, they are a guarantee of efficient, fair and equal treatment for all insurance companies, large or small.

The draft text does not meet these baseline legal requirements.

Proposed Section 2644.4.5(f), for example, requires an insurer to prove that the model is based on "what in the Commissioner's assessment is the best available scientific information for assessing frequency, severity, damage and loss" and "best available scientific information on risk mitigation at the property." However, the regulation is silent on exactly how the Commissioner makes that "assessment."

As noted above, the Model Advisor has even less instruction, being charged simply with "determining required model information." There is no minimum set of information that every modeler would have to disclose.

Without a comprehensive and precise set of definitions and standards, insurance companies and Wall Street modeling firms will seek to justify any model, regardless of its accuracy, which will lead to arbitrary, discriminatory and excessive rates.

Giving the Commissioner and the Model Advisor unbounded discretion with no published guidelines for their decisions opens the door to the "standardless, ad hoc decision-making" decried by the California Supreme Court in *20th Century*, *supra* (8 Cal.4th at p. 312).

The PRID is completely voluntary.

The proposed regulation also has no requirement that a modeling company submit their model to the PRID. Proposed Section 2644.4.5(e) states "any person may initiate or intervene in a PRID," but nowhere does the reg require a model company to submit to the proceeding.

III. INDEPENDENT EXPERTISE: The proposed regulation does not leverage California's vast resources in academia and industry.

Contrary to representations by the Commissioner and Department staff, including the March 14, 2024, press release promising a "new process for review of models by a panel of experts" to "evaluate the appropriateness and soundness of each model," the regulation does not require the appointment of an independent panel of scientific and other experts.

Expert panels with advisory, audit, and oversight authority operate across California government. The enacting legislation and regulations for such bodies will typically lay out the responsibilities of the body and parameters for choosing appointees, including: frequency of meetings, size of the panel, duties, qualifications of members, and specific stakeholders that must be represented – often requiring a diversity of viewpoints and expertise. The Department of Insurance's own website lists ten such panels and boards[7] – each of which has specific parameters for appointees.

Proposed Section 2651.10(g) does not mandate such a panel. This section states only that the Model Advisor "is authorized to hire outside consultant(s) with relevant knowledge and subject matter expertise to assist in determining required model information." Consultants hired by the agency report to the Department and the Commissioner; they are not independent. Moreover, the draft regulation places no conditions on hiring of the consultants, such as a requirement that they be free of conflicts of interest or agree to make any work they submit to the Department and the Commissioner public. This employer/consultant relationship does not resemble the kind of diverse, interdisciplinary panel of independent experts with a wide array of engineering, computing, climate and other scientific expertise that would be necessary to assist the Department in correctly and independently understanding and evaluating a model's operation.

[7] California Department of Insurance, Commissioner Appointments. https://www.insurance.ca.gov/0500-about-us/03-appointments/index.cfm

If past experience is instructive, the Department can be expected to keep the advice of these consultants confidential too. When the Department has hired outside consulting firms to evaluate underwriting models used to determine eligibility for a homeowners policy based on wildfire risk in the past, it has refused to share any of the information or analysis provided by those firms.

In one instance, a Consumer Watchdog petition for hearing in a proceeding on a Farmers' rate application was denied by the Commissioner, based in part on an outside actuarial consulting firm's evaluation of Farmers' use of the Zesty Z-FIRE underwriting model. The denial stated only that based on that outside actuarial firm's review of the model, the Department was "satisfied that the model is sufficient for the purpose in which it is intended to be used, as a secondary new business eligibility tool" and that "the Department has no concerns about its accuracy or reliability."[8] In violation of Proposition 103's transparency requirement, the Department refused access to the consulting firm's analysis of the model:

> The withheld document is a communication between CDI management and our actuarial contractor, Taylor & Mulder. The document contains analyses, opinions, and recommendations made by Taylor & Mulder to CDI management and is specific to the review of the Zesty Z-Fire model and related to Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company's (collectively referred to as "Farmers") rate application. If the CDI were to make this document available to you, it would expose our deliberation and decisionmaking processes and undermine our ability to have candid communications with Taylor & Mulder. Disclosure of the document would also discourage candid discussions between the CDI management and Taylor & Mulder, whether it is regarding the review of this model, other models or other projects relating to rate applications. It would also make public predecisional information that took place during the review process and before a final decision was made by the CDI relating to Farmers' rate application. For these reasons, the public interest is better served by not disclosing the document.[9]

If the Model Advisor can conduct the PRID process by meeting behind closed doors with – or even relying entirely upon – "outside consultants" and contend that their work is protected from disclosure, public access would be negated. Such consultants certainly do not constitute a panel, let alone an independent panel of experts.

[8] Decision Denying Petitioner's Petition for Hearing, In the Matter of the Rate Applications of Fire Ins. Exchange, et al., File No. PA-2020-00006, May 11, 2021, p. 3.
[9] California Department of Insurance letter denying Consumer Watchdog Public Records Act request PRA-2021-00414, Sept. 10, 2021. https://consumerwatchdog.org/wp-content/uploads/2024/04/2021-09-10CDIZFire.pdf

IV. HIGHER RATES: Limited model disclosure will make determining a model's impact on rates impossible.

According to the draft regulation, the PRID will decide what information can be accessed by the public in the third phase of oversight: Prop 103 review of an insurance company's rate application.

Proposed Section 2644.4.5(f) states that in the context of a specific insurance company's rate application, "the applicant shall have the burden of demonstrating…" to the Commissioner that the models they use rely on the best science and meet actuarial standards. This is the only place in the regulation that explicitly states models will be subject to evaluation. Even so, the ability to review a model's impact on rates at this stage will be significantly curtailed because the PRID process limits the information about the model that will be available to do that evaluation.

Access to the model itself, the model's weighting of different factors that impact fire risk, any data set used to build a model, and model output reports - including but not limited to size of loss distributions along with the probability associated with each event - are among the information certain to be foreclosed from public disclosure by the PRID. In recent years, insurance companies and modelers have refused to provide the department or public participants access to such information regarding underwriting models in the rate review process even though they are required by law to do so. The same will be true for catastrophe models.

This is the only place the proposed regulation contains any guidelines for what the commissioner would consider in reviewing a model's impact on rates. Unfortunately, as noted above, the guidelines are far too broad to provide any practical standards for regulators to follow.

V. CONFLICTS WITH OTHER RECENT REGULATIONS: The draft regulation prioritizes the protection of trade secrets over long-standing principles of government accountability, in violation of existing law and regulations.

Wall Street modeling companies have made clear in their public statements, in comments to the Department of Insurance, and in testimony before the Legislature, that they are unwilling to disclose their algorithms or data sets, or to provide access to the actual catastrophe models.

Zesty.ai submitted testimony regarding the wildfire mitigation discount regulation stating:

> …the current draft regulations would jeopardize the industry's ability to protect intellectual property and thus limit new innovation from being introduced in the California insurance market. As such, we would recommend that "data, algorithms,

> [and] computer program" as currently detailed in subsection (f) should be excluded from the public inspection process.[10]

At the July catastrophe modeling workshop, Moody's RMS submitted a list of what it would not disclose:

> Any elements that are considered Intellectual Property
> Proprietary data sets (in-house / third party)
> Software programs
> Source Code
> Notional sensitivity analyses showing all possible combinations of output of model
> Client Specific Results[11]

The proposed catastrophe model regulation capitulates to those demands. However, these confidentiality provisions in **proposed Section 2651.10(d) –** "confidential PRID information shall not be public information and shall be considered to be information received in official confidence by the Department of Insurance" – and the NDA provisions in **(e)**, directly contradict not only the clear disclosure requirements of Proposition 103's Section 1861.07, but also the wildfire mitigation discount regulation (10 CCR 2644.9) approved by the Commissioner in October 2022, and the newly proposed "complete rate application" regulation Commissioner Lara proposed earlier this year, (REG-2019-00025).

The Department made a robust case for the submission and full disclosure of models, their algorithms, and all data associated with a model in the rulemaking documents supporting the necessity of both regulations.

Proposed Sections 2651.1(p) and (q), and Proposed Sections 2651.10(a) and (o), appear to be an attempt to bootstrap the changes proposed by this draft regulation into the text of the "complete rate application" regulation. Together they define the limited scope of the "model information" that must be provided as part of a complete rate application. Such information is not a substitute, however, for providing the "model" itself and any model "algorithm" as part of a complete rate application as required by CDI proposed 2648.4. In proposing the "complete rate application" regulation just three months ago, the Department explained the necessity of providing models and algorithms as part of a complete rate application as follows:

> In order to fully evaluate an insurer's request to change its rates and determine whether the requested rate change is appropriate and not excessive, inadequate, or unfairly discriminatory, the Commissioner must be able to review all information that may have a potential impact on the requested rate during the projected rating period. Relevant here, the general criteria, guidelines, systems, manuals, models and/or algorithms that

[10] ZESTY.AI STATEMENT, California Department of Insurance Prenotice Public Discussion on Mitigation in Rating Plans and Wildfire Risk Models, REG-2020-00015, November 10, 2021, p. 2.
[11] Moody's RMS Presentation, California Department of Insurance Workshop Examining Catastrophe Modeling and Insurance, REG-2023-00010, July 13, 2023, p. 5.

an insurer uses to determine whether to accept or reject new and renewal business and to determine an applicant's or insured's coverage or coverage options may loosely be referred to as "underwriting guidelines."

(CDI Initial Statement of Reasons, REG 2019-00025, Feb. 9, 2024, p. 15.)

The Department similarly argued the necessity of disclosing models and algorithms in the Initial Statement of Reasons for the Mitigation in Rating Plans and Wildfire Risk Models rulemaking, REG-2020-00015. Subdivision 2644.9(f) of that adopted regulation states that "any records, data, algorithms, computer programs, or any other information used in connection with the rating plan or Wildfire Risk Model used by the insurer" shall be available for public inspection. The Initial Statement of Reasons explains:

> Requiring the data to be filed and be publicly available allows consumers, including consumer groups to: 1) review the data; 2) participate in the ratemaking process and 3) enforce rating laws including those prohibiting rates that are excessive, inadequate or unfairly discriminatory.
>
> …
> Subdivision [2644.9](f) makes it clear that all information related to rating plans or Wildfire Risk Models submitted to the Commissioner as part of the rate review process shall be available for public inspection. Subdivision (f) makes it clear that such information specifically includes records, data, algorithms, computer programs or other information used in connection with the rating plan or Wildfire Risk Model. Subdivision (f) makes it clear that this information shall be publicly available whether it was submitted with the initial application made to the Commissioner or whether it was subsequently submitted. Subdivision (f) also makes it clear that ***such information shall be publicly available regardless of the source of the information and regardless of whether the insurer or developer of the rating plan or Wildfire Risk Models claims the information is a trade secret, confidential or proprietary.***
>
> ***…***
> ***Subdivision (f) is also reasonably necessary to make ratemaking transparent and allow for consumer participation pursuant to Insurance Code section 1861.10. Consumer participation would be discouraged and less effective if consumers groups and the public were not able to view the data that the insurers relied upon when submitting their rating plans that include wildfire mitigation factors and Wildfire Risk Models.*** Subdivision (f) is necessary to allow consumers, including consumer groups, to confirm that insurers' rates are not excessive, inadequate or unfairly discriminatory and thus that the rates comply with Insurance Code section 1861.05.
>
> ***If subdivision (f) is not included, consumer groups and the public will not have a way to determine if the Wildfire Risk Model is based on credible data and/or if the rates being***

> ***proposed, based in whole or part on those Wildfire Risk Models are excessive, inadequate or unfairly discriminatory. [emphasis added]***

(CDI Initial Statement of Reasons, REG-2020-00015, Feb. 25, 2022, pp. 42-43.)

Section 2648.4 of the proposed "complete rate application" regulation requires that models and algorithms used to accept, reject, or rate a risk must be provided as part of a complete rate application and made publicly available. Wildfire risk models used to determine individual premiums are similarly required to be submitted to the Commissioner and publicly disclosed pursuant to Section 2644.9(c) & (f).

The proposed regulation appears to empower the Model Advisor to override these requirements through the PRID process, which would conflict with both regulations and Insurance Code section 1861.07.

VI: LIMITING GOVERNMENT ACCOUNTABILITY: The proposed draft seeks to exempt the PRID process from the protections of the California Administrative Procedures Act.

Proposed Section 2651.1 (m) and (n) refers to the "Pre-application required information determination" and "procedure" (the PRID) as "nonadjudicative." This highly technical term is not used in any other Insurance Code statute or regulation. To the extent the Department is seeking to exclude the PRID process from the long-standing protections against government overreach set forth in the California Administrative Procedures Act (APA), which applies to all "adjudicative proceedings," it should reverse course.

The Administrative Procedures Act provides baseline procedural protections through its "Bill of Rights," found in Articles Six through Eight of the APA (Gov. Code §§ 11425.10–11435.65). Among the most important of those rights are that (1) hearings must be open for public observation; (2) the adjudicative function must be separated from investigative and advocacy functions; (3) presiding officers are subject to disqualification for bias; (4) decisions must be based on the record; and (5) ex parte communications are restricted. (Gov. Code § 11425.10.)

Moreover, the proposed PRID process would permit the Model Advisor to conduct the entire procedure behind closed doors. **Proposed Section 2651.10(e)** gives the Model Advisor "discretion to grant or deny a request to initiate or intervene in a PRID procedure." This conflicts directly with Proposition 103, which provides California consumers with an *unqualified* right to initiate or intervene in any proceeding. Section 1861.10(a) states:

> (a) Any person may initiate or intervene in any proceeding permitted or established pursuant to this chapter, challenge any action of the commissioner under this article, and enforce any provision of this article.

Even if the Model Advisor chooses to permit such participation, the regulation purports to make the entire PRID process confidential, including any hearings. (**Proposed Section**

2651.1(s).) No provisions prevent the Model Advisor from engaging in ex parte communications or require the separation of adjudicative and advocacy functions. Additionally, the Model Advisor need not state the factual basis of their decision based exclusively on evidence in the record when determining what model information must be provided. The APA should explicitly apply to any model review. The APA will ensure minimum protections are in place to help rectify these issues by requiring public observation, limiting ex parte communications, requiring separation of functions, and requiring the ultimate decision be based on facts in the record.

The Model Advisor is given unchecked power.

The proposed regulation envisions that the Model Advisor will make many legal determinations that are governed by the California APA. The regulations describe the Model Advisor's power as "without limitation," including to: "administer oaths; issue subpoenas; rule on motions to compel discovery; receive evidence and testimony," **Proposed Section 2651.10(h)**.

The Model Advisor will determine what information will be made public and will determine the "whether there is a significant public interest in the non-disclosure of confidential PRID information." **Proposed Section 2651.10(f)**

Yet there are no guidelines to govern these determinations by the Model Advisor.

Allowing such open-ended discretion without regulatory guidelines again opens the door to the "standardless, ad hoc decision-making" advocated by the insurance industry and rejected by the California Supreme Court in *20th Century Insurance Co. v. Garamendi* (1994) 8 Cal.4th 216, 312.

Compounding the lack of clarity as to the Model Advisor's role and powers, the draft regulation sets forth no qualifications for the Model Advisor.

VII. ALLOWS MODELS FOR AUTO AND OTHER FORMS OF INSURANCE. The regulation goes beyond wildfires to grant the commissioner broad, unrestrained authority to approve models for other purposes.

Proposed Section 2644.4.5(c)(3) allows the commissioner to expand the use of catastrophe models to "additional lines or exposures" and determine not only the catastrophe load, but project average annual losses in any line "at the Commissioner's discretion."

This rulemaking was convened in response to the shortages in the home insurance marketplace and the insurance companies' insistence that they can't do business in California unless they are allowed to use catastrophe models to predict wildfire risk. It is easy to imagine the potential for abuse if the commissioner starts receiving requests from insurance companies to expand their use of catastrophe models to predict losses in any line. This expansion would be a dramatic and unnecessary change when models can be inaccurate, inconsistent and contain biases.

As noted above, 10 CCR § 2643.1 requires the Insurance Commissioner to use "a single, consistent methodology" to evaluate insurers' rates and the California Supreme Court said open-ended discretion without guidelines opens the door to "standardless, ad hoc decision-making."

To allow insurers to use models in any line to project average aggregate non-cat losses in place of insurer specific data and specified trend periods, and making that determination discretionary one with no need for a regulation, will lead to the very inconsistency in application of the regulatory formula across insurers that 10 CCR § 2643.1 prohibits.

VII. PAST TESTIMONY

We incorporate here our previous comments of July and September 2023 that contain further resources and examples of why thorough, transparent review of models and their impact on rates is so necessary.[12]

See these comments for additional information on:

- Models' inconsistency. For example:

  At the Virtual Meeting Regarding Home Hardening and Wildfire Catastrophe Modeling held by the California Department of Insurance on December 10, 2020, Allan Schwartz, Fellow of the Casualty Actuarial Society and a Member of the American Academy of Actuaries, presented testimony to illustrate how this variability manifests in the private earthquake models already in use in California. He identified examples of dramatic differences in the results of the models consulted by insurance companies.

- The academic scrutiny of flaws in financial industry climate prediction software. For example:

  Boston School of Law Professor Madison Condon's presents a public interest critique including: the modeling firms' conflicts of interest; the disproportionate impact of data bias on communities of color; and how the secrecy of private models hides errors.

- Detailed questions about a model's function and impact that reviewers require access to a model to answer. For example:

[12] Consumer Watchdog testimony, California Department of Insurance Workshop Examining Catastrophe Modeling and Insurance, REG-2023-00010, July 13, 2023. https://consumerwatchdog.org/wp-content/uploads/2023/07/Consumer-Watchdog-Testimony-Catastrophe-Modeling-Workshop-7-13-23.pdf

How is risk scoring determined for quantitative variables that have multiple components (e.g. Fire station proximity: Physical distance, staffing, average drive duration, complications in an active wildfire scenario, etc.)?

- The lack of a California investigatory record of models' accuracy and reliability in other states, or projected models' impact on rates in California.

- The Wall Street and insurance industry ties creating financial conflicts of interest at some of the largest modeling firms.[13]

CONCLUSION

Responsible use of catastrophe models in compliance with California's rate oversight and transparency requirements would require that models be publicly reviewed for accuracy, reliability and bias, and be approved for use. Full access to a model and the ability to test its results are a prerequisite for the public and regulators to be able to determine if its predictions and impact on consumers' rates are fair. We urge the Department to redraft the proposal with these standards in mind.

A public California Wildfire Catastrophe Model would best meet these fairness and accountability goals, and empower consumers, communities, and the state to incentivize risk reduction and more transparently predict climate risk.

[13] Consumer Watchdog testimony, California Department of Insurance Workshop Examining Catastrophe Modeling and Insurance, REG-2023-00010, Sept. 28, 2023. https://consumerwatchdog.org/wp-content/uploads/2023/09/Consumer-Watchdog-Testimony-9-28-2023-2nd-CDI-Catastrophe-Modeling-Workshop.pdf

EXHIBIT 11

COMMENTS BY ALLAN I. SCHWARTZ ON BEHALF OF CONSUMER WATCHDOG REGARDING CALIFORNIA DEPARTMENT OF INSURANCE PROPOSED REGULATION TEXT REG-2023-00010 DATED March 14, 2024 FOR CATASTROPHE MODELING AND RATEMAKING

Section 2644.4.5 Use of Catastrophe Models

Sub-section (c) states in part "… at the Commissioner's discretion, models may be used in cases where limited historic insurance data is available".

This is vague in that it does not specify when and how the Commissioner could exercise that discretion. Would it occur on an ad hoc basis for individual filings? If yes, then when? Before the filing is made? While the filing is being reviewed? After a settlement or hearing on the filing?

If the Commissioner is to exercise such discretion, it should follow the same procedure required for adding additional rating factors beyond the three mandatory ones for private passenger automobile insurance.[1] That is, any additional use of models for ratemaking should be done through regulation.

Setting forth in the regulation any additional cases where models can be used will limit the possibility of different entities being treated unfairly.

With regard to the "limited historic insurance data", the criteria for that should be clearly set forth. Does that involve years of data? The volume of data? Data for that filer or wider industry data? What type of data – premiums, losses, exposures?

By setting out criteria ahead of time, entities involved in the rate filing process will have a better understanding of what procedures should be followed, which should expedite the rate filing review process.

Section 2644.5. Catastrophe Adjustment

Sub-section (a)

This states in part "For fire following earthquake, wildfire, and terrorism exposures in any line of insurance, an insurer may include an adjustment based on the average annual loss generated from one or more catastrophe models."

The filer should be required to submit the data and output of every catastrophe model for which it has results. Otherwise, an insurance company could run several models and show only the results for the model output it finds most favorable to itself, which could be disadvantageous to California policyholders. Furthermore, if the filer only submitted the results of one model, it will likely be asked for the results of other models during the rate filing review process, which could lead to delay.

Furthermore, it would be useful to have the results of more than one model to mitigate the results that may come from an abnormal model. North Carolina requires the use of more

[1] CIC 1861.02(a)(4) states in part "Those other factors that the commissioner may adopt by regulation and that have a substantial relationship to the risk of loss."

than one computer model for property insurance. "If the Rate Bureau presents any modeled hurricane losses based upon a commercial hurricane simulation computer model with a property insurance rate filing, the Bureau shall present data from more than one such model." N.C.G.S. 58-36-10(3).

The filer should also be required to show that the catastrophe model, or combination of catastrophe models used in the filing is the most actuarially sound. This would be consistent with 2644.7 and 2644.8, both of which require the insurer to use the most actuarially sound procedure.

By requiring all model results to be included in the filing and requiring a showing of most actuarially sound, entities involved in the rate filing process will have a better understanding of what is needed, which should expedite the rate filing process.

This sub-section also states in part "Further, the average annual loss may be adjusted to include a provision for defense and cost containment expenses (DCCE), either by applying a historical ratio of noncatastrophe DCCE to noncatastrophe loss or by applying a historical ratio of catastrophe DCCE to catastrophe loss."

The filer should be required to submit both sets of DCCE and loss data – both noncatastrophe and catastrophe. Otherwise, an insurance company could select the results it finds most favorable to itself, which could be disadvantageous to California policyholders. Furthermore, if the filer only submitted one set of data, it will likely be asked for the other data during the rate filing review process, which could lead to delay.

The filer should also be required to show that the DCCE and loss data used in the filing are the most actuarially sound. This would be consistent with 2644.7 and 2644.8, both of which require the insurer to use the most actuarially sound procedure.

By requiring all data to be included in the filing and requiring a showing of most actuarially sound, entities involved in the rate filing process will have a better understanding of what is needed, which should expedite the rate filing review process.

Sub-Section (b)2

This states in part, "The number of years over which the average shall be calculated shall be at least 20 years for residential and commercial property lines and at least 10 years for private passenger, and commercial, auto physical damage."

The filer should be required to submit data for as many years as available. Otherwise, an insurance company could select the number of years results it finds most favorable to itself, which could be disadvantageous to California policyholders. Furthermore, if the filer only submitted a limited number of years of data, it will likely be asked for more data during the rate filing review process, which could lead to delay.

The filer should also be required to show that the number of years of data used in the filing is the most actuarially sound. This would be consistent with 2644.7 and 2644.8, both of which require the insurer to use the most actuarially sound procedure.

By requiring all available data to be included in the filing and requiring a showing of most actuarially sound, entities involved in the rate filing process will have a better understanding of what is needed, which should expedite the rate filing review process.

Sub-Section (b)10

This states, "The insurer's current definition of catastrophe and the period of time it has used such definition."

The insurer should provide the catastrophe definition used over the entire catastrophe data period and the time frame of each, not just the current. This complete information is needed to make any adjustments that may be necessary to derive an actuarially sound catastrophe provision. If this is not included in the rate filing, it will likely be asked for more information during the rate filing review process, which could lead to delay.

Requiring the complete information in the filing should expedite the rate filing review process.

Sub-Section (c)12

This states, "The name of any major event or events contributing to the year's catastrophic losses, for instance, the 'Cedar Fire,' and the peril or perils associated with those losses."

The amount of losses and DCCE associated with each event for each peril should be provided. This is needed to evaluate the impact of each event on the catastrophe provision, and the numerical value of adjustments that may be needed to be made to reflect Sub-Section (d).

Sub-Section (d)

This states in part, "The catastrophe adjustment shall reflect any changes between the insurer's historical and prospective exposure to catastrophe due to a change in", and then lists three items.

Additional items that should be included in the list are changes to:

(4) The definition of catastrophe,

(5) The impact of mitigation measures, both on the individual policyholder level, community level, and state level,[2]

[2] This is consistent with proposed Senate Bill No. 1060.

(6) The insurer's business practices including, but not limited to, operations, claims, underwriting and marketing,

(7) Building and land use practices, and

(8) Other items that impact the prospective exposure to catastrophe events.

Sub-Section (e)

This states "For any individual peril, projected aggregate catastrophe losses cannot be based upon a combination of modeled and historical losses associated with that peril."

A list of perils by line of insurance should be provided in the regulation. This will allow all entities to know what procedures are allowed and also to be treated fairly. In addition, it would eliminate possible disputes regarding what constitutes a peril, which should expedite the rate filing review process.

Section 2651.1. Pre-Application Required Information Determination ("PRID") Procedure

The procedures set forth in this section seem vague and complicated.

A much better procedure would be to follow the practices used by the Florida Commission on Hurricane Loss Projection Methodology ("FCHLPM"). The FCHLPM website states "The Florida Commission on Hurricane Loss Projection Methodology (FCHLPM) was created during the 1995 Legislative Session as an independent panel of experts to evaluate computer simulation models and other recently developed or improved actuarial methodologies for projecting hurricane and flood losses."[3] The FCHLPM publishes a "Hurricane Standards Report of Activities" which set forth in detail the standards and procedures used to evaluate hurricane computer models.[4] The standards used by the FCHLPM cover six broad categories. Those are: (i) General, (ii) Meteorological, (iii) Statistical, (iv) Vulnerability, (v) Actuarial and (vi) Computer/Information.[5] Within each of these broad categories there are numerous detailed requirements. By setting forth the requirements in a document, the FCHLPM informs modelers of the information that is required for model examination. That expedites the process of examining and approving the use of models for rate filings. Using that type of procedure would be much better from an actuarial and regulatory perspective than the procedure set forth in the proposed regulation.

The title of this Section appears to indicate that this section deals with Information Determination. The regulation is not clear whether the end result of the PRID will simply be the

[3] https://fchlpm.sbafla.com/about-the-fchlpm/

[4] https://fchlpm.sbafla.com/media/532jql0c/2023-hurricane-roa.pdf

[5] *Ibid.*

information required in a rate filing, or if the PRID will be used to determine that the model can be relied upon in the rate filing. That needs to be clarified.

As discussed above, the preferred procedure would be similar to that used by the FCHLPM. Reviewing computer models in the context of individual rate filings would be a duplicative inefficient process. However, the review of computer models in the PRID proceeding should be thorough, complete, detailed and transparent. This is needed so all the participants, as well as the public, are assured that the result is a reasonable impartial assessment of the model that is fair to both insurance companies and policyholders.

However, even if the intent of a PRID is that the model can be relied upon by insurers, it should be made clear that during the rate review process the application of the model by the particular insurance company making the rate filing can be reviewed and evaluated.

An example of the types of issues that can arise regarding the use and application of a computer model to project losses can be found in an Order by the North Carolina Commissioner of Insurance I/M/O a January 3, 2014 filing by the North Carolina Rate Bureau for Revised Homeowners Insurance Rates.[6] The Order took into account the issues raised by lowering the otherwise calculated losses from the computer model by 13.9%.[7] The North Carolina Court of Appeals upheld the Commissioner's Order stating, "Upon full review of the Commissioner's analysis of the modeled hurricane losses, the Order shows the Commissioner performed a careful review of the evidence and did not arbitrarily reduce the modeled hurricane losses to be used in ratemaking. The Commissioner removed those sources of the modeled hurricane losses that he determined were questionable and not fully supported by the Bureau."[8]

Sub-section (o) states in part that even "if the Model Advisor determines that there is no set of required model information that could reasonably be relied upon to support the use and inclusion of any of the modeled financial projections, modeled catastrophe adjustments, modeled projected losses, or any other type of modeled loss outputs and projections for purposes of reviewing an insurer's complete rate application" the "insurer may still seek to rely upon the model". That seems completely unreasonable. If there is no set of information that could show the model "could reasonably be relied upon", there would seem to be no rational basis for allowing that model to be used to charge premiums to California policyholders.

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6 https://www.ncrb.org/Portals/0/ncrb/personal%20lines%20services/Rate%20Filings/2014%20Commissioners%20Order.pdf?ver=2019-10-02-142509-227

7 *Ibid.*, Page 94, FOF 225

8 State ex rel. Comm'r of Ins. v. N.C. Rate Bureau (In re Filing Dated Jan. 3, 2014) 248 N.C. App. 602 (N.C. Ct. App. 2016), 791 S.E.2d 211

EXHIBIT 12

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

June 12, 2024 REG-2023-00010

INVITATION TO WORKSHOP REGARDING CATASTROPHE MODELING AND RATEMAKING:

INSURER COMMITMENTS TO INCREASE WRITING OF POLICIES IN HIGH RISK WILDFIRE AREAS

The California Department of Insurance ("Department") will conduct a workshop to discuss the following contemplated changes: (1) adding new Section 2644.4.8 to California Code of Regulations, Title 10, Chapter 5, Subchapter 4.8, Article 4. The purpose of the contemplated changes is to allow property and casualty insurers to use catastrophe models for purposes of ratemaking based on a commitment to write homeowners and commercial policies in wildfire areas. This is part of the Department's overall proposed rulemaking changes to allow insurers to base projected losses on complex models for purposes of determining appropriate and justified rates in order to ensure a competitive and sustainable insurance market while protecting consumers.

You are invited to participate in the workshop discussions. The purpose of this discussion is to provide interested and affected persons an opportunity to present statements or comments regarding the contemplated regulations.

Date, Time and Location

Date: June 26th, 2024

Time: 2:30 p.m. The virtual workshop shall continue until all in attendance wishing to provide comments have commented, or 4:30 p.m., whichever is earlier.

Location: Link to Register for the Web-based Virtual Format:

https://us06web.zoom.us/webinar/register/WN_Ep67ot5hQaCud_fe3owzNQ

Attendance. To increase public participation and improve the quality of any regulations that the Commissioner ultimately adopts, interested parties are invited to attend the virtual meeting and offer comment, if they so choose.

Please note that under the California Public Records Act (Government Code section 6250, et seq.), your written and oral comments, and associated contact information (e.g., your address, phone number, e-mail, etc.) become part of the public record and may be released to the public upon request.

The telephonic call-in line to be used for the public hearing is accessible to persons with hearing impairment. Persons with sight or hearing impairments are requested to notify the logistical contact person for these discussions (listed below) in order to review available accommodations, if necessary.

Please direct all inquiries regarding the workshop to the contact persons named below.

Regulation Text. For purposes of promoting discussion, draft text of the proposed regulatory changes is attached. Participants should be prepared to present specific comments on the attached workshop draft regulation text during the public discussions. Participants are also invited to submit written statements and are encouraged to provide supporting documents and materials as well.

The workshop draft regulation text attached here concerns the portion of Commissioner Lara's Sustainable Insurance Strategy pertaining to allowing property and casualty insurers' commitments to write policies in high risk wildfire areas in order to use catastrophe models for purposes of ratemaking. The Department will hold insurance companies accountable to these commitments through the rate review process under Proposition 103 as part of its long-standing consumer protection mission. The Department is also providing a map which outlines the concentration of FAIR Plan policies and wildfire risk in the state.

Public Input Regarding Alternatives. In connection with this workshop discussion, the Department hereby seeks public input regarding alternatives to the contemplated regulations.

Please provide written or oral comments outlining any alternatives that would secure the same benefits as the contemplated regulations defining distressed areas and allowing property and casualty insurers to use catastrophe models in support of rate applications based on increasing their market share in distressed areas and other factors. The anticipated benefits of the contemplated regulations include, without limitation, the following:

- Promoting the availability of insurance in areas that have been underserved by providing an incentive for insurers to write more business in underserved areas in combination with allowing insurers to use catastrophe modeling in their ratemaking.

For each suggested alternative, please provide analysis and supporting information in your comments detailing the economic impact on entities that would be subject to or affected by the contemplated regulations. Please provide this input regarding alternatives to the contact for substantive inquiries, using the contact information below, by June 27, 2024.

This is Not a Formal Public Hearing on Proposed Regulations. Please be advised that participation in this workshop will be in addition to, and not in substitution for, any participation in any formal rulemaking process that may follow. This invitation to the workshop does not constitute a Notice of Proposed Action. Consequently, comments (oral or written) received in connection with this workshop discussion might not be included in any record of rulemaking that may follow. Similarly, the Department is not required to respond to comments received in connection with the workshop discussion. For this reason, if you wish to have comments included in any rulemaking file that may follow, or if you wish for the

Department to respond to your comments as part of the process by which it adopts this regulation, you must present your comments during the public comment period according to the procedures outlined in any Notice of Proposed Action.

Again, comments submitted in connection with this discussion will not be considered in any subsequent rulemaking proceeding unless they are resubmitted after the Notice of Proposed Action is issued. However, the Commissioner will consider public comments received in this workshop discussion when contemplating regulatory changes that may be proposed in a Notice of Proposed Action.

Contact Persons. All substantive questions and concerns regarding the contemplated regulations and/or these public discussions should be directed to Jennifer McCune, using the contact information below. Please submit any written comments via electronic mail to CDIRegulations@insurance.ca.gov by June 27, 2024.

Logistical Inquiries
Abigail Gomez, Analyst
California Department of Insurance
300 Capitol Mall, 16th Floor
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CDIRegulations@insurance.ca.gov

Substantive Inquiries
Jennifer McCune, Attorney
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CDIRegulations@insurance.ca.gov

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

WORKSHOP DRAFT TEXT OF REGULATION

CATASTROPHE MODELING AND RATEMAKING: INSURER COMMITMENTS TO INCREASE WRITING OF POLICIES IN HIGH RISK WILDFIRE AREAS

June 12, 2024 **REG-2023-00010**

Title 10. Investment
Chapter 5. Insurance Commissioner
Subchapter 4.8. Review of Rates
Article 4. Determination of Reasonable Rates

Adopt Section 2644.4.8. Distressed Areas; Insurer Commitments.

An insurer that opts to make, fulfill and document the fulfillment of its insurer commitments in the manner specified in this Section 2644.4.8 may use catastrophe modeling as permitted by Section 2644.4.5.

As used in this section, the term "qualifying residential property insurance" shall mean a policy of residential property insurance as defined in Insurance Code section 10087, except that renter's insurance policies do not fall within the meaning of qualifying residential property insurance. Additionally, an HO-6 policy, or its equivalent, is not included within the meaning of qualifying residential property insurance.

(a) Distressed areas, and properties insured by FAIR Plan policies, that are to be used in insurer commitments.

(1) Distressed areas.

For purposes of this section distressed areas shall include the following:

(A) Undermarketed ZIP Codes.

The Commissioner shall publish an initial bulletin containing a list of the Undermarketed ZIP Codes determined pursuant to this subdivision (a)(1)(A). The Commissioner shall by subsequent bulletins update the list of Undermarketed ZIP Codes from time to time as conditions warrant, but in any event no less frequently than once per year. For purposes of this section, an Undermarketed ZIP Code shall mean a ZIP Code, as determined by the Commissioner, which at least partially overlaps a high or very high fire hazard severity zone as shown on a map

published by the Department of Forestry and Fire Protection (Cal Fire) and in which ZIP Code:

1. At least 15% of residential properties that are insured under either the voluntary market or the FAIR Plan are insured by the FAIR Plan; or

2. The average premium per $1,000.00 of Coverage A is at least four dollars ($4.00) while the per-capita income of the ZIP Code is no higher than the fiftieth (50th) percentile for California.

(B) Distressed counties.

The Commissioner shall publish an initial bulletin containing a list of the distressed counties determined pursuant to this subdivision (a)(1)(B). The Commissioner shall by subsequent bulletins update the list of distressed counties from time to time as conditions warrant, but in any event no less frequently than once per year. For purposes of this section, a distressed county will be determined by the Commissioner as follows:

A county is a distressed county if in the aggregate greater than twenty percent (20%) of the dwelling units that are situated in that county are classified as high or very high risk as determined by the Commissioner. For purposes of this subdivision (a)(1)(B), dwelling units include single family dwellings, condominium units, residential dwelling complexes of two to four units, and mobile homes. Dwelling units exclude residential dwelling complexes of five or more units that are normally written under a commercial policy.

(2) Properties insured by the FAIR Plan exposed to wildfire risk.

Policies insuring properties that the insurer has classified as moderate to very high fire risk and that immediately prior to the insurer's insuring them, on a date subsequent to the approval of its rate application described in subdivision (c) of this section, had been covered under the FAIR Plan.

(b) Statewide market calculations.

(1) Calculation of statewide market share.

For purposes of this section the Department will calculate an estimate of the number of earned exposures of qualifying residential property insurance statewide based on the most recent experience year reported to the Department, such initial evaluation period ending on December 31, 2023, which figure shall be used as the denominator in the calculation of statewide market share for each insurer. The Commissioner shall publish a bulletin with the estimate of statewide earned exposures, no less frequently than once per year.

The numerator to be used in the calculation of each insurer's statewide market share shall be the number of earned exposures of qualifying residential property insurance policies in

the most recent 12-month period used in its recorded period as submitted in the insurer's rate application pursuant to subdivision (c) of this section.

In order to calculate its statewide market share, the insurer shall divide its numerator by the denominator, each as described in this subdivision (b)(1), and the insurer's statewide market share shall be the resulting quotient, rounded to the thousandths place.

(2) Statewide distressed areas earned exposures.

For purposes of this section the Department will calculate an estimate of the total number of earned exposures of qualifying residential property insurance in both the voluntary market and the FAIR Plan inside the distressed areas of the state based on the most recent experience year/dataset reporting such relevant information to the Department, such initial evaluation period ending on December 31, 2023, which figure shall be used in the calculation of each insurer's residential commitment inside the distressed areas pursuant to subdivision (d) below. The Commissioner shall publish a bulletin that includes the estimate of statewide distressed areas earned exposures, no less frequently than once per year.

(c) The insurer shall, as part of a complete rate application filing, submit an insurer commitment as set forth in subdivision (d), (f) and/or (j) of this section.

(d) Insurer commitments with respect to qualifying residential property insurance.

The insurer shall commit in writing to achieving no later than two years (730 days) after the approval of its rate filing (the insurer's "performance date" hereinafter), or maintaining, the insurer's earned exposure commitment in the distressed areas of the state as follows:

(1) Eighty-five percent standard.

(A) The insurer shall commit to write in distressed areas a number of policies equivalent to no less than the product of (1) the insurer's statewide market share, as calculated pursuant to subdivision (b)(1), (2) 0.85, and (3) the number of statewide qualifying residential property insurance policies inside distressed areas as stated in subdivision (b)(2) of this section; or

(B) In the event the insurer already meets or exceed the eighty-five percent standard set forth above in subdivision (d)(1)(A) of this section at the time of its rate application, the insurer shall commit to maintaining at least the same number of earned exposures in the distressed areas as it reported in the rate application filing pursuant to subdivision (c), for at least three years (1,095 days) after the approval of the rate application.

(2) Five percent increment.

The insurer may instead commit to writing additional policies as specified in subdivision (d)(3) in the voluntary market inside the distressed areas of the state such that, on the performance date, the insurer has increased its number of earned exposures

inside the distressed areas by at least the number of policies equal to 5% of its earned exposures in the distressed areas of the state within the most recent 12 month period used in its recorded period as submitted in the insurer's rate application pursuant to subdivision (c) of the section.

(3) The additional policies written in order to satisfy the requirement of this subdivision (d) shall include only the following:

(A) Policies insuring properties in distressed areas of the state; and/or

(B) Policies insuring properties that the insurer has classified as moderate to very high fire risk and that immediately prior to the insurer's insuring them, on a date subsequent to the approval of its rate application described in subdivision (c) of this section, had been covered under the FAIR Plan.

(e) Low-premium-volume insurers.

(1) An insurer whose gross California annual premium from qualifying residential property insurance policies is less than $10 million may comply with this section without making an insurer commitment pursuant to subdivision (d) of this section, until such time as subdivision (f)(2) is applicable to the insurer.

(2) No later than March 31 of the calendar year immediately following the calendar year during which an insurer described in subdivision (e)(1) of this section determines that it has met or exceeded $10 million of gross California annual premium from qualifying residential property insurance policies, the insurer shall submit a rate application as described in subdivision (c) of this section, which application contains an insurer commitment that conforms to subdivision (d) of this section.

(3) An insurer described in subdivision (e)(1) of this section shall calculate its gross California annual premium from qualifying residential property insurance policies annually.

(f) Insurer commitments with respect to commercial property insurance.

(1) For purposes of this subdivision (f) eligible ZIP Codes shall include all ZIP Codes in the state that at least partially overlap a high or very high fire hazard severity zone, as shown on a map published by Cal Fire.

(2) Insured exposure requirement. At the time of an insurer's first rate application filing subsequent to the effective date of this section, the insurer must commit in writing to increase its writing of policies in the eligible ZIP codes equivalent to five percent of its

total insurable value in eligible ZIP codes no later than two years (730 days) after the approval of the rate filing in which the insurer includes its insurer commitment.

(3) In the event the insurer is unable to timely meet the requirement in (f)(2), the insurer shall file a new application in which it modifies its insurer commitment in accordance with section (h)(1)(B)(2).

(g) Documenting the insurer's fulfilment of its insurer commitment.

The insurer shall create and maintain a wildfire risk portfolio. An insured property shall be added to the insurer's wildfire risk portfolio at the time the location and, if applicable, prior FAIR Plan coverage status of the insured property are fully documented pursuant to the provisions of this subdivision (g).

(1) For qualified residential insurer commitment.

(A) In addition to the material called for in subdivisions (g)(3) and (g)(4) below that is applicable to any property in its wildfire risk portfolio, the insurer shall maintain and keep current a document entitled "Wildfire Risk Portfolio Register," which shall list, for each property added to the portfolio, the following information: the date the property was added to the portfolio; the address of the property, including the ZIP Code; if the property is being added to the portfolio solely on the basis that it lies within a distressed county but not any Undermarketed ZIP Code, the county in which the property is situated; the inception date of the policy; and the termination date of the policy, if the policy has terminated.

(B) To document that the FAIR Plan was insuring the property in question immediately prior to the inception, on or after January 1, 2025, of a policy insuring that property that is issued by the insurer seeking to add the property to its portfolio after the effective date of this section, the insurer shall have on file:

1. A carrier discovery report or

2. Other documentation demonstrating that the property had been insured under the FAIR plan immediately preceding the date the insurer issues its policy. Such documentation may include (1) copies of declarations pages from the FAIR Plan, (2) a subscribing loss underwriting exchange report and/or (3) an electronic copy of the entire application completed by the insured and submitted to the insurer, on which application the insured has identified the prior insurer as the FAIR Plan.

(2) For commercial insurer commitment. In addition to the material called for in subdivisions (g)(3) below that is applicable to any property in its wildfire risk portfolio, the insurer shall maintain and keep current a document entitled "Wildfire Risk Portfolio Register," which shall list, for each property added to the portfolio, the following information: the date the property was added to the portfolio; the address of the property,

including the ZIP Code; the total number of exposures insured under each policy; the inception date of the policy; the property's total insurable value, and the termination date of the policy, if the policy has terminated.

(3) For both qualified residential insurer commitment and commercial insurer commitment.

(A) The Wildfire Risk Portfolio Register shall be maintained as a digital file that is sortable by all fields. The Wildfire Risk Portfolio Register shall be maintained until such time as at least five years have passed since the approval of an insurer's rate application renouncing the insurer's insurer commitment pursuant to subdivision (h)(2) of this section.

(B) Until such time as at least five years have passed since the approval of an insurer's rate application renouncing the insurer's insurer commitment, the insurer shall maintain a digital file for each insured property added to its portfolio, in which file shall be stored an electronic copy of each record necessary for purposes of supporting the property's status of lying within a distressed area of the state for purposes of satisfying the insurer's insurer commitment.

(h) Modification of, or failure to fulfill, insurer commitment.

(1) Modification when insurer loses significant market share.

(A) Residential insurers whose insurer commitment stated in the original rate application filing included an undertaking to write additional policies in distressed areas.

In the event that, subsequent to approval of its rate application described in subdivision (c) of this section (hereinafter, the "original application"), an insurer files a new rate application in which the insurer recalculates its insurer commitment as specified in subdivision (d) of this section on the basis that the insurer's statewide market share as calculated pursuant to subdivision (b)(1) of this section is at least five percent (5%) lower than was used for purposes of calculating the insurer commitment contained in the insurer's original rate application, then the new rate application may contain a modified insurer commitment pursuant to subdivision (d) of this section that reflects the recalculated insurer commitment, which insurer commitment shall become effective if and when the new rate application is approved.

(B) Residential insurers whose performance met or exceeded the applicable standard or requirement at the time of initial rate application filing.

An insurer may modify its insurer commitment that was made pursuant to subdivision (d)(1)(B) of this section as follows: The insurer may reduce its earned exposures in distressed areas of the state by up to five percent (5%) below the level reported in the original rate application filing, to the extent that is indicated

by the amount of the diminution of the insurer's statewide market share, but in no event below the 85% performance standard set forth in subdivision (d)(1)(B) of this section

(C) Modification of commercial insurer commitments.

An insurer may modify its insurer commitment as follows: In the event the insurer is unable to timely meet the requirement in (f)(2), the insurer shall file a new application in which it modifies its insurer commitment accordingly. The insurer may reduce its insurer commitment in eligible ZIP Codes of the state by no more than the decline in its total insurable value reported in the original rate application filing.

(2) Failure to fulfill an insurer commitment.

If at any time an insurer fails to fulfill its insurer commitment, or within a period of two years after the approval of its original application pursuant to subdivision (c), or at any point thereafter, fails to make reasonable progress toward timely fulfilling its insurer commitment, then the insurer shall immediately submit a new rate application renouncing its insurer commitment as described in subdivision (d) or (f) of this section. In this case the new rate application shall not make use of catastrophe modeling as permitted by Section 2644.4.5.

(i) Insurer Attestation.

(1) Attestations by insurers that have fulfilled, or are taking reasonable steps to fulfill, the insurer commitment.

In the event the insurer submits a subsequent rate application two years or more after its initial rate application pursuant to subdivision (c) of this section, the insurer shall include in that subsequent rate application an attestation that insurer has fulfilled or is taking reasonable steps to fulfill its insurer commitment at the time the subsequent rate application is submitted. In the event that a subsequent rate application is submitted less than two years after the approval of the initial rate application pursuant to subdivision (c), the insurer shall include in that subsequent rate application an attestation that the insurer is taking reasonable steps to fulfill its insurer commitment.

(2) Attestations with respect to modified insurer commitments that have been fulfilled.

In the event an insurer's rate application modifying its insurer commitment pursuant to subdivision (h)(1) of this section has been approved, the insurer shall attest in any subsequent rate application submitted two years or more after the approval of the application by which the insurer modified its insurer commitment that the insurer has fulfilled its modified insurer commitment at the time the subsequent rate application is submitted.

(3) Attestations with respect to modified insurer commitments that have yet to be fulfilled.

In the event that a subsequent rate application is submitted prior to the insurer's fulfillment of a modified insurer commitment pursuant to subdivision (h)(1) of this section that has not yet been fulfilled, the insurer shall include in that subsequent rate application an attestation that the insurer is taking reasonable steps to fulfill its modified insurer commitment.

(4) No attestation required subsequent to failure to meet insurer commitment.

In the event an insurer's rate application that includes a statement that the insurer has failed to fulfill its insurer commitment pursuant to subdivision (h)(2) of this section has been approved, and the insurer has not subsequently filed and received approval of a rate application that includes an insurer commitment that complies with the provisions of this section, the insurer need not include in subsequent rate applications an attestation as described in this subdivision (i).

(j) Alternative Commitments.

Any contrary provision of this section notwithstanding, if for any of the reasons stated in subdivision (j)(1) of this section, an insurer is unable, in good faith, to make a commitment as set forth in subdivisions (d) or (f) of this section, then an insurer may propose an alternative commitment in a complete rate application filing pursuant to subdivision (c), as described in subdivision (j)(2) of this section:

(1) An insurer may propose an alternative commitment pursuant to this subdivision (j) on one or more of the following bases:

(A) its size,

(B) its scope of coverages, or

(C) the frequency or severity of recent events impacting the insurer.

(2) Such rate application filing shall include a statement:

(A) setting forth the reason why this subdivision (j) is applicable, and

(B) describing the proposed alternative commitment in sufficient detail to allow the Commissioner to evaluate whether the alternative appropriately depopulates the FAIR Plan and/or increases availability of qualifying residential property insurance and/or commercial property insurance.

(k) Nothing in this section shall be construed as limiting, in any way, an insurer's ability to offer qualifying residential property insurance or commercial property insurance in this state.

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi*, 8 Cal.4th 216 (1994). Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company* v. *Deukmejian* (1989) 48 Cal.3d 805.

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

PRELIMINARY LIST OF DISTRESSED COUNTIES FOR INSURER QUALIFYING RESIDENTIAL PROPERTY INSURANCE COMMITMENTS

CATASTROPHE MODELING AND RATEMAKING: INSURER COMMITMENTS TO INCREASE WRITING OF POLICIES IN HIGH RISK WILDFIRE AREAS

June 12, 2024 **REG-2023-00010**

1. Tuolumne
2. Trinity
3. Nevada
4. Mariposa
5. Plumas
6. Alpine
7. Calaveras
8. Sierra
9. Amador
10. El Dorado
11. Mono
12. Lake
13. Mendocino
14. Siskiyou
15. Butte
16. Lassen
17. Shasta
18. Tehama
19. Santa Cruz
20. Humboldt
21. Napa
22. Del Norte
23. Modoc
24. Placer
25. Monterey
26. Marin
27. San Luis Obispo
28. Ventura

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

PRELIMINARY LIST OF UNDERMARKETED ZIP CODES FOR INSURER QUALIFYING COMMERCIAL PROPERTY INSURANCE COMMITMENTS

CATASTROPHE MODELING AND RATEMAKING: INSURER COMMITMENTS TO INCREASE WRITING OF POLICIES IN HIGH RISK WILDFIRE AREAS

June 12, 2024 **REG-2023-00010**

90008	90402	91107	91383	91759
90022	90601	91201	91384	91761
90027	90602	91202	91387	91762
90028	90603	91206	91390	91763
90039	90605	91207	91403	91765
90041	90621	91208	91423	91766
90043	90631	91214	91436	91768
90045	90638	91301	91501	91773
90046	90704	91302	91504	91784
90049	90720	91304	91505	91786
90056	90731	91307	91522	91789
90063	90732	91311	91604	91791
90065	90740	91316	91608	91792
90068	90744	91320	91701	91901
90069	90745	91321	91702	91902
90077	90746	91326	91706	91905
90094	90747	91331	91708	91906
90210	91001	91342	91709	91913
90220	91006	91344	91710	91914
90230	91008	91350	91711	91915
90232	91010	91351	91724	91916
90245	91011	91352	91730	91917
90263	91016	91354	91733	91931
90265	91020	91355	91737	91932
90272	91023	91360	91740	91934
90274	91024	91361	91741	91935
90275	91040	91362	91745	91941
90277	91042	91364	91746	91948
90290	91046	91367	91748	91962
90292	91103	91377	91750	91963
90293	91105	91381	91754	91977

91978	92117	92325	92539	92656
91980	92119	92333	92543	92657
92003	92120	92335	92544	92660
92004	92121	92336	92545	92663
92007	92122	92339	92548	92673
92008	92123	92341	92549	92675
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92019	92128	92352	92557	92679
92020	92129	92354	92561	92683
92021	92130	92356	92562	92688
92024	92131	92358	92563	92691
92025	92145	92359	92567	92692
92026	92154	92366	92570	92694
92027	92173	92371	92571	92697
92028	92210	92372	92582	92705
92029	92220	92373	92583	92782
92036	92223	92374	92584	92807
92037	92230	92376	92585	92808
92040	92234	92377	92587	92821
92055	92239	92378	92590	92823
92057	92240	92382	92591	92831
92058	92252	92385	92592	92832
92059	92256	92386	92595	92833
92060	92260	92391	92596	92835
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92064	92264	92399	92603	92861
92065	92266	92404	92610	92862
92066	92268	92405	92612	92867
92067	92277	92407	92614	92869
92069	92282	92408	92617	92870
92070	92284	92410	92618	92879
92071	92285	92411	92620	92880
92075	92305	92501	92624	92881
92078	92307	92503	92625	92882
92081	92308	92504	92627	92883
92082	92314	92505	92629	92886
92084	92315	92506	92630	92887
92086	92317	92507	92637	93001
92091	92318	92508	92646	93003
92096	92320	92518	92647	93004
92106	92321	92521	92648	93010
92107	92322	92530	92649	93012
92108	92323	92532	92651	93013
92111	92324	92536	92653	93015

93021	93262	93454	93620	93955
93022	93265	93455	93621	93960
93023	93267	93458	93622	94002
93033	93268	93460	93623	94010
93035	93270	93461	93626	94019
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93063	93286	93510	93635	94024
93065	93287	93512	93636	94028
93066	93292	93513	93638	94030
93101	93306	93514	93640	94035
93103	93307	93517	93641	94037
93105	93308	93518	93643	94038
93108	93309	93519	93644	94043
93109	93313	93522	93645	94044
93110	93314	93526	93646	94060
93111	93401	93527	93647	94062
93117	93402	93529	93651	94063
93203	93405	93531	93653	94066
93204	93407	93532	93654	94070
93205	93420	93536	93657	94074
93206	93422	93541	93664	94089
93207	93424	93543	93665	94112
93208	93426	93544	93667	94128
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93224	93432	93551	93908	94402
93225	93433	93552	93920	94404
93226	93434	93553	93921	94501
93234	93435	93555	93923	94502
93238	93436	93558	93924	94503
93239	93437	93560	93925	94506
93240	93440	93561	93926	94507
93243	93441	93563	93927	94508
93244	93442	93601	93928	94509
93247	93444	93602	93930	94513
93249	93445	93603	93932	94514
93251	93446	93604	93933	94515
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94534	94598	94970	95132	95345
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94539	94602	95002	95136	95361
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94542	94610	95004	95139	95364
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94550	94704	95013	95223	95379
94551	94705	95014	95224	95383
94552	94707	95017	95225	95386
94553	94708	95018	95226	95387
94555	94709	95020	95228	95389
94556	94710	95023	95229	95391
94558	94720	95030	95230	95403
94559	94801	95032	95232	95404
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94568	94903	95043	95248	95415
94569	94904	95045	95249	95417
94572	94923	95046	95251	95420
94573	94924	95054	95252	95421
94574	94930	95060	95254	95422
94575	94933	95062	95255	95423
94576	94937	95064	95257	95425
94577	94938	95065	95304	95426
94578	94940	95066	95305	95427
94579	94941	95070	95306	95428
94580	94945	95073	95310	95429
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95451	95545	95646	95912	95988
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95464	95560	95675	95935	96015
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95472	95571	95687	95945	96024
95476	95573	95688	95946	96025
95482	95585	95689	95947	96027
95485	95587	95692	95949	96028
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STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, CA 95814

PRELIMINARY LIST OF UNDERMARKETED ZIP CODES FOR INSURER QUALIFYING RESIDENTIAL PROPERTY INSURANCE COMMITMENTS

CATASTROPHE MODELING AND RATEMAKING: INSURER COMMITMENTS TO INCREASE WRITING OF POLICIES IN HIGH RISK WILDFIRE AREAS

June 12, 2024 **REG-2023-00010**

90046	92305	93226	93641	95223
90063	92314	93240	93643	95224
90068	92315	93243	93644	95225
90077	92317	93255	93645	95226
90210	92321	93260	93651	95228
90265	92322	93262	93653	95229
90290	92323	93265	93664	95232
90704	92325	93271	93667	95233
91008	92333	93283	93669	95245
91384	92339	93285	93675	95246
91759	92341	93426	93920	95247
91901	92352	93435	93924	95248
91905	92358	93512	93928	95249
91906	92378	93518	93954	95251
91916	92382	93527	94020	95255
91917	92385	93529	94021	95257
91931	92386	93531	94060	95305
91935	92391	93532	94074	95306
91948	92397	93541	94508	95310
91962	92539	93549	94515	95311
91963	92548	93563	94516	95318
92036	92549	93601	94567	95321
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92060	92590	93603	94573	95327
92061	92676	93604	94576	95329
92065	92678	93605	94937	95335
92066	93108	93614	94940	95338
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92086	93208	93628	95033	95364
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EXHIBIT 13

Comments of Consumer Watchdog
Fourth Workshop Regarding Catastrophe Modeling and Ratemaking:
Insurer Commitments to Increase Writing of Policies in High-Risk Wildfire Areas
(REG-2023-00010)
June 26, 2024

Commissioner Lara proposes to allow insurance companies to use unverifiable third-party models to set rates, charge consumers for unregulated reinsurance, and roll back regulatory oversight that has protected consumers for nearly four decades.

These insurance industry solutions, proposed in response to an availability crisis the industry created, will make insurance premiums even more unaffordable for consumers across the state.

Similar concessions to those in the Commissioner's plan have failed to stabilize the insurance market in Florida. Floridians' home insurance rates are two-and-a-half times higher than in California.[1] Florida's insurer of last resort, Citizens, has four times as many policyholders as the FAIR Plan.[2] Insurance companies have still abandoned the state.

This regulation—based on a legislative proposal negotiated between Commissioner Lara and insurance companies behind closed doors last year—was supposed to make insurance companies give something back by requiring them to sell home insurance again to Californians they have abandoned.

It is deeply disappointing that the long-awaited text of the regulation fails to deliver on making insurance more available for Californians.

The Commissioner has stated publicly that his plan will require insurance companies to increase sales to homeowners in "distressed areas." **However, the text of proposed regulation 2644.4.8 does not require a single insurance company to return to areas of the state it has abandoned.**

The proposal does not require the sale of policies with comprehensive coverage; would not require insurance companies to charge a price that consumers are able to afford; and contains so many loopholes that insurance companies' "commitment" to sell insurance in distressed areas can be waived for any insurer that claims it cannot, or later opts not to, meet it. But when insurance companies fail to expand coverage, they will still get to keep the double-digit price hikes that will result from allowing insurance companies to use unverifiable secret algorithms to set prices.

[1] https://content.naic.org/sites/default/files/publication-hmr-zu-homeowners-report.pdf
[2] https://floir.com/tools-and-data/residential-market-share-reports

The proposed regulation will drive up rates for every Californian, not just those in wildfire areas.

While the coverage "commitments" do not begin for two years, insurance companies would be able to raise rates using black box models immediately.

The proposed regulation allows insurance companies to use black box catastrophe models to set rates for every Californian. The next regulation on deck will allow insurance companies to charge all policyholders for the unregulated (and skyrocketing) cost of global reinsurance—which no other California commissioner has ever allowed. These two changes will raise rates not just in riskier areas, but for home, condo, and apartment insurance across the state. That means every Californian will pay more for an empty promise to get homeowners in wildfire areas insured.

The majority of the public does not support that tradeoff, even if it were successful in getting people insured again. A poll conducted by FM3 Research for Consumer Watchdog found that Insurance Commissioner Lara's plan to allow insurance companies to increase premiums for all Californians in exchange for a promise to insure homeowners in higher wildfire risk areas is opposed by a 2 to 1 margin, 62% opposed to 30% in support. Only 9% of voters register in strong support.[3]

As we note in our testimony at the prior modeling workshops[4], private models are notoriously inaccurate and inconsistent and contain biases that threaten to restore redlining and other notorious discriminatory practices. Catastrophe models will simply be tools for insurance companies to charge more unless California mandates transparency into how they impact prices, imposes rules of the road requiring review and approval of their design and use, and requires that insurance companies use them to provide consumers and communities with actionable information about their own climate risk.

A public model that is testable and fully open to public scrutiny would best serve these goals. We were pleased to hear Commissioner Lara finally endorse the idea of a public model for the first time in an Assembly Insurance Committee hearing in April. We urge the Commissioner to put this regulation on hold until a public model is created that the public can have confidence is not unfairly inflating prices, and to endorse a mandate that insurance companies sell to Californians who do the right thing and protect their homes from fire. This is the most practical and most certain way to guarantee Californians access to affordable coverage.

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[3] https://consumerwatchdog.org/insurance/new-poll-shows-voters-oppose-insurance-commissioners-home-insurance-plan-by-2-to-1-overwhelming-support-requiring-insurers-to-cover-all-who-fire-proof-their-homes/

[4] https://consumerwatchdog.org/wp-content/uploads/2024/04/Consumer-Watchdog-Testimony-Catastrophe-Modeling-Workshop-04-23-24.pdf; https://consumerwatchdog.org/wp-content/uploads/2023/07/Consumer-Watchdog-Testimony-Catastrophe-Modeling-Workshop-7-13-23.pdf; https://consumerwatchdog.org/wp-content/uploads/2023/09/Consumer-Watchdog-Testimony-9-28-2023-2nd-CDI-Catastrophe-Modeling-Workshop.pdf

Insurance companies do not have to sell comprehensive coverage to meet their commitments.

Ever since Commissioner Lara announced his deal with the insurance industry last September, Consumer Watchdog has asked him to confirm exactly what kind of policy insurance companies would have to sell. This question was urgent because the deal the Commissioner made with the insurance industry during the last legislative session would have allowed the sale of bare bones, FAIR Plan–equivalent policies, not the standard, full-benefit home insurance that Californians need.[5] The Commissioner never answered.

Now we know this regulation has the same loophole. Nothing in the text of the regulation specifies that the policies insurance companies are committing to sell must be standard, full-benefit insurance coverage that will make sure people can fully rebuild their property and replace their possessions if they experience a loss.

This directly contradicts public expectations and assertions by the Commissioner and Department staff that the policies will be comprehensive.

Section 2644.4.8(d). The regulation directs companies to commit to sell "policies" with no description of the scope of that coverage.

Section 2644.4.8. The only other term used in the regulation is "qualifying residential property insurance," as defined in Ins. Code Section 10087, excluding condo owner and tenant policies. That term broadly means a "policy insuring individually owned residential structures of not more than four dwelling units, individually owned condominium units, or individually owned mobilehomes, and their contents, located in this state and used exclusively for residential purposes or a tenant's policy insuring personal contents of a residential unit located in this state."[6]

"Qualifying residential property insurance" could mean an HO-3 comprehensive homeowners policy. It could also mean the "basic property coverage" sold by the FAIR Plan.

A standard HO-3 policy for homeowners covers far more than the limited-benefit FAIR Plan coverage. Among the perils that HO-3 policies cover but are excluded by the FAIR Plan, even with optional add-on coverage, are:

- Theft
- Liability
- Falling objects, such as a tree on the roof
- Non-flood water damage, such as pipes bursting
- The weight of ice or snow

[5] https://consumerwatchdog.org/wp-content/uploads/2023/11/LtrGovLeg11-1-23.pdf
[6] https://california.public.law/codes/ca_ins_code_section_10087

- Glass breakage
- Damage to others' property

When Commissioner Lara recognized the importance of comprehensive policies to homeowners and ordered the FAIR Plan to offer broader coverage, the order specified that FAIR must offer "the option of an HO-3 policy or a policy with coverages equivalent to those included in an HO-3 policy."[7]

If the Commissioner's intent is to require insurance companies to sell full-benefit coverage under their commitment, this regulation must also specify the type of policies insurance companies must issue. Why does this regulation not do so?

Consumers can already buy limited-benefit coverage from the FAIR Plan. This is the jam consumers are trying to get free of. If insurance companies' only commitment under this regulation is to sell bare-bones coverage in return for unjustified rate increases, consumers will be no better off than they are today.

There is no requirement that insurance companies expand sales to sell at least 85% of their statewide market share to people in distressed areas.

Section 2644.4.8(d). The text of the regulation is clear. Rather than make the 85% percent commitment in *(d)(1)*, an insurer "may instead commit" to increasing its policies in distressed areas by as little as 5% of its current business in those areas, on a one-time basis under *(d)(2)*.

Section 2644.4.8(f). A 5% increase is also the only commitment that commercial insurers must make.

This "five percent increment" could amount to very little change for an insurance company that has already dropped most of its customers in fire zones. It perversely rewards those companies that have already abandoned Californians, instead of those that have stayed in the market, because if a company's baseline number of policies is small, a 5% increase will be marginal too.

The 5% increase is not limited to small or regional companies.

The Commissioner and Department staff have stated that the 5% increment is limited to small and regional companies that could not meet the 85% standard.[8]

The text of the regulation does not contain any such limitation. Regional companies are not mentioned in the regulation at all.

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[7] https://www.insurance.ca.gov/0250-insurers/0500-legal-info/0700-commissioners-orders/upload/FAIR-Plan-Order-2019-2.pdf

[8] https://www.insurance.ca.gov/01-consumers/180-climate-change/upload/California-Department-of-Insurance-Presentation-on-Insurance-Commitments-in-Wildfire-Distressed-Areas.pdf

Section 2644.4.8(e). Small companies are mentioned—but not in the context of the 5% standard. Small insurance companies with gross premium of less than $10 million are exempted entirely from the regulation. They may use models to increase rates without expanding sales in the state at all.

Even the 5% commitment is an illusion, because insurers have the option of making an "alternative commitment" to choose their own standards.

Section 2644.4.8(j). At any time, insurance companies may tell the Department of Insurance they cannot meet either their 85% or 5% commitment and propose a different commitment.

The justifications for an insurer seeking an "alternative commitment" are undefined. For example (j)(1)(C) cites "the frequency or severity of recent events impacting the insurer" as a basis for proposing an alternative commitment. This text does not even specify that the recent events must have caused the insurance company financial harm. Such vague terms open the door for any insurance company to demand the right to opt for a lesser "alternative" to either the 85% or 5% increment.

The regulation contains no standards that an acceptable "alternative commitment" must meet.

The regulation states, in one sentence with no further qualification, that the Commissioner will evaluate an insurance company's proposed alternative commitment based on whether it "appropriately depopulates the FAIR Plan and/or increases availability of qualifying residential property insurance and/or commercial property insurance."

Could an insurance company offer to sell a few more policies in a single ZIP code? Increase sales only in non-distressed areas? Start selling Difference In Conditions wraparound coverage, but drop more homeowners' full-benefit policies?

An insurance company could apply for an alternative commitment from Day One. Or it could invoke this alternative commitment option at the two-year mark when it fails to meet the 85% market share or 5% increase commitments. This option creates one avenue to never-ending revisions of an insurance company's commitments.

This "alternative commitment" loophole eliminates even the minimum commitments the regulation otherwise purports to impose.

Multiple additional loopholes and off-ramps let insurance companies off the hook if they fail to meet their commitments.

Section 2644.4.8(i). An insurance company that has not met the 85% or 5% commitment after two years has only to file an "insurer attestation" that it "is taking reasonable steps to fulfill its insurer commitment." As the regulation does not define what an "insurer attestation" contains,

it could be as little as a sentence informing the insurance commissioner whether a company met its commitment or not. “Reasonable steps” is also not defined.

After the attestation, the insurance company is granted an indefinite extension with no requirement or deadline for future reporting or compliance.

Section 2644.4.8(h)(1). Another section directs insurance companies to submit a lower “modified commitment” if their market share has decreased.

This encourages insurance companies to continue on the path they’re on today. An insurance company that intentionally reduces market share by dropping policyholders would then trigger a re-evaluation (lowering) of the insurance company’s commitment. There is no limit on the number of times these commitments can be reduced. Yet the regulation would allow the company that is actively choosing to non-renew policyholders to retain the financial boon of using private models to increase rates.

Section 2644.4.8(j). A third section allows insurance companies that can’t meet their goals to propose the “alternative commitments” outlined above.

There are no timelines for meeting an insurer’s commitments, or even reporting on an insurer’s progress beyond the first two-year mark, if it says it is “acting in good faith” to comply.

One reason insurance companies are unlikely to meet these commitments is that policies in fire areas will be too expensive for most homeowners to afford.

A very likely outcome of this regulation is that insurance companies will technically offer policies in distressed areas, but that they will price them so prohibitively high that no one will be able to afford them. Insurance companies will then be able to claim they are “taking reasonable steps to fulfill” their goals—because they are offering the policies—but are unable to comply ***because no one can afford to buy them.***

There are no penalties for failure.

In the closed-door press briefing announcing this regulation, Insurance Commissioner Lara mentioned multiple enforcement mechanisms that are at his disposal: market conduct exams, rate reviews, even refunds.[9] The text of the regulation, however, does not name mandatory or even potential consequences if an insurance company does not meet its commitment at the two-year mark, or at any point in the future, as long as it says it is taking “reasonable steps” to fulfill it.

[9] https://calmatters.org/economy/2024/06/california-pushes-insurers-to-cover-more-homes-in-these-areas-is-your-zip-included/

The regulation does not require the commissioner to investigate failures, order refunds, or take any other enforcement action against an insurer that fails to meet its commitments.

Section 2644.4.8(h)(2). The regulation does say that an insurance company that "renounces" its commitment shall no longer use catastrophe models. But since there is no timeline for an insurance company to meet its commitments, plenty of leeway to reduce its commitment when it fails to meet the mark, and no penalty for failure, there is no reason to expect an insurer will ever choose to renounce its commitment.

Companies will not have to prove they met their commitments publicly.

Section 2644.4.8(c). The only information under the proposed regulation insurance companies must file publicly as part of a complete rate application is notification of what commitment—85%, 5%, or some alternative—they have chosen.

Section 2644.4.8(g). The proposed regulation requires insurance companies to maintain a "wildfire risk portfolio register" that is meant to track an insurance company's progress on its commitment. But the regulation does not require the portfolio register to be made public in rate filings or at any other time. The public, policymakers, and the press will have no way of verifying if an insurance company is meeting its commitments.

One potential benefit of such reporting—if it were public, and if insurance companies were in fact meeting their commitments—would be new data to fill the massive existing information gap regarding Californians' access to coverage. That information could be used to better illuminate for policymakers and the public whether access is improving or getting worse in areas across the state. But no such disclosure is required.

The Commissioner has not disclosed details about how "distressed areas" were identified.

Section 2644.4.8(a) The regulation defines "distressed areas" to include undermarketed ZIP codes with high fire risk where at least 15% of all policies are with the FAIR Plan, or where policies in lower-income ZIP codes cost more than $4 per $1000 in coverage. It also includes counties where 20% of dwellings are high risk. However, no data has been released to show how the Department identified the ZIP codes and counties that meet these metrics. The public needs more evidence of how those areas were identified. The data used by the Department to make these determinations should be made public, after being cleaned to remove any personally identifiable information about insurance policyholders.

This regulation will not get homeowners in fire areas in Californians insured again. That is why consumer groups have urged you to press the creation of a public wildfire model in California, and to endorse a mandate that insurance companies sell to Californians who do the right thing and protect their homes from fire.

EXHIBIT 14

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

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

CATASTROPHE MODELING AND RATEMAKING

August 16, 2024 **REG-2023-00010**

Exempt Rulemaking

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

SUBJECT OF PROPOSED RULEMAKING

Notice is given that California Insurance Commissioner Ricardo Lara will hold a public hearing to consider amending California Code of Regulations, Title 10, Chapter 5, Subchapter 4.8, Article 4, sections 2644.4, 2644.5, 2644.8, and 2644.27, and adopting section 2644.4.5 and 2644.4.8, as well as adopting Article 8, section 2648.5.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, concerning these regulations, as follows:

Date: September 17, 2024

Time: 10:00 a.m. The public hearing shall continue until all in attendance wishing to provide comments have commented, or 1:00 pm.

Location: https://us06web.zoom.us/webinar/register/WN_AlZHZOIOS_6LI9G0-BQYUQ

The telephonic call-in line that is available to access the public hearing is accessible to persons with hearing impairment. Persons with sight or hearing impairments are requested to notify one of the contact persons for this hearing (listed below) in order to review available accommodations, if necessary.

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end on **September 17, 2024.** Please direct all written comments to the following contact person:

Sara Ahn, Staff Counsel
California Department of Insurance
c/o Office of the Special Counsel
300 Capitol Mall, 16th Floor
Sacramento, CA 95814
Phone: (213) 346-6635
Email: CDIRegulations@insurance.ca.gov

The above contact person may be directly contacted with any questions regarding the substance of the proposed action at the following email address: CDIRegulations@insurance.ca.gov

The following contact person may also serve as a backup to the contact person listed above:

Margaret Hosel, Staff Counsel
c/o Office of the Special Counsel
300 Capitol Mall, 16th Floor
Sacramento, CA 95814
Phone: (415) 538-4383
Email: CDIRegulations@insurance.ca.gov

All other inquiries, including procedural questions related to submitting comments or participating in the hearing, should be addressed to the following contact person.

Abigail Gomez
California Department of Insurance
c/o Office of the Special Counsel
300 Capitol Mall, 16th Floor
Sacramento, CA 95814
Phone: (916) 492-3507
Email: CDIRegulations@insurance.ca.gov

Please note that under the California Public Records Act (Government Code Section 6250, et seq.), any written and oral comments, and associated contact information included in such comments (e.g., electronic or physical address, phone number, etc.) become part of the public record and can be released to the public upon request.

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to the contact person at the address listed above, no later than **September 17, 2024.** Any written materials received after that time may not be considered.

COMMENTS TRANSMITTED BY E-MAIL

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: CDIRegulations@insurance.ca.gov.

Comments sent to e-mail addresses other than that which is designated in this notice will not be accepted. Comments sent by e-mail are subject to the deadline set forth above for written comments.

AUTHORITY AND REFERENCE

The proposed regulations will implement the provisions of Insurance Code sections 730, 1850.4, 1858.6, 1861.01, 1861.05, 1861.07, 1861.09, 1861.10, and 12924, which also provide the rulemaking authority for this action. The Commissioner is authorized to promulgate regulations to implement Proposition 103. *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216.

INFORMATIVE DIGEST

Summary of Existing Law

Proposition 103 is codified in Insurance Code sections 1861.01 et seq., and requires, *inter alia*, that no insurance rate subject to its terms shall be inadequate, excessive, or unfairly discriminatory. To help determine whether rates are excessive, inadequate, or unfairly discriminatory, Insurance Code section 1861.05 requires any insurer desiring to change its rates for property and casualty insurance to file a complete rate application with the Insurance Commissioner for his review and approval prior to using the proposed rates. Additionally, Proposition 103 encourages public participation in the ratemaking process and allows consumer representatives to intervene in the review of rate filings. A complete rate application contains certain data specified by statutes and regulations as well as such other information as the Commissioner may require. Under Insurance Code section 1861.07, all information *provided to the Commissioner* as part of a complete rate application must be available for public inspection and therefore, made public.

California is currently the only state that prohibits insurers from using models to base projected losses in most property and casualty lines of insurance. The only exception to this prohibition is for projected losses for earthquakes and fire following earthquakes. For all other risks, current regulations found in Title 10, sections 2644.4 and 2644.5 require insurers to base projected losses using historical experience, with catastrophe losses based on a long-term average of catastrophe claims of at least the past 20 years for homeowners coverage.

Effect of Proposed Action

The proposed amendments in this rulemaking will permit insurers to use forward-looking catastrophe models in their rate calculations and make necessary changes to the existing rate-making formula to ensure that the use of such catastrophe models in ratemaking will be actuarially sound. This rulemaking will also adopt and amend regulations to create a new procedure, the pre-application required information determination procedure (PRID procedure), to allow the public a fulsome opportunity to thoroughly investigate the inner workings of such models, irrespective of whether the information sought is actually relevant to rate-making, while at the same time respecting potentially trade-secret proprietary information of model vendors and owners. In addition, this rulemaking will provide that only insurers that commit to writing additional policies or maintaining policies in distressed areas may be permitted to use forward-looking catastrophe models in their commercial and residential property rate filings to calculate the wildfire component in their overall rates, because their historical experience may no longer accurately reflect their projected losses given the anticipated changes in their book of business as well as climate-related factors.

Given the importance of balancing consumers' rights to participate in a thorough investigation of the reliability of these forward-looking models for use in ratemaking with the third-party modelers' concerns regarding the protection of their proprietary information, the Department has built in necessary confidentiality protections as part of this rulemaking so that proprietary information about the model that is not relevant to rate-making is never made public. Ultimately, information and data relevant to ratemaking provided to the Commissioner as part of a complete rate application will be made public under Insurance Code section 1861.07 but other irrelevant information that the public would like to investigate during the PRID procedure would be kept confidential and not subject to Insurance Code section 1861.07.

Policy Statement Overview

While using historical experience may have allowed insurers to accurately project losses in prior eras, insurers and others working in the insurance field note that the progression of increased risk of loss due to wildfire, extreme weather events, and other climate risks, now renders historical experience increasingly unsuitable to accurately project losses. Additionally, historic losses may not be as accurate in predicting future losses where insurers agree to change their historic books of business by writing or maintaining additional policies in higher-risk wildfire-prone areas. Proponents of models cite advances in modeling technology in support of reliance on these tools to more accurately project losses in an era of increasing climate risk.

Based on input from public workshops together with a thorough assessment of today's insurance landscape, the Department believes that allowing companies to use catastrophe models in their rate calculations will give them the ability to more accurately anticipate future potential catastrophe losses, thereby supporting greater availability of insurance. The Department is mindful that the use of catastrophe models must fit within the existing rate approval process and informed by California's goals of fairness, availability, and affordability. Further, the Department has been very clear that ensuring public participation in the rate-setting process is of utmost importance as it strives to increase the availability of reliable insurance from the admitted

market, ensure the long-term sustainability of rates, and incentivize the accurate recognition of mitigation efforts.

Benefits Anticipated

The proposed regulation allows insurers to use catastrophe models to project annual aggregate losses for wildfire exposure if the insurers meet certain conditions to demonstrate a need to use such models. Allowing insurers to use forward-looking models to estimate projected losses for rate-making purposes is expected to provide benefits including:

- Improving pricing accuracy and rate stability by allowing insurers to use additional tools to assess prospective exposure to catastrophe losses in their rate calculations.
- Promoting availability of insurance in areas that have been underserved by improving pricing accuracy and encouraging a more competitive market.
- Promoting fairness as models can more timely account for risk mitigation trends as a result of risk mitigation actions taken at community and property levels.
- Encouraging uniformity and consistency in insurance ratemaking by allowing the use of scientifically, computationally, and actuarially sound models to project catastrophe losses in property and casualty lines, a practice allowed in all other states.
- Standardizing the usage of non-modeled losses to streamline the rate review approval process, minimize disputes, and allow for the more focused review and faster approval of rate applications.

The new, optional PRID procedure is intended to expedite the Department's review and approval of rate filings that rely upon models by eliminating unnecessary pre-hearing discovery disputes regarding models that delay the process. Because a singular pre-application required information determination can be relied upon in multiple rate filings by various insurers, the proposed regulation will expedite the Department's review and approval of rate filings, which will directly impact insurance availability and promote a robust and competitive insurance marketplace. Benefits anticipated to result from the PRID procedure include:

- Increasing openness and transparency in business and government by establishing a procedure to allow for thorough investigation of a model to determine what information and data is pertinent to using that model in ratemaking.
- Clarifying and expediting the review of modeled catastrophe loss projections and overall rate review process by establishing the role of a Model Advisor to direct a new procedure specified by these regulations and make determinations as to what constitutes required model information in a rate application. Without this procedure, model disputes would likely occur during the rate application, potentially leading to lengthy delays in the rate review and approval process.

Further, allowing insurers that commit to writing additional policies or maintaining policies in distressed areas to use forward-looking catastrophe models is expected to increase availability of residential and commercial property insurance options for Californians, because this requirement:

- Promotes market efficiency by providing insurers that commit to writing more business in distressed areas, and/or taking out of the FAIR Plan more policies insuring properties impacted by heightened wildfire risk, a mechanism for calculating rates more accurately than may be possible using historical loss trends, thus enabling insurers to charge rates commensurate with the associated increased risk of loss.
- Promotes fairness by creating an attainable standard that all companies must follow should they want to use catastrophe modeling in ratemaking.
- Increases competition in the voluntary insurance market for qualified residential insurance policies in distressed areas, as an insurance company will now need to write additional policies to meet, or maintain, its insurer commitment.
- Encourages FAIR Plan depopulation by incentivizing voluntary market insurers to write policies in distressed areas. FAIR Plan depopulation would alleviate insurer uncertainty due to high levels of risk in the FAIR Plan. In the event of a large wildfire, insurers could be assessed to fund the FAIR Plan's obligations. A FAIR Plan assessment would be an additional cost for insurers and cause further instability in the voluntary property insurance market.
- Increases the availability of commercial insurance policies in higher wildfire risk areas by requiring companies to write a number of additional policies equivalent to five percent of the company's total insurable value in order to use catastrophe models.

Consistency or Compatibility with Existing State Regulations

The proposed amendments are not inconsistent or incompatible with any other existing regulations. The proposed amendments specifically address using catastrophe models in a manner that is consistent with the existing regulatory rate-making formula and ensures that the Commissioner's system of prior rate approval remains grounded in actuarially sound principles. Additionally, these proposed amendments specifically address creating the PRID procedure to allow the public a fulsome opportunity to thoroughly investigate the inner workings of catastrophe models while at the same time respecting potentially trade-secret proprietary information of model vendors and owners.

NOT MANDATED BY FEDERAL LAW OR REGULATIONS

These regulations are not mandated by federal law. There are no existing federal regulations or statutes comparable to these proposed regulations as no federal statutes or regulations address property and casualty insurance rating factors.

OTHER STATUTORY REQUIREMENTS

The Department evaluated whether there were other requirements prescribed by statute applicable to these regulations by reviewing statutes and regulations relating to this issue and determined that there were no such requirements.

LOCAL MANDATE

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

FISCAL IMPACT
The following anticipated fiscal impacts to the Department have been identified.

PRID Procedure
The regulations state the Commissioner shall delegate the authority to oversee a PRID procedure to a Model Advisor, who has the authority to issue subpoenas, administer oaths, and control the course of the PRID procedure. The Department will incur costs in the administration of the PRID procedure, the review and analysis of catastrophe models, bringing in outside consultants, questioning expert witnesses, and judicial review of decisions. The Department anticipates that the Model Advisor will be dedicated full-time to running PRID procedures for three years. The Model Advisor is expected to need support from attorneys and legal staff in order to efficiently conduct proceedings and serve subpoenas. The Department also anticipates the Model Advisor will need support from actuaries and data specialists in order to properly evaluate catastrophe models. Additionally, attorneys will be needed to represent the Department's position during the PRID procedure, and to conduct judicial reviews. The expected additional time commitments from Department staff is equivalent to approximately 9 full-time positions and is calculated to result in a fiscal impact of $1,894,000 in year 1, $1,959,000 in year 2, and $1,958,000 in year 3.

The Model Advisor has the ability to bring in outside consultants to assist with model review. The Department anticipates needing support from outside consultants who are experts in the fields of fire science, applied mathematics, civil and mechanical engineering, actuarial science, and software development. The Department's reliance on outside consultants is expected to decrease as staff becomes more adept at evaluating models and running PRID procedures. The additional cost to bring in outside consultants is expected to result in a fiscal impact of $327,000 in year 1, $292,000 in year 2, and $179,000 in year 3.

In total, the PRID procedure is expected to result in a fiscal impact to the Department of $2,221,000 in year 1, $2,251,000 in year 2, and $2,137,000 in year 3.

Catastrophe Models
The fiscal impact analysis of the catastrophe model regulation assumes that the PRID procedure is effective in evaluating models so that additional actuarial review time of rate filings is limited. The Department assumes that senior actuarial staff will need to spend additional time in order to validate results of catastrophe models in the most complex rate filings and to redesign rate templates and indications. The Department also anticipates that staff involved in the rate approval and rate enforcement process will require additional training on catastrophe models and the new rate templates in the first year. Additional time commitments from Department staff is expected to result in a fiscal impact to the Department of $309,000 in year 1, $71,000 in year 2, and $47,000 in year 3.

Insurer Commitments

The regulation text requires the Department to update the distressed areas and data needed for insurer commitment calculations, no less than once per year. Department staff, both specialists and managers, involved in data analysis are expected to spend additional hours to calculate the data needed to populate the bulletin. The involvement of additional Department staff, including deputy commissioners, attorneys, and managers is expected to be necessary to create, write, and publish the bulletin. The fiscal impact from the bulletin is expected to decrease after the first year, as subsequent bulletins can use the first bulletin as a template.

The Department also anticipates reviewing the Wildfire Risk Portfolio Register as part of routine examinations already being conducted by Department staff. The Department conducts an average of 12 examinations, annually. The regulation is anticipated to result in an increase in the amount of time spent on each examination, as additional time is needed to analyze the register and related data, select a random sample of policies from the register, and to review polices and their underwriting files to confirm that the information in the register is correct and that the policy should count towards fulfilling the insurer commitment.

In total, the insurer commitments regulation is expected to result in a fiscal impact to the Department of $74,000 in year 1, $72,000 in year 2, and $72,000 in year 3.

Summary Matrix: Fiscal Cost Impacts

	Year 1	**Year 2**	**Year 3**
PRID Procedure	$2,221,000	$2,251,000	$2,137,000
Catastrophe Models	$309,000	$71,000	$47,000
Insurer Commitments	$74,000	$72,000	$72,000
Total	**$2,604,000**	**$2,394,000**	**$2,256,000**

The Department has determined that the proposed regulation will not impose a cost to any local agency or school district that requires reimbursement under Government Code section 17500 et seq., nor will it result in other nondiscretionary costs or savings to local agencies.

HOUSING COSTS

The proposed regulations will have no significant direct effect on housing costs, but increasing the availability of housing due to expanded coverage options will benefit the housing market, as referenced in California Governor Gavin Newsom's Executive Order N-13-23.

The regulation is not expected to directly impact housing costs. However, the expected increase in insurance availability in higher wildfire areas may impact both an individual's decision to buy a home, and housing construction and development efforts. Significant changes to housing supply or demand in an area may impact the cost of housing.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the adoption of the proposed amendments of the regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The businesses that will be affected are insurance companies writing property and casualty policies in California.

The Department has determined that insurers, modelers, and consumer representatives may follow the PRID procedure. The PRID procedure allows complex catastrophe models to be reviewed in a way that protects third-party modelers' data from competitors and facilitates public participation in the rate-making process consistent with Proposition 103. The PRID procedure is optional, and a single PRID procedure may result in a determination of required model information that may be used in multiple rate applications by unaffiliated insurers.

The Department has considered proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

(i) No change to the current regulatory scheme prohibiting insurers from using catastrophe models to estimate projected losses and continue to require insurers to only rely on historical data for such estimates.

(ii) A dispute pertaining to the confidentiality of information and data regarding a model that should be included in a complete rate application should not be resolved by the Model Advisor, but rather by an administrative law judge in a rate hearing.

(iii) The information and data regarding a model should be approved by either the Insurance Commissioner or an expert panel of outside consultants.

STATEMENT OF RESULTS OF THE ECONOMIC IMPACT ON CALIFORNIA BUSINESS ENTERPRISES AND INDIVIDUALS

Below is a summary of the results of the results of the Economic Impact on California Business Enterprises and Individuals. A detailed analysis of the conclusions follows.

A. **The creation of jobs within the state:** The proposed regulation is estimated to result in the creation of 1053.4 jobs within the State of California. Overall, the estimated net impact of the proposed regulation on jobs is less than one-thousandth of a percent of the total projected non-farm employment in California (68.2 / 18,083,200= 0.0004%).[1]

B. **The elimination of jobs within the state:** The proposed regulation is estimated to result in the elimination of 985.2 jobs within the State of California. Overall, the estimated net impact of the proposed regulation on jobs is less than one-thousandth of a percent of the total projected non-farm employment in California (68.2 / 18,083,200= 0.0004%).

[1] California Department of Finance. California Economic Forecast-May Revise 2024-25, April 2024. https://dof.ca.gov/forecasting/economics/economic-forecasts-u-s-and-california/ Accessed June 13, 2024.

C. **The creation of new businesses within the state:** It is not anticipated that the proposed regulation will have a significant impact on the creation of new businesses in California. However, the Department does anticipate that voluntary market insurers and modeling companies will expand operations in the state.

D. **The elimination of existing businesses within the state:** It is not anticipated that the proposed regulation will have a significant impact on the elimination of existing businesses in California. However, the Department does anticipate that the FAIR plan will reduce operations in the state.

E. **The competitive advantages for businesses currently doing business within the state:** Companies that do a better job of modeling risks more granularly could have a competitive edge over those who are not using catastrophe models to quantify risk. If insurers can better quantify the charge for risk in higher wildfire risk areas, they will be more likely to target those risks.

F. **The competitive disadvantages for businesses currently doing business within the state:** Insurers who do not use catastrophe models to quantify risk may not be as competitive in higher wildfire risk areas. As a result, some policyholders that the insurer would wish to maintain may elect to leave for another insurer that is better at pricing risk.

G. **The increase of investment in the state:** Inadequate residential and commercial insurance coverage can hinder investment in California by increasing the economic and financial risks associated with those investments. Many mortgages for home purchases require the property to be insured. Increased insurance availability may increase bank lending for mortgages, an investment in California. Without properties having proper access to insurance coverage, banks will likely invest in other markets (states) where their assets will have greater protection.

   Construction and development investments are dependent on consumer demand and commercial insurance coverage. Any hinderance to consumers or businesses can impact investment into these spaces. Housing projects may end up limited in some areas with increased wildfire risk if the related costs to insure projects in those areas are too high or if consumer demand in those areas is decreased due to the perception of lack of adequate coverage and costly premiums.

H. **The decrease of investment in the state:** Permitting catastrophe modeling will involve an adjustment period in which the market will be adapting to new risk information. It is possible that better risk quantification could lead to the identification of more wildfire risks in areas lacking mitigation. Specific areas could be categorized as too high-risk, which would deter individuals and businesses from investing in these areas.

I. **The incentives for innovation in products, materials, or processes:** As modeled catastrophe losses will be a new methodology permitted in California the state could see significant innovation in the number of, and quality of models. Expanded use of advanced predictive models and enhancement of underlying datasets may improve the

overall performance of future catastrophe models. Several insurers have suspended writing residential insurance policies in California, while others have left the state completely. A market with less competition often has less innovation, the goal is to bring back insurers for a more balanced and competitive marketplace.

Advanced modeling that can better identify the locations with the highest wildfire risk may lead to more precise, targeted mitigation strategies.

J. **The benefits of the regulations to the health, safety, and welfare of California residents:** The proposed regulation is expected benefit the welfare of California insurance consumers by reducing their financial risk exposure. With catastrophe modeling providing a clearer understanding of risk, insurers should be more willing to offer coverage in high wildfire risk areas, ensuring more Californians have access to coverage.

Insurance companies and government agencies may be able to use data from models to proactively educate the public on risks and preparedness, leading to better prepared communities.

POTENTIAL COST IMPACT ON REPRESENTATIVE PERSON OR BUSINESSES

- Initial costs for a typical insurance company are estimated to be $3,220,000 ($161 million direct cost / 50), with annual ongoing costs of $3.2 million for at least 3 years.
- Initial costs for a typical modeling company are estimated to be $25,800 ($0.232 million / 9 companies) to comply with requirements in the PRID procedure.
- Initial costs for a typical consumer intervenor are estimated to be $98,500 ($0.197 million / 2 companies) to comply with requirements in the PRID procedure.

BUSINESS REPORT

The Department finds that it is necessary for the health, safety or welfare of the people of the state that the regulations apply to businesses.

IMPACT ON SMALL BUSINESSES

The proposed regulation is projected to have a direct adverse impact on insurers as discussed in the foregoing analysis, however by law insurance companies are not considered small businesses (Government Code § 11342.610(b)(2)).

PRID Procedure
The PRID procedure regulation is not expected to adversely impact small businesses.

Catastrophe Models
The proposed regulation may impact the insurance rates paid by all businesses, including small businesses. Due to the regulation changing how insurance rates are calculated, some small businesses may pay more for insurance and some may pay less. There is no provision in the regulation that is expected to negatively impact small businesses disproportionately. Any

changes in the insurance rate paid by an individual small business is expected to be tied to how much of the property's wildfire risk has been mitigated and how well the insurer's catastrophe model accounts for mitigation.

Insurer Commitments
The implementation of insurer commitments is not expected to result in an adverse economic impact on small businesses. Nothing in the regulation requires a small business to pay for a commercial insurance policy. This analysis assumes that businesses will act to maximize profits and protect their investments in both property and durable goods. Some small businesses may experience an increase in costs if they elect to pay for a new commercial insurance policy and were previously uninsured. Some small businesses may pay less for insurance coverage if they were previously insured by the FAIR Plan. This analysis does not consider a business electing to purchase new or increased insurance coverage an adverse impact, as there are substantial business benefits to risk management and asset protection.

ALTERNATIVES INFORMATION

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this action is proposed; would be as effective 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 underlying Insurance Code sections 1861.01 *et seq.*

AVAILABILITY STATEMENTS

The Department has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed action. Upon request, the Initial Statement of Reasons will be made available for inspection and copying. Requests for the Initial Statement of Reasons or questions regarding this proceeding should be directed to the contact person listed above.

The file for this proceeding includes a copy of the express terms of the proposed action, the Initial Statement of Reasons, and all the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file. The documents described above may be inspected in person or provided electronically. Please direct such requests to the contact person above.

MODIFIED TEXT

If the amended regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public prior to the date of adoption. Interested persons should request a copy of these amended regulations prior to adoption from the contact person listed above.

FINAL STATEMENT OF REASONS

Once it has been prepared, the Final Statement of Reasons will be part of the file for this proceeding. The documents described above may be inspected in person or provided electronically. Please direct such requests to the contact person above.

INTERNET ACCESS

Documents concerning proposed regulations are available on the Department's website at the following link: https://legaldocs.insurance.ca.gov/publicdocs/RegulationList

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

INITIAL STATEMENT OF REASONS

CATASTROPHE MODELING AND RATEMAKING

August 16, 2024 **REG-2023-00010**

Exempt Rulemaking

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

INTRODUCTION

California Insurance Commissioner Ricardo Lara will hold a public hearing to consider amending California Code of Regulations, Title 10, Chapter 5, Subchapter 4.8, Article 4, sections 2644.4, 2644.5, 2644.8, and 2644.27, and adopting sections 2644.4.5 and 2644.4.8, as well as adopting Article 8, section 2648.5. The date, time and location for the public hearing, as well as applicable contact information, are set forth in the Notice of Proposed Action for this rulemaking.

STATEMENT OF THE PROBLEM

Addressing increased climate risks to California communities is a high priority for the state, especially because wildfire risks have had significant consequences for insurance availability and affordability in recent years.

Climate change has made California hotter and drier over the last several decades, resulting in more frequent wildfires of greater intensity. According to the California Department of Forestry and Fire Protection, since July of 2017:

- California's eight largest wildfires have occurred, including the fourth largest, the Park fire, which was actively burning at the time of writing.[1]
- Twelve of California's most destructive wildfires have occurred.[2]

[1] "Top 20 Largest California Wildfires," California Department of Forestry and Fire Protection, accessed August 2, 2024, https://34c031f8-c9fd-4018-8c5a-4159cdff6b0d-cdn-endpoint.azureedge.net/-/media/calfire-website/our-impact/fire-statistics/top-20-largest-ca-wildfires.pdf?rev=0899d8b12f964f8aaa90f912bf07d41b&hash=860D259F6863891425BB451612F52BF2

[2] "Top 20 Most Destructive California Wildfires," California Department of Forestry and Fire Protection, accessed July 27, 2024, https://34c031f8-c9fd-4018-8c5a-4159cdff6b0d-cdn-endpoint.azureedge.net/-/media/calfire-

- Six of California's deadliest wildfires fires have occurred, including the single deadliest wildfire fire.[3]

Climate change has also increased the occurrence and severity of winter storms, as evidenced by the series of severe storms that occurred in California in the winter and spring of 2022-2023 and which prompted an Expedited Major Disaster Declaration by California Governor Gavin Newsom. Severe winter storms in 2024 prompted additional emergency declarations, including Governor Newsom's securing of a Presidential Major Disaster Declaration to support storm recovery efforts.

As the frequency and severity of these growing climate threats increased, California's insurers began making new and different business decisions that further exacerbated the insurance availability issues experienced by consumers. Top insurance groups paused or restricted writing new property insurance policies and/or renewing property insurance policies, leaving consumers with fewer options and higher costs. An increasing number of California's property owners found themselves unable to obtain insurance from an admitted insurer in the voluntary market and were forced to turn to California's insurer of last resort, the FAIR Plan.

On September 21, 2023, Governor Newsom issued Executive Order N-13-23 ("Order") which requested the Insurance Commissioner to take "prompt regulatory action" to strengthen and stabilize California's marketplace for homeowners insurance and commercial property insurance, and to consider whether the recent sudden deterioration of the private insurance market presents facts that support emergency regulatory action.[4]

The Order recognized the negative impact that the contraction of insurance options in California has on property and business owners, among other negative economic impacts, and recognized the reasons why California's insurers were no longer willing to write property insurance policies as they once had:

> "WHEREAS this year, two of the State's largest insurance carriers, representing over 27 percent of the admitted insurance market in California, announced they would stop issuing new homeowners and commercial property insurance policies in California; several others, representing another more than 36 percent of the market, announced plans to limit new policy origination; and insurer-initiated non-renewals were 28 percent higher statewide in 2019 through 2021 than in 2015 through 2018, with the highest impacts in the top ten counties with the highest

website/our-impact/fire-statistics/top-20-destructive-ca-wildfires.pdf?rev=3f619258cab84b34b680ce521d615525&hash=6C6AD8F9377A31117DF437BBDBE68F07

[3] "Top 20 Deadliest California Wildfires," California Department of Forestry and Fire Protection, accessed July 27, 2024, https://34c031f8-c9fd-4018-8c5a-4159cdff6b0d-cdn-endpoint.azureedge.net/-/media/calfire-website/our-impact/fire-statistics/top-20-deadliest-ca-wildfires.pdf?rev=dddeac543dd84d21a4b01ad6bed5f48c&hash=6A2BD57BB8EC29DB9EC0C94F92B00F52

4 Governor Gavin Newsom, "EXECUTIVE ORDER N-13-23," Executive Department of the State of California, accessed July 31, https://www.gov.ca.gov/wp-content/uploads/2023/09/9.21.23-Homeowners-Insurance-EO.pdf

wildfire risk, where non-renewals increased by 158 percent over that time period; and

WHEREAS insurers have cited exposure to catastrophic weather events, higher construction repair costs, global inflation, and greater reinsurance premiums, which rose 30 to 50 percent across the country this summer for carriers with catastrophe losses, as the primary drivers of their decision to pull back from the California market."

The Order requested the Insurance Commissioner to consider various goals in crafting an appropriate regulatory response, including tailoring "the rate approval process to account for all factors necessary to promote a robust, competitive insurance marketplace, including through potential revisions to the way catastrophe risks and insurer costs are accounted for."

The Order also recognized that "the California Insurance Commissioner has broad authority under the Insurance Code to adopt rules to promote the public welfare, including under sections 1861.01, 1861.05, and 1861.055 to adopt regulations governing the prior approval process for insurance rate change applications, and to adopt emergency regulations under section 11346.1 of Government Code and section 12921.7 of the Insurance Code."

The same day, the Commissioner announced his Sustainable Insurance Strategy, a comprehensive, multi-phase initiative aimed at modernizing the state's insurance market to ensure accessible insurance for all Californians, create a resilient insurance marketplace, and protect consumers and communities from the adverse impacts of climate change. As part of this strategy, the Commissioner is enacting regulations under his authority to improve insurance availability by increasing ratesetting accuracy so that insurers are more willing to offer coverage in even the higher-risk areas of California. This rulemaking is designed to improve the availability of property insurance in California as part of the Commissioner's Sustainable Insurance Strategy and address the Governor's executive action.

The Commissioner's strategy builds on his multi-year effort to engage with consumers and stakeholders as the Department assesses how new tools can improve risk management, make residential and commercial insurance more accessible and reliable for Californians, and maintain competition and ensure stability in the state's insurance marketplace.

Within weeks of assuming office, Insurance Commissioner Ricardo Lara began meeting with Californians to hear their concerns about what California's devastating wildfires might mean for their ability to find and retain homeowners insurance. Since 2019, in more than 1,800 meetings, town halls, and events held virtually and in person in all 58 counties of the state, Commissioner Lara and Department staff met with more than 122,000 consumers and received feedback that affirmed the need for transformative change.

In October 2020, Commissioner Lara convened an investigatory hearing on wildfire and insurance, and the evidence and testimony presented at that hearing highlighted that home and community-based hardening techniques are effective and essential methods to reduce wildfire risks to lives and property.

In December 2020, the Commissioner invited testimony from 14 individuals with wildfire expertise and experience, including researchers from the University of California and the Institute for Business and Home Safety, representatives from multiple catastrophe modeling and actuary firms, and experts engaged in community risk mitigation programs, to talk about risk management tools and whether California consumers could benefit from the use of catastrophe models in insurance ratemaking. The testimony and presentations described how wildfire mitigation could reduce the spread and risks of future wildfires, and how California consumers could benefit from the use of wildfire catastrophe models in homeowners insurance ratemaking.

In 2021, the Commissioner's Climate Insurance Working Group released the first-ever Climate Insurance Report. Among the recommendations, the working group stressed the importance of risk assessment, and one recommendation advised the Commissioner to hold public meetings specifically on the use of catastrophe models as a tool for estimating catastrophe losses, noting that a public meeting would give Californians an opportunity to discuss and assess such policy tools.

As a result of public testimony from wildfire mitigation experts and hearing directly from policyholders in communities throughout the state, Commissioner Lara took action on wildfire mitigation by promulgating groundbreaking regulation that recognizes and rewards wildfire safety and mitigation efforts made by homeowners and businesses. The rulemaking became operative in October 2022 and was the first-in-the-nation regulation to require insurance companies to provide incentives to consumers under the "Safer from Wildfires" framework created by the Department of Insurance in partnership with several state emergency preparedness agencies.

With the Safer from Wildfires framework in place, Commissioner Lara directed the Department to resume examining the potential use of catastrophe modeling in ratemaking. On July 13, 2023, the Commissioner convened a workshop that explored the legal questions presented by the use of catastrophe modeling in insurance rate approval, such as how to implement the public inspection requirement of Insurance Code section 1861.07. Questions explored during this workshop included:

- When thinking about incorporating catastrophe models into the rate-level calculation for homeowners and commercial insurance, what is the significance of Section 1861.07?
- To what extent can the methodologies, factors, and inner workings of catastrophe models be publicly disclosed in accordance with Section 1861.07 so that the Department can evaluate those models?
- If the Department requires sensitive information in the course of its model review, what are some potential methods of ensuring the Department can adequately review catastrophe models in accordance with Section 1861.07?
- Other states have incorporated alternative methods of structuring model review, such as use of an independent third-party panel. Are there any methods used by other states that would be a viable option in California?

To further examine the use of catastrophe modeling tools in the insurance rate approval process and to understand how such tools can be used for not just wildfire but other perils, Commissioner Lara convened a workshop on September 28, 2023. This workshop focused on understanding how the use of catastrophe modeling in the rate approval process to develop an aggregate catastrophe adjustment and aggregate losses will impact insurance availability and affordability over time, and how the Department could ensure the integrity of model projections upon implementation. The workshop also explored, among other issues, the review of models by experts, the remedy when models produce different results, and the data being used within the models to generate aggregate loss projections.

In the months that have passed since Commissioner Lara announced the Sustainable Insurance Strategy, the Department has worked intensely to develop ambitious reforms designed to stabilize the state's insurance marketplace while continuing to engage in ongoing meetings and robust conversations with the public, academia, insurance companies, and consumer groups regarding the use of catastrophe models.

On April 23, 2024, the Commissioner convened a public workshop on contemplated regulatory changes that would allow insurers to use catastrophe models for the purposes of ratemaking.

On June 26, 2024, the Commissioner convened a public workshop on contemplated regulatory changes to identify the commitments that homeowners and commercial insurance companies must meet in order to be presumed to have demonstrated a need to use catastrophe models in their rate applications.

Thousands of stakeholders attended the public meetings described above and engaged in robust, engaged examination of ideas and approaches. Based on input from such ongoing conversations and public workshops, together with a thorough assessment of today's insurance landscape, the Commissioner has concluded that in order for insurers to be able to write additional new business, or maintain existing sufficient levels of business, and thereby increase the availability of property insurance in high-risk wildfire-prone areas, they must be allowed to use catastrophe models in their rate calculations if they commit to such underwriting. This is in part due to the fact that the historic losses of insurers that commit to increasing their underwriting in higher-risk areas may not be as accurate for purposes of predicting projected losses for ratemaking purposes. The growing insurance crisis in California is especially prevalent in areas with higher wildfire risk, where insurers are nonrenewing existing policies and failing to write new policies. Historic losses that are currently used to set rates do not reflect recent trends in real estate development in wildfire risk areas or wildfire risk mitigation, two substantial factors in the likelihood of catastrophic losses. Providing insurers that commit to writing additional new policies, or maintain existing policies at a certain level, in higher-risk wildfire-prone areas with the ability to use catastrophe modeling will give them the ability to better anticipate future potential catastrophe losses and set more accurate rates, which in turn will help support greater availability of insurance in California. Therefore it is reasonably necessary to link the use of catastrophe modeling to an insurer's commitment to write new policies and maintain existing policies in areas that are experiencing higher wildfire risk and thus higher insurer withdrawal, and accordingly, the regulation specifies that insurance companies that intend to use catastrophe modeling to determine their rates must increase or maintain their market share of wildfire

distressed properties, in order to be presumed to have demonstrated a need to use catastrophe modeling instead of historic losses for ratemaking purposes.

Based upon the foregoing, this rulemaking will help address the insurance crisis created by growing climate threats by allowing insurers that agree to write and maintain more policies in higher wildfire risk areas to set their rates using losses projected by wildfire catastrophe modeling instead of relying on historical losses.

The Department is mindful that the use of catastrophe models must fit within the existing rate approval process and be informed by California's goals of fairness, availability, and affordability. Further, the Department has been very clear that ensuring continued public participation in the rate-setting process is important as it strives to increase the availability of reliable insurance from the admitted market, ensure the long-term sustainability of rates, and incentivize the accurate recognition of mitigation efforts.

The modern property and casualty rate approval process borne out of Proposition 103, passed in 1988, is codified in Insurance Code section 1861.01 *et seq.*, and requires, *inter alia*, that no insurance rate subject to its terms shall be inadequate, excessive, or unfairly discriminatory. To help determine whether rates are excessive, inadequate, or unfairly discriminatory, Insurance Code section 1861.05 requires any insurer desiring to change its rates for property and casualty insurance to file a complete rate application with the Insurance Commissioner for review and approval prior to using the proposed rates. Additionally, Proposition 103 encourages public participation in the ratemaking process and allows consumer representatives, commonly referred to as intervenors, to participate in the review of rate filings. A complete rate application contains certain data specified by statute as well as such other information as the Commissioner may require. Under Insurance Code section 1861.07, all information *provided to the Commissioner* as part of a complete rate application must be available for public inspection and therefore, made public.

Through experience reviewing intervened prior approval rate applications for over three decades, the Department has found that problems arise when Insurance Code section 1861.07 is interpreted without emphasis on the words "provided to the commissioner," because during the rate review process, intervenors often ask companies to publicly provide more information and data than what the Commissioner requires as part of a compete rate application. This is especially problematic when it comes to catastrophe models relied upon for ratemaking because such models are complex and may contain proprietary or other sensitive information. The Department understands the transparency requirement of Proposition 103 and is committed to upholding such requirement, but when sensitive information and data are not relevant to ratemaking and not required to be provided to the Commissioner as part of a complete rate application, it is unreasonable to ask companies to make such information and data public. Moreover, unnecessary pre-hearing discovery disputes often delay the rate review and approval process, which has a direct impact on consumers and insurance availability.

Recently, the Department has also experienced problems with intervenors taking the position that any and all components of working versions of third-party models must be made publicly available for inspection and use by consumers without restriction, not only the relevant

information and data regarding those models, even though the Commissioner does not require the actual modeling tool or platform to be publicly provided. This is again problematic, not only because the intervenors seek to make public information and data beyond what the Commissioner requires, but also because it is impractical to publicly submit the actual model or version of a model. With that said, the Commissioner values both transparency and public participation, and wants to provide California consumers the opportunity to investigate models and assist the Commissioner in determining what relevant model information should be made publicly available as part of ratemaking.

To address the public transparency requirement, this proposed rulemaking creates a new procedure, the pre-application required information determination procedure (PRID procedure), to allow the public a fulsome opportunity to thoroughly investigate the inner workings of models, irrespective of whether the information sought is actually relevant to ratemaking, while at the same time respecting potentially trade-secret proprietary information of model vendors and owners. By creating a separate forum to confidentially review model information and data prior to an insurer's submission of a complete rate application relying upon that model, the Department seeks to reduce irrelevant pre-hearing discovery in the rate approval process, which will improve and expedite the Department's review and approval of rate filings that rely on modeling tools while also protecting, to the extent possible, trade-secret proprietary information of model vendors and owners.

SPECIFIC PURPOSE AND REASONABLE NECESSITY OF ADOPTING REGULATIONS

How These Regulation Changes Will Achieve the Goal of Promoting a Robust and Competitive Insurance Marketplace

Insurance ratemaking requires an assessment of risks to be insured against in a future policy period. Traditionally, risk is assessed using historical losses to project prospective risks. However, estimates based on historical losses are not necessarily reflective of prospective exposure, particularly as the frequency and intensity of certain catastrophic events increase and where an insurer's historic loss exposures do not accurately reflect a commitment to expand its book of business to provide insurance for new business or maintain existing business in higher-risk wildfire-prone areas. Specifically, insurers' estimates of their catastrophe risk using historical losses (the traditional approach provided for in current Section 2644.5) are not necessarily reflective of their prospective catastrophe exposure because they do not account for:

- Climate change and its impact on the frequency and severity of wildfires and floods;
- Continued development and increased population density in the wildland urban interface (WUI) and other areas susceptible to wildfire, flood, or other perils;
- Changes in building construction and building codes;
- Recent mitigation efforts by public utilities, communities, and homeowners; and
- Changes in an insurer's underwriting practices which result in changes in the insurer's mix of business and exposure to catastrophes.

In addition to concerns with the accuracy of loss projections based primarily on historical data, another concern is that even a single catastrophic event can have a large impact on the data used for ratemaking, leading to large swings in projected losses and rates charged to California's consumers. Given that the Insurance Commissioner must provide prior approval of rates, volatility in projected losses and insurance rates is undesirable for both consumers and insurers.

Therefore, the Department proposes amending Sections 2644.4, 2644.5, 2644.8, 2644.27 and adding Sections 2644.4.5, 2644.4.8, and 2648.5 to address the use of catastrophe models in ratemaking. The Department distinguishes between (1) lines of insurance for which the losses for the entire line may be projected using a catastrophe model and (2) lines of insurance in which the losses for only a *subset* of perils within those lines may be subject to a catastrophe adjustment based on a catastrophe model.

These regulatory changes enable catastrophe models to be used under more circumstances than is currently permitted, and more clearly define the necessary requirements for catastrophe adjustments submitted as part of a complete rate application, whether by means of catastrophe models or the traditional approach of using historic losses.

As mentioned above, the insurance availability crisis is particularly acute with respect to residential and commercial property policies that cover structures in wildfire-prone areas. These regulatory changes enable catastrophe models to be used to project losses from wildfires when setting rates for residential insurance coverage of wildfire risk where an insurer demonstrates a presumptive need to use catastrophe modeling to project losses by committing to increase the number of policies covering wildfire risk in distressed areas, or, if an insurer has a robust market share in those areas, maintaining that market share. Distressed areas consist of Undermarketed ZIP codes and distressed counties. The proposed regulation sets forth how Undermarketed ZIP codes and distressed counties are identified and requires the Commissioner to publish and update bulletins listing the ZIP codes and counties.

The refusal of a growing number of admitted insurers in voluntary market to renew or write new business in areas that have a high or very high risk of loss due to wildfire is reflected in the steadily increasing enrollment in FAIR Plan policies, as discussed in the Order:

> "WHEREAS steadily increasing enrollment in the FAIR Plan as a percentage of the total number of residential insurance policies in California over the past five years, particularly in counties with the highest wildfire risk, where the number of new and renewed FAIR Plan policies in 2021 was more than ten times the total in 2018, has threatened the ongoing stability of the plan…"

In addition to policies in the distressed areas listed in the bulletin, an insurer may also demonstrate a presumptive need to use catastrophe modeling for projected losses where it commits to write additional policies with moderate to high wildfire risk that were insured by the FAIR plan in the year immediately prior to policy issuance. The purpose of allowing FAIR plan policies to be part of an insurer's commitment to increase underwriting of distressed area policies is because, based upon the recent rapid growth of FAIR Plan policies, FAIR Plan policies are most likely to represent the type of high-risk policies that normal market insurers

have recently withdrawn from writing due to concerns over rating accuracy for those policies.

The proposed regulation defines qualified residential property insurance in order to identify which residential property policies demonstrate that an insurer is meeting its commitment. It is necessary to identify and limit the types of residential property policies that insurers may use to fulfill their commitments to avoid the problem of insurers fulfilling commitments with relatively lesser-needed and relatively lower cost "contents only" policies when the crisis in availability is most severe for policies that cover structures.

For commercial policies, in order to be presumed to have demonstrated a need to use catastrophe models to project wildfire losses, an insurer must commit to increasing total insured value in eligible ZIP Codes. The proposed regulation sets forth how eligible ZIP Codes are identified and requires the Commissioner to publish and update a bulletin identifying eligible ZIP Codes.

For both commercial and residential policies, as an insurer writes more business or maintains a larger portion of business in wildfire prone areas, basing rates on historical losses becomes increasingly inaccurate and untenable. Twelve insurance groups write 85% of homeowners policies statewide. A number of those top insurers have indicated that they are unwilling to write more, or maintain existing, policies in higher-risk wildfire-prone areas unless they can use catastrophe modeling to set more accurate rates. Insurer commitments will help address the wildfire insurance crisis by allowing insurers who agree to take on more risk, or maintain existing levels of exposure, in wildfire-prone areas to make use of a tool that will enable them to price that risk more accurately. These regulations also make clear how the use of catastrophe modeling will be incorporated into the Commissioner's existing system of prior rate approval.

The new voluntary PRID procedure, which will occur prior to and separate from the submission of any individual complete rate application, will ultimately determine what information and data regarding a model insurers are required to submit to the Commissioner as a part of a complete rate application, should the model be relied upon for ratemaking. The purpose of the procedure is not to resolve any particular rate application filed by any one insurer, but to provide a forum where the public has a fulsome opportunity to thoroughly investigate the integrity of models, irrespective of whether the information sought is actually relevant to ratemaking. Importantly, a model may periodically undergo one PRID procedure, after which the determination may be used in multiple rate applications by multiple insurers.

To ensure that third-party modelers are not required to unnecessarily disclose proprietary information in a competitive marketplace, the Department has built in necessary confidentiality protections so that proprietary information about the model that is not relevant to ratemaking is never made public. Ultimately, information and data relevant to ratemaking provided to the Commissioner as part of a complete rate application will be made public under Insurance Code section 1861.07, but other irrelevant information that the public would like to investigate during the PRID procedure would be kept confidential and not subject to Section 1861.07.

Overall, the new PRID procedure is intended to expedite the Department's review and approval of rate filings that rely upon models by eliminating unnecessary pre-hearing discovery disputes

regarding models that delay the process. Because the pre-application required information determination can be relied upon in multiple rate filings by various insurers, the proposed regulation will expedite the Department's review and approval of rate filings, which will directly impact insurance availability and promote a robust and competitive insurance marketplace.

[Amend] 2644.4. Projected Losses.

The purpose of amending this regulation is to clarify issues of ambiguity and inaccuracy in this section. Specifically, the proposed text clarifies the meaning of "projected losses." The clarification is necessary because the definition does not currently explicitly distinguish between (1) "projected losses" when determined by means of adjustments to historical empirical loss data and (2) "projected losses" when determined by means of a catastrophe model. Additionally, the amended text provides clarification to address issues of ambiguity arising from the regulatory review of historical rate filings.

(a) Unless projected losses are based on catastrophe models as permitted pursuant to subdivision (d) of this Section 2644.4, ~~P~~projected losses means the insurer's historic noncatastrophe losses per exposure, adjusted by catastrophe adjustment, as prescribed in section 2644.5, by loss development, as prescribed in ~~s~~Section 2644.6, and by loss trend, as prescribed in ~~s~~Section 2644.7.

Projected losses as defined by Section 2664.4 are used to calculate maximum permitted earned premium and minimum permitted earned premium pursuant to Sections 2664.2 and 2664.3.

The existing regulation is unclear and may potentially create uncertainty and confusion regarding calculation of prospective losses. The purpose of amending subdivision (a) is to explicitly specify that "projected losses" may be derived by two different approaches. If left unamended, subdivision (a) could suggest that "projected losses" can only be derived by applying a series of adjustments to historic losses per exposure, precluding the possibility of deriving those losses by means of a catastrophe model for certain specified lines of insurance.

The term "noncatastrophe" modifying "insurer's historic losses per exposure" is necessary to (1) clarify that the losses required to be adjusted for loss trend, loss development, and catastrophe adjustment are noncatastrophe losses, and (2) eliminate any possibility of double-counting catastrophe losses by inappropriate application of the catastrophe adjustment to losses that already include catastrophe losses.

In this amendment, the "s" in "Section has been capitalized. This nonsubstantive amendment makes a stylistic change to the formatting of the citation of a specific section of the California Code of Regulations.

(b) Projected losses shall be calculated by applying the loss development and loss trend factor separately to data from each accident -year, report year or policy year, as applicable, in the recorded period.

The purpose of amending subdivision (b) is to clarify ambiguities that exist in the current regulation text to ensure that insurers submit the data appropriately and consistently in their complete rate applications. The addition of "loss development and" to the subdivision ensures there is no confusion that both loss development and loss trend factors must apply separately to data from each year in the recorded period.

Further, current regulation text specifies that these factors are applicable by accident year, and then appears to contradict that statement by specifying that projected losses for claims-made policies shall be on a report-year basis. Proposed subdivision (b) clarifies that loss development and loss trend factors are applied separately by "accident year, report year or policy year, as applicable" and provides a clear description of the circumstances under which each basis may be applicable in the following subdivisions.

While it is standard actuarial practice to apply loss development factors separately by year, it is reasonably necessary to use this language as the text could otherwise be interpreted to mean that only loss trend factors are required to be applied separately by year, when in fact, the intent of the regulation is to also apply loss development factors separately by year.

(1) For occurrence policies, projected losses shall be calculated on an accident-year basis. ~~However,~~

(2) ~~f~~For claims-made policies, projected losses shall be calculated on a report-year basis.

(3~~e~~) For mechanical breakdown and similar insurance as defined in subdivision (b) of Section 2642.7~~policies providing multi-year coverage, such as mechanical breakdown~~, projected losses may be calculated on a policy-year basis.

The language of proposed (b)(1) through (b)(3) breaks out existing subdivision (b) language and adds new language to specify how the calculation of projected losses shall vary depending on different policy and insurance types.

The purpose of proposed (b)(1) is to identify that an accident-year basis must be used to project losses for occurrence policies. The purpose of proposed (b)(2) is to identify that projected losses for claims-made policies shall still be calculated on a report-year basis. The Department shifts the language of existing subdivision (c) to proposed (b)(3) to reference coverages identified in Section 2642.7(b) and clarify the policies to which this subdivision applies.

Proposed (b)(1) through (b)(3) protect against any confusion regarding how projected losses for different kinds of policies must be calculated by providing additional clarity. It is reasonably necessary to specify reporting requirements in this way to enable insurers to submit complete rate applications and reduce the time needed to process these applications. It is reasonably necessary to add this specificity to ensure that projected losses are calculated appropriately and consistently by insurers.

(cd) For professional liability and errors and omissions coverage, the insurer shall, in lieu of the computation of projected losses specified in sSections 2644.5 through 2644.7, tender an alternative computation of projected losses, which the Commissioner shall approve if the Commissioner finds the projection to have been made in the most actuarially sound actuarial manner. Nothing in this section precludes the Commissioner from requiring the additional filing of The insurer shall also provide projected losses computed in the manner specified in sSections 2644.5 through 2644.7 and in any other manner as may be required by the Commissioner.

The Department proposes amending subdivision (d) and renaming it subdivision (c).
The existing regulation is unclear and may potentially cause confusion among insurers regarding the computations they need to provide with respect to projected losses. The purpose of amending proposed subdivision (c) is to clarify that insurers are required to provide projected losses using the standard methods specified in Sections 2644.5 through 2644.7 as well as the "alternative computation of projected losses." In addition, a special provision regarding an alternate methodology required to determine projected losses for professional liability and errors and omissions coverage, due to the uniqueness of those coverages, was reworded for ease of readability.

The current regulation has been interpreted in a manner that has led some insurers to question the Department when asked by Department staff to provide computations of projected losses using the standard methodology as well as the alternate methodology. It is reasonably necessary to explicitly clarify the requirement that the standard methodology of projecting losses, in the manner specified in Sections 2644.5 through 2644.7, or in any other manner the Commissioner requires, be submitted in addition to the required alternate methodology, to resolve any potential insurer confusion regarding what is required of them when submitting a complete rate application. The standard methodology is used as a basis of comparison to the alternate methodology to ensure that the most actuarially sound method to project losses for these coverages is being used.

In addition, there is a nonsubstantive clarifying edit to ensure consistency of language with the explicit definition of "most actuarially sound" as defined in Section 2642.8.
In this amendment, the "s" in "Section has been capitalized. This nonsubstantive amendment makes a stylistic change to the formatting of the citation of a specific section of the California Code of Regulations.

(d) For the earthquake, flood, or any other line of insurance for which projected losses are permitted to be modeled pursuant to subdivision (c) of Section 2644.4.5, projected losses may be based on catastrophe models.

The purpose of newly added subdivision (d) is to expand the lines of insurance for which catastrophe models may be used to project losses.

Currently, subdivision (e) of this section provides that projected losses may be based on catastrophe models for the earthquake line of business and for fire following earthquake

exposure in other lines to project losses and defense and cost containment expenses. Although projected losses for flood insurance are not currently allowed to be determined using catastrophe modeling, sufficient data for that line of insurance necessary to project losses under the standard methodology as specified in Sections 2644.5 through 2644.7 does not exist, and therefore insurers are unable to project flood losses with sufficient accuracy.

Therefore, the Department is amending the regulation to add flood insurance to the lines of insurance where projected aggregate losses are permitted to be modeled using a catastrophe model. The restriction on the use of flood models impacts the willingness and ability of insurers to enter the private flood insurance market in California. Without the ability to use catastrophe modeling for flood, insurers do not have a way to accurately set rates for flood coverage. It is reasonably necessary to expand the lines of insurance for which catastrophe models may be used to project losses pursuant to subdivision (c) of Section 2644.4.5 where the data required by the standard methodology as specified in Sections 2644.5 through 2644.7 does not exist. The adoption of this language is reasonably necessary to recognize that in certain situations model projections are superior to using historic averages and to allow projected losses to be modeled where sufficient historical data may not be available. By allowing insurers to more accurately project losses for specified lines of insurance, this language is also reasonably necessary to address availability issues.

~~(e) For the earthquake line of business and for the fire following earthquake exposure in other lines, projected losses and defense and cost containment expenses may be based on complex catastrophe models using geological and structural engineering science and insurance claim expertise. The use of such models shall conform to the standards of practice as set forth by the Actuarial Standards Board and the applicant shall have the burden of proving, by a preponderance of the evidence, that the model is based upon the best available scientific information for assessing earthquake frequency, severity, damage and loss, and that the projected losses derived from the model meet all applicable statutory standards.~~

The Department is also amending the regulation to move and modify some of the language in subdivision (e) to other sections and remove subdivision (e).

One purpose of restructuring subdivision (e) is to remove language regarding “defense and cost containment expenses” (DCCE) as catastrophe models do not currently project DCCE. It is reasonably necessary to strike the language of subdivision (e) as the treatment of DCCE for modeled exposures is now specified in subdivisions (a) and (b) of Section 2644.5.

The language discussing the standards to which the models must conform has been moved to a newly created Section 2644.4.5 “Use of Catastrophe Models” that is devoted to the requirements necessary for the use of all models. The Department proposes modifying language that currently appears in Section 2644.4, subdivision (e), as it could be misconstrued to only require compliance with statutes.

[Adopt] Section 2644.4.5. Use of Catastrophe Models.

Since the Department is expanding the allowable use of models under certain conditions to those lines and perils that are subject to catastrophes such as flood, terrorism, wildfire, and others that the Commissioner deems appropriate, it is reasonably necessary to create a whole section devoted to models and their use. This section includes language regarding models from existing Section 2644.4 Projected Losses as well as proposed language for models that are to be used for developing a catastrophe adjustment. Rather than placing similar language regarding catastrophe models into two different sections where catastrophe models may occur, placing the regulations concerning the permitted uses and requirements for use of catastrophe models in a single section provides clarity and better organization of the rules related to this single subject, and prevents against insurer confusion and the inconsistent or inaccurate understanding of, and compliance with, these regulations.

(a) Permitted uses.

(1) For the earthquake and flood lines, projected annual aggregate losses may be based on catastrophe models.

Proposed subdivision (a) addresses permitted uses for catastrophe models. This subdivision incorporates language from existing subdivision (e) and adds new language related to flood insurance. Subsection (a)(1) identifies lines of insurance for which losses may be projected using catastrophe models.

Existing Section 2644.4(e) provides that projected losses may be based on catastrophe models in the earthquake line of business; the Department proposes moving the language from subdivision (e) to this subdivision and allowing projected losses to be based on models for the flood line as well. Currently, because of limited historic data, insurers cannot project flood losses with sufficient accuracy based on historical data and insurers are not permitted to use catastrophe models for this peril. Accordingly, this regulation is reasonably necessary to provide insurers with an alternative method, catastrophe modeling, to project flood losses for ratemaking.

(2) The catastrophe adjustment for the fire following earthquake exposure, and for terrorism exposure, in lines other than earthquake and flood may be based on projected annual aggregate losses derived from catastrophe models.

Subdivision (a)(2) addresses when a catastrophe adjustment may be based on catastrophe models.

Currently, insurers are allowed to use a catastrophe model to make a catastrophe adjustment for fire following earthquake exposures in lines other than earthquake; the Department proposes also specifically allowing the catastrophe adjustment to be based on catastrophe models for terrorism exposures. Terrorism is similar to flood, in that there is limited data upon which to base the ratemaking adjustments. Terrorism coverage is required to be offered by commercial policies, but with limited historic data available to project losses, insurers cannot provide the support necessary to justify their rates for this coverage under the current regulations. Allowing a

catastrophe model to be used to make a catastrophe adjustment is reasonably necessary to assist the Department in evaluating these exposures and promote the goal of avoiding excessive, inadequate, or arbitrary rates.

(b) Wildfire exposure.

The catastrophe adjustment for wildfire exposure in lines of insurance other than earthquake and flood may be based on catastrophe models, provided that the insurer complies with Section 2644.4.8.

Subdivision (b) addresses requirements for using a catastrophe model to determine the catastrophe adjustment for wildfire exposure in all lines where that exposure exists.

California is the only state that requires the use of historical wildfire data in ratemaking. For those insurers who commit to writing additional business, or maintaining existing levels of business in the face of increasing climate change impacts, in higher-risk wildfire-prone areas, it is reasonably necessary to amend existing regulations to allow such insurers to use catastrophe models within the existing rate approval process in order to modernize California's insurance market, improve risk management and rate-setting accuracy, make residential and commercial insurance more accessible and reliable for Californians, and maintain competition and ensure stability in the state's insurance marketplace.

Section 2644.4.8 allows an insurer to use catastrophe models to project aggregate annual exposures for the purpose of setting wildfire insurance rates if the insurer commits to change its underwriting practices as specified.

Subdivision (b) is necessary because insurers who commit to meeting these underwriting targets will be presumed to have demonstrated a need to use catastrophe modeling, as their historic losses may no longer accurately predict their projected losses for ratemaking purposes. Additionally, after numerous extremely destructive and catastrophic fire seasons, many policyholders have been unable to find insurance in the voluntary market, resulting in a rapid expansion of the FAIR plan. Insurers have paused or ceased writing new business, as well as nonrenewed existing business, in higher-risk wildfire-prone areas, because the current method for calculating an insurer's catastrophe adjustment based upon historic experience may no longer be necessarily reflective of an insurer's prospective exposure because it does not account for:

- Climate change and its impact on the frequency and severity of wildfires and floods;
- Continued development and increased population density in the WUI and other areas; susceptible to wildfire, flood, or other perils;
- Changes in building construction and building codes;
- Forest management;
- Prescribed fire;
- Recent mitigation efforts by public utilities, communities, and homeowners; and
- Changes in an insurer's underwriting practices which result in changes in the insurer's mix of business and exposure to catastrophes

Accordingly, insurers who commit to writing specified additional new policies, and renewing certain existing policies, in higher-risk wildfire-prone areas in compliance with the insurer commitment set forth in subdivision (c) of Section 2644.4.8, will be permitted to use catastrophe modeling for ratemaking purposes. Allowing insurers to project annual aggregate losses as a result of wildfire exposure based on catastrophe models will result in more appropriate, accurate rates which in turn will encourage insurers to maintain and increase their market presence in California, as well as promote the goal of avoiding excessive, inadequate or arbitrary rates.

(c) Additional lines or exposures.

(1) In addition to the permissible uses of catastrophe models specified in subdivisions (a) and (b) of this Section 2644.4.5, at the Commissioner's discretion, probabilistic models may be used in cases where limited historic insurance data is available:

(A) To project annual aggregate losses in lines of insurance other than those specified in subdivision (a)(1) of this section, or

(B) To determine the catastrophe adjustment for exposures to perils other than those specified in subdivision (a)(2) or (b) of this section.

The purpose of subdivision (c) is to discuss the circumstances under which the use of catastrophe models may be permitted by additional lines or exposures. This provision allows for the immediate and appropriate response by the Commissioner to situations that warrant the permitted use of catastrophe models in the future and establishes a framework that affords the Commissioner necessary flexibility for future decision-making while providing transparency regarding what will inform those future decisions.

The purpose of subdivision (c)(1) is to clarify that where only limited historic data is available, there may be instances in which the use of catastrophe models to project losses for as-yet-unspecified perils may be permitted and specify that the Commissioner has the discretion to permit that use. The purpose of subdivision (c)(1)(a) and (c)(1)(b) is to specify appropriate uses of catastrophe modeling when only limited historic data is available. These changes are reasonably necessary because the use of as catastrophe models may be appropriate for projecting losses for unspecified perils where there is limited historical insurance data available or where historical data is not predictive of future costs for the peril or line of insurance in question.

(2) The Commissioner may allow modeling for such additional lines or exposures only if, taking into account the circumstances under which, and the conditions pursuant to which, modeling for the additional line or coverage in question is to be permitted, it is in the Commissioner's judgment reasonably foreseeable that permitting modeling would serve two or more of the following purposes of Proposition 103:

(A) Protecting consumers from arbitrary insurance rates and practices.

(B) Encouraging a competitive insurance marketplace.

(C) Ensuring that insurance is fair, available and affordable to all Californians.

Subdivision (c)(2) identifies that the Commissioner may permit the use of catastrophe modeling for additional lines or exposures as allowed by subdivision (c) of this section provided that it is the Commissioner's judgment that such use sufficiently serves the purposes of Proposition 103 specified in (c)(2)(A) through (c)(2)(C). (*See* Prop. 103, § 2, 1 Stats. 1988, p. A-276.) This provision is reasonably necessary to clarify that the potential permitted additional use of catastrophe modeling due to circumstances or conditions relevant to additional lines or exposures will only be approved by the Commissioner if that permitted use would serve a minimum of two of the three specified purposes of Proposition 103. This provision protects against a regulatory framework that does not allow the Commissioner to respond appropriately to changing conditions and circumstances of California's insurance market. It is essential that the Commissioner protect and promote a competitive, stable insurance marketplace, particularly with respect to ratemaking.

(3) In the event the requirement of subdivision (c)(2) of this section is satisfied, the Commissioner's decision as to whether to allow modeling for additional lines or exposures shall be based upon the following factors:

(A) The degree to which the peril is an emerging or newly recognized peril for ratemaking purposes.

(B) The degree to which a model is likely to be reliable for ratemaking purposes.

(C) The extent to which any historical insurance data is unavailable.

(D) The degree to which available historical insurance data is not predictive of future costs.

Subdivision (c)(3) identifies the factors upon which the Commissioner will base the decision on whether to allow the use of catastrophe modeling for additional lines or exposures, and that the decision is first contingent upon the satisfaction of (c)(2). The factors named in subdivisions (c)(3)(A) through (c)(3)(D) reflect the Department's choice to address the need for balance and flexibility in responding to changing conditions, particularly climate conditions, and the traditional practice of relying on historical data where it is available, reliable, and predictive of future costs, in specifying the factors the Commissioner will use in making decisions. This provision is reasonably necessary to ensure that the permitted use of catastrophe models in additional lines or exposures is appropriately evaluated. Once the prerequisite requirements described subdivisions in (c)(1) and (c)(2) are satisfied, it is reasonably necessary for (c)(3) to specify the factors upon which the Commissioner's decision to allow modeling for additional lines or exposures shall be based. This establishes a framework that affords the Commissioner necessary flexibility in future decision-making while providing transparency regarding what will inform those future decisions. This subdivision is also reasonably necessary to ensure that catastrophe modeling may play an appropriate role where there is limited historical data or where

the available historical data is less relevant due to environmental or other factors that impact the calculation of projected losses.

(d) Under no circumstances, however, will modeling be permitted for the reason that an individual company lacks data that is otherwise available.

Subdivision (d) clarifies that an individual insurer's lack of data is not an allowable basis to permit an insurer to use a catastrophe model. This amendment is reasonably necessary to ensure the consistent treatment of all insurers, in that individual insurers may only use catastrophe modeling for ratemaking purposes as allowed by regulations adopted by the Department. This subdivision prevents against inconsistent treatment, an unintended consequence that might negatively impact insurers, that could possibly occur if such decisions were made on an ad hoc basis.

(e) Catastrophe models shall be run on the insurer's in-force business as of the end of the most recent year in the recorded period.

Subdivision (e) prescribes the data used to run catastrophe models and is consistent with Department requirements about the recency of the data in the recorded period of the rate application. This subdivision protects against the possibility of projected losses being calculated using old or outdated data which could lead to the inaccurate modeling of future losses. This requirement is reasonably necessary to ensure that the Department matches the time period of that data to the data used to run the model (i.e., data for the insurer's business in-force as of the end of the recorded period) and that the Department gets the most prospective estimate of the projected losses from the model on that insurer's book possible, leading to more accurate rates.

(f) The use of catastrophe models shall conform to the standards of practice as set forth by the Actuarial Standards Board, and the applicant shall have the burden of demonstrating that

Subdivision (f) addresses the standards that insurers must meet to use catastrophe models. If this subdivision did not specify standards that the use of catastrophe models by insurers must meet, the reliability of such model's projections would be in question. It is reasonably necessary to require and specify standards regarding the use of models to ensure the reliability of projections and sound estimates for the period for which rates are being established by the insurer. This subdivision is also reasonably necessary to ensure the consistent and appropriate use of models by insurers.

(1) the model is based upon what in the Commissioner's assessment is the best available scientific information for assessing frequency, severity, damage and loss,

Subdivision (f)(1) replaces and modifies language found in current Section 2644.4(e) that will be removed as part of this proposal. It is reasonably necessary when describing the insurer's responsibility in (f)(1), to not include the phrase "preponderance of the evidence" because the phrase denotes a legal standard that may be subject to misinterpretation. Proposed (f)(1) replaces

the language that previously existed in Section 2644.4(e) that was specific to earthquake models with more general language to encompass the use of catastrophe models for other perils.

(2) the applicant's use of its selected model(s) produces the most actuarially sound estimate of projected catastrophe losses,

Proposed (f)(2) clarifies that the use of the model must produce the "most actuarially sound" estimate of losses. The term "most actuarially sound" is defined in Section 2642.8, which is not being revised in this rulemaking. It is reasonably necessary to use this term that is currently in use by the Department and by the entities that will need to comply with this regulation. This is consistent with the use of this standard throughout the ratemaking regulations. This subdivision is reasonably necessary to ensure that the model used by the applicant meets accepted standards of practice and will produce sound estimates of projected losses for ratemaking purposes.

(3) the projected losses derived from the model meet all applicable statutory, regulatory and other legal standards, and

Proposed (f)(3) clarifies that use of catastrophe models must be compliant with all applicable legal requirements. It is reasonably necessary to identify that it is the insurer's burden to ensure that the model is not inconsistent with controlling law. It is also reasonably necessary to cite various sources of relevant law to be appropriately inclusive because the Department cannot predict the various ways in which catastrophe models could potentially not comply with controlling law. To address the problem that insurers may be unclear regarding whether the projected losses derived from the catastrophe model comply with all controlling law, the Department specifies that relevant statutory, regulatory, and other legal standards apply. It is reasonably necessary to include this language to notify insurers of their responsibilities to ensure they rely upon only those catastrophe models that comply with controlling law for ratemaking purposes.

(4) the model incorporates what in the Commissioner's assessment is the best available scientific information on risk mitigation at the property, community, and landscape scales, including but not limited to forest management, prescribed fire, and risk mitigation initiated by local and regional utility companies.

Proposed (f)(4) requires that the model incorporate the best available scientific evidence on risk mitigation. The purpose of (4) is to promote accuracy in ratemaking by ensuring that factors which impact the risk of loss are incorporated in the model. Not including this provision could lead to inaccurate or higher loss projections which could lead to rates that are unfair or excessive. Forest management and prescribed fire factors are landscape scale risk mitigation approaches that are currently occurring in many parts of California and can influence the fire risk on large areas of land. Risk mitigation initiated by local and regional utility companies can similarly influence risk of loss so it is reasonably necessary to specify that such risk mitigation information is required to be incorporated into the model. If the Department were to remain silent and not specify that this information be incorporated by the model, the models may not include consideration of two common risk mitigation strategies, which are some of the most widespread actions by local, state, and the federal government, or risk mitigation efforts initiated

by local and regional utility companies. It is reasonably necessary to include the incorporation of this information because, while landscape scale risk mitigation can include many ongoing actions, forest management and prescribed fire are common tools utilized by state and local government, and by the federal government on the nearly one-third of California that is managed by the U.S. Forest Service. Without this specification, these two widely used strategies may be ignored, possibly resulting in the use of less effective or less accurate catastrophe models. Specifying forest management and prescribed fire ensures that the best available information on these approaches is considered by wildfire catastrophe models.

(g) This section is hereby expressly included within the range of regulations sections specified in subdivision (a) of Section 2648.4, notwithstanding that this section's adoption is subsequent in time to the adoption of, or the effectiveness of any amendments to, Section 2648.4.

The purpose of subdivision (g) is to express the Department's intention that, to the extent this section supports requirements relating to a complete rate application in Section 2648.4, it is clear that it is intended to be included in the range of numbers referenced in subdivision (a). Without this language, it could be argued that, even though the section number of Section 2644.4.5 falls within the range of section numbers specified in Section 2648.4, this Section 2644.4.5 should not be considered to be included within the meaning of the range of section numbers specified in Section 2648.4, for the reason that this Section 2644.4.5 may not have been adopted by the time the currently proposed amendments to Section 2648.4 are effective. This subdivision (g) is reasonably necessary in order to preclude that argument. By expressly including this section, it eliminates the possibility that there is any ambiguity as to whether this Section 2644.4.5 falls within the range of section numbers specified in Section 2648.4; it expressly does.

[Adopt] Section 2644.4.8. Distressed Areas; Insurer Commitments.

An insurer that opts to make, fulfill and document the fulfillment of its insurer commitments in the manner specified in this Section 2644.4.8 may use catastrophe modeling as permitted by Section 2644.4.5 for purposes of determining the catastrophe adjustment for wildfire exposure for commercial property insurance and qualifying residential property insurance.

The purpose of this section is to allow insurance companies to use catastrophe modeling to determine their catastrophe losses adjustment in the ratemaking formula where they are presumed to have demonstrated a need to do so by committing to take on the risk of writing additional business, or maintaining existing business as specified, in higher-risk wildfire-prone areas. Rates in California are currently determined based, in part, on projections from insurer's historical losses. Recently, insurers in California have been withdrawing from writing business in higher-risk wildfire areas and have indicated that the reason they are withdrawing is, in part, because they cannot develop appropriate wildfire rates using historical losses only and instead need to use catastrophe modeling in ratemaking. It is reasonably necessary to afford to insurers who commit to writing more business, or maintaining existing levels of business as specified, in distressed areas, and/or taking out of the FAIR Plan more policies insuring properties impacted by heightened wildfire risk, to use catastrophe modeling to project losses. Catastrophe modeling

may be a more accurate mechanism for calculating rates than may be possible using historical loss trends where insurers commit to change their book of business such that their historic losses may no longer accurately reflect their future book of business. This in turn will enable those insurers to charge rates more accurately commensurate with the associated increased risk of loss, which will help address the insurance availability problems that California property owners are increasingly experiencing.

> As used in this section, the term "qualifying residential property insurance" shall mean a policy of residential property insurance as defined in Insurance Code section 10087, except that renter's insurance policies do not fall within the meaning of qualifying residential property insurance. Additionally, an HO-6 policy, or its equivalent, is not included within the meaning of qualifying residential property insurance.

The purpose of this section is to make clear that these regulatory amendments apply to insurers requesting rate changes for residential homeowners policies that provide wildfire coverage for individually owned residential structures of not more than four dwelling units. It is reasonably necessary to identify the type of residential insurance policies most impacted by the current insurance availability crisis and thus to define "qualifying residential property insurance" (QRPI) to help communicate to insurers the type of residential policies that insurers may be presumed to have demonstrated a need to use catastrophe modeling for by committing to write more of.

Because a policy of "residential property insurance" is already defined in Insurance Code section 10087, that definition is used as a starting point and then certain types of insurance that do not insure structures are carved out of the Section 10087 definition. It is reasonably necessary to exempt renters' and HO-6 insurance policies because such policies do not insure structures. It is also reasonably necessary to avoid double counting of HO-6 policies because the commercial commitments will also capture the types of commercial policies that provide fire coverage for condominium structures.

Specifying that the term "qualifying residential property insurance" only includes insurance policies that include coverage for physical structures addresses the problem of having a definition that is broader than the problem this regulation is addressing. By focusing on insurance policies with structures, the definition aligns this section with the types of policies that are most likely to be impacted by the ongoing insurance availability challenges related to wildfire risk such that insurers committing to write more of such policies may be presumed to have demonstrated a need to use catastrophe modeling for ratemaking purposes. The growth in the FAIR Plan from 2018 to 2022 has been in policies that include coverage for the structure.

> (a) Distressed areas, and properties insured by FAIR Plan policies, that are to be used in insurer commitments.

The purpose of subdivision (a) is to identify the high-risk wildfire-prone areas in which admitted insurers may be presumed to have demonstrated a need to use catastrophe modeling by committing to write more QRPI policies, as well as the certain properties insured by the FAIR Plan which insurers can commit to convert into the admitted market, for purposes of ratemaking. For the reasons previously described, allowing insurers to use catastrophe modeling to project

losses for ratemaking purposes where they commit to write more QRPI policies is reasonably necessary to allow insurers to obtain rates that more accurately reflect the increased risk of writing in those wildfire-prone areas. This is necessary for those insurers because their historic losses may no longer accurately reflect their future book of business, and will thus enable those insurers to charge rates commensurate with the associated increased risk of loss, which ultimately helps to address the growing insurance availability problem policyholders are experiencing.

(1) Distressed areas.

For purposes of this section distressed areas shall include the following:

As previously discussed, the Commissioner has concluded that insurers that commit to write additional new business and increase the availability of property insurance in high-risk wildfire-prone areas will be presumed to have demonstrated a need to use catastrophe models in their rate calculations because their historic losses may no longer be accurate for ratemaking purposes. The purpose of subdivision (a)(1) is to identify where insurers may find information on which areas experiencing higher levels of wildfire risk will be considered "distressed areas" as the term relates to fulfilling insurer commitments made pursuant to subdivision (c) of this section. This subdivision is reasonably necessary to prevent insurer confusion and provide certainty regarding which areas qualify as distressed areas for purposes of meeting insurer commitments. The Commissioner anticipates that by identifying the areas that qualify as distressed for purposes of these regulations, this will also help address the growing problem of insurance unavailability in those areas.

(A) Undermarketed ZIP Codes.

As previously discussed, the Commissioner has concluded that insurers that commit to write additional new business and increase the availability of property insurance in high-risk wildfire-prone areas will be presumed to have demonstrated a need to use catastrophe models in their rate calculations because their historic losses may no longer be accurate for ratemaking purposes. The purpose of subdivision (A) is to specify that this subdivision will provide information on how the Commissioner will identify Undermarketed ZIP Codes and how the Commissioner will communicate which ZIP Codes are undermarketed. It is reasonably necessary to signpost where insurers and other affected parties may find this information within the regulation text and prevents potential confusion about where to find this information in the future.

The Commissioner shall publish an initial bulletin containing a list of the Undermarketed ZIP Codes determined pursuant to this subdivision (a)(1)(A). The Commissioner shall by subsequent bulletins update the list of Undermarketed ZIP Codes from time to time as conditions warrant, but in any event no less frequently than once per year.

As previously discussed, the Commissioner has concluded that insurers that commit to write additional new business and increase the availability of property insurance in high-risk wildfire-prone areas will be presumed to have demonstrated a need to use catastrophe models in their rate

calculations because their historic losses may no longer be accurate for ratemaking purposes. The purpose of this subdivision is to communicate that the Commissioner will publish an initial bulletin specifying the ZIP Codes determined by the Commissioner to be experiencing the greatest levels of residential insurance availability challenges as a result of increased wildfire risk – the Undermarketed ZIP Codes. This subdivision further communicates that the Commissioner will periodically issue subsequent bulletins to update the list of Undermarketed ZIP Codes as conditions warrant but no less frequently than once per year.

It is reasonably necessary for the Commissioner to publish an initial bulletin containing a list of Undermarketed ZIP Codes so that insurers will know which ZIP Codes in which they can write additional policies to meet their insurer commitments. It is reasonably necessary for the Commissioner to update, to the extent that conditions warrant, by subsequent bulletins the identification of Undermarketed ZIP Codes with specific regularity in order to respond to potential changes in the availability of QRPI related to wildfire risk in the admitted market. The purpose of the updates is to ensure that the identified Undermarketed ZIP Codes reflect conditions within the admitted market which are fluid and can change based on complex interactions between various wildfire, land-use, and human-based systems, and because of the cumulative impact of decisions made individually by insurance companies offering QRPI in California.

It is reasonably necessary for the Department to update the current Undermarketed ZIP Codes as new and different data is analyzed to and state-wide changes in the admitted market with respect to QRPI are identified. The Department will also assess on an annual basis whether any such updates to the list are warranted based on the most recent data that is available to the Department in accordance with subsequent subsections of this regulation.

It is reasonably necessary for the Department to use ZIP Codes as a method to define distressed areas because residential exposure data at the policy level by ZIP Code from admitted insurers and the FAIR Plan is already available to the Department. This makes ZIP Code boundaries the most adequate and efficient means to communicate Undermarketed ZIP Codes with insurers and the public.

> For purposes of this section, an Undermarketed ZIP Code shall mean a ZIP Code, as determined by the Commissioner, which at least partially overlaps a high or very high fire hazard severity zone as shown on current maps published by the Department of Forestry and Fire Protection (Cal Fire) and in which ZIP Code either:

As previously discussed, the Commissioner has concluded that insurers that commit to write additional new business and increase the availability of property insurance in high-risk wildfire-prone areas will be presumed to have demonstrated a need to use catastrophe models in their rate calculations because their historic losses may no longer be accurate for ratemaking purposes. This subdivision sets forth the first part of the Commissioner's definition of an Undermarketed ZIP Code. It specifies that an Undermarketed ZIP Code is a ZIP Code which at least partially overlaps a high or very high fire hazard severity zone and clarifies that the high or very high fire hazard severity zone will be taken from a current map published by the Department of Forestry

and Fire Protection. It then signals that the ZIP Code must also meet other requirements by the use of a colon after the language "and in which ZIP Code either:".

It is reasonably necessary for the Commissioner to define Undermarketed ZIP Codes so that insurers will know which ZIP Codes in which they can write additional policies to meet their insurer commitments. It is also reasonably necessary for the definition of Undermarketed Zip Codes to be correlated with areas of the state known to be higher-risk, wildfire-prone areas that are experiencing insurance unavailability, because historic loss projections may not accurately set rates for insurers that commit to write more business in those areas, such that they will be presumed to have demonstrated a need to use catastrophe modeling.

Accordingly, it is also reasonably necessary to link the definition of Undermarketed ZIP Codes to fire hazard severity zones as identified on current maps published by the Department of Forestry and Fire Protection (Cal Fire) because of the logical and data-driven link between increased wildfire risk and geographic areas of the state known to be experiencing greater issues obtaining insurance coverage from admitted insurers in the voluntary market.
Cal Fire is the subject matter expert on statewide wildfire risk with the latest and best data on the most fire-prone severity zones and creates fire hazard maps that can be overlaid with ZIP Code boundaries. This subdivision communicates that the definition of Undermarketed ZIP Codes will rely on current Cal Fire maps. This is necessary to eliminate any confusions regarding which Cal Fire maps will be used for the purposes described in this subdivision.

By layering Cal Fire's high to very high fire hazard severity zones over ZIP Code maps, the Department is able to identify which ZIP Codes contain geographic areas experiencing high or very high wildfire risk. Using exposure data, the Department is then able to identify, of those ZIP Codes that contain high or very high wildfire risk, which ZIP Codes are experiencing the most significant decline in insurance availability.

If the Department did not approach defining Undermarketed ZIP Codes in the particular way described above, insurers' increased writing of residential property insurance would not necessarily correlate to areas of the state known to be higher-risk, wildfire-prone areas that are experiencing insurance unavailability, such that insurers might not be presumed to have demonstrated a need to use catastrophe modeling for ratemaking purposes.

1. At least fifteen percent (15%) of the sum of the following are insured by the FAIR Plan:

As previously discussed, the Commissioner has concluded that insurers that commit to write additional new business and increase the availability of property insurance in high-risk wildfire-prone areas will be presumed to have demonstrated a need to use catastrophe models in their rate calculations because their historic losses may no longer be accurate for ratemaking purposes. This subdivision builds upon subdivision (a)(1)(A) in which Undermarketed ZIP Code is defined as a ZIP Code "which at least partially overlaps a high or very high fire hazard severity zone as shown on current maps published by the Department of Forestry and Fire Protection (Cal Fire)." The purpose of this subdivision is to communicate that the ZIP Code must also either meet the

criteria in this subdivision or in a subsequent subdivision ((a)(1)(A)2.), in order to qualify as an Undermarketed ZIP Code.

Subdivision (a)(1)(A)1 is the first of the two metrics that may be used to complete the definition of Undermarketed Zip Code. This subdivision sets forth that a ZIP Code is an Undermarketed ZIP code if, in addition to meeting the condition set forth in preceding subdivision (a)(1)(A) that the ZIP Code "at least partially overlaps a high or very high fire hazard severity zone as shown on current maps published by the Department of Forestry and Fire Protection (Cal Fire)," at least fifteen percent (15%) of the sum of the criteria listed in the following two subdivisions, (a)(1)(A)1.a. and (a)(1)(A)1.b., are insured by the FAIR Plan in that ZIP Code. Mathematically speaking, the only way to derive the FAIR Plan percentage in a ZIP Code is to use the numbers that result from the calculations in subdivisions (a)(1)(A)1. a. and (a)(1)(A)1.b..

The purpose of this language is to make specific the definition of Undermarketed ZIP Code and communicate how the Commissioner calculates the FAIR Plan percentage in a ZIP Code to determine if it is at or above 15%. It is reasonably necessary for the Commissioner to define Undermarketed ZIP Codes so that insurers will know which ZIP Codes in which they can write additional policies to meet their insurer commitments. It is also reasonably necessary for the definition of Undermarketed Zip Codes to be correlated with areas of the state known to be higher-risk, wildfire-prone areas that are experiencing insurance unavailability, because historic loss projections may not accurately set rates for insurers that commit to write more business in those areas, such that they will be presumed to have demonstrated a need to use catastrophe modeling. The Commissioner has determined that the FAIR Plan is experiencing significant growth in these higher-risk, wildfire-prone areas that are experiencing admitted market insurance unavailability. Accordingly, it is reasonably necessary to use the 15% FAIR Plan threshold because it corresponds to the insurer's 85% commitment. If insurers commit to write QRPI policies in distressed areas such that their market share in the corresponding distressed ZIP Codes is at least 85% equivalent to their overall statewide market share, then the FAIR Plan concentration will not be able to exceed 15% in those areas.

This language also addresses the problem of potential confusion or uncertainty as to how the Department is calculating the percentage of residential properties insured by the FAIR Plan in a particular ZIP Code so that the aforementioned determination can be made. This language also eliminates the possibility of any confusion regarding whether, if the FAIR Plan penetration in a ZIP Code is at or above 15%, that ZIP Code qualifies as an Undermarketed ZIP Code.

a. The number of residential properties in the ZIP Code that are insured by the FAIR Plan, and

b. The number of residential properties in the ZIP Code that are insured in the voluntary market by admitted insurers under a policy of qualifying residential property insurance; or

As previously discussed, the Commissioner has concluded that insurers that commit to write additional new business and increase the availability of property insurance in high-risk wildfire-prone areas will be presumed to have demonstrated a need to use catastrophe models in their rate

calculations because their historic losses may no longer be accurate for ratemaking purposes. The purpose of these provisions is to specify the two values that are added together to create the sum referenced (a)(1)(A)1., the number of residential properties in the ZIP Code that are insured by the FAIR Plan and number of residential properties in the ZIP Code that are insured in the voluntary market by admitted insurers under a policy of qualifying residential property insurance.

Also, as previously discussed, it is reasonably necessary for the Commissioner to define Undermarketed ZIP Codes so that insurers will know which ZIP Codes in which they can write additional policies to meet their insurer commitments. It is also reasonably necessary for the definition of Undermarketed Zip Codes to be correlated with areas of the state known to be higher-risk, wildfire-prone areas that are experiencing insurance unavailability, because historic loss projections may not accurately set rates for insurers that commit to write more business in those areas, such that they will be presumed to have demonstrated a need to use catastrophe modeling. The Commissioner has determined that the FAIR Plan is experiencing significant growth in these higher-risk, wildfire-prone areas that are experiencing normal market insurance unavailability. Accordingly, these provisions are reasonably necessary to make specific the definition of Undermarketed ZIP Code and communicate how the Commissioner calculates the FAIR Plan percentage in a ZIP Code to determine if it is at or above 15%. If the Department did not include these provisions, confusion and uncertainty may exist regarding how the Commissioner defines Undermarketed ZIP Code.

The word "or" at the end of this subdivision is reasonably necessary to communicate that, in addition to the criteria in this subdivision, the subsequent subdivision provides another criterion that can be met to define an Undermarketed Zip Code.

2. The average premium per $1,000.00 of Coverage A in the ZIP Code is at least four dollars ($4.00) while the median income of the ZIP Code is no higher than the fiftieth (50th) percentile for California.

As previously discussed, the Commissioner has concluded that insurers that commit to write additional new business and increase the availability of property insurance in high-risk wildfire-prone areas will be presumed to have demonstrated a need to use catastrophe models in their rate calculations because their historic losses may no longer be accurate for ratemaking purposes. This subdivision builds upon subdivision (a)(1)(A) in which Undermarketed ZIP Code is defined as a ZIP Code "which at least partially overlaps a high or very high fire hazard severity zone as shown on current maps published by the Department of Forestry and Fire Protection (Cal Fire)." The purpose of this subdivision is to communicate that the ZIP Code must also either meet the criteria in this subdivision or in a preceding subdivision ((a)(1)(A)1.), in order to qualify as an Undermarketed ZIP Code.

This subdivision communicates the second of two metrics that may be used to complete the definition of Undermarketed Zip Code and requires the average premium of Coverage A (Coverage A, commonly referred to as Dwelling Coverage, covers the structure of the home) in a particular ZIP Code to be at least four dollars ($4.00) and the median income of the ZIP Code to be no higher than the 50th percentile for California. In other words, if the average premium of

Coverage A is at least four dollars and the median income of the Zip Code is no higher than the 50th percentile for California and the ZIP Code "at least partially overlaps a high or very high fire hazard severity zone as shown on current maps published by the Department of Forestry and Fire Protection (Cal Fire)," then the ZIP Code qualifies as an Undermarketed Zip Code.
Using the average premium per $1,000 of coverage is a common and relatable measurement used by insurance regulators to create a common scale to compare relative cost of insurance products being written in a particular location on a consistent basis. It is reasonably necessary to focus on measuring the average premium per $1,000 of Coverage A as Coverage A represents the portion of the overall coverage amounts that is directly tied to fire risk, including wildfire risk, of residential structures.

It is reasonably necessary to set a threshold, such as the four-dollar ($4.00) threshold set here, above which Coverage A can be deemed to be significantly more expensive, so as to compare insurance in the market in that location or between locations. In this case, the threshold was established by analyzing the variability and the differences compared to the average premium per $1,000 of Coverage A. This metric is calculated by combining the premium from all the relevant policies insuring residential structures in a ZIP Code and dividing by the combined amount of structure coverage under Coverage A from those same policies in that ZIP Code.

Based on CDI data collected from insurance companies operating in California, the Commissioner has determined it is reasonably necessary to classify a ZIP Code as undermarketed if, in part, the average premium per $1,000 of Coverage A in that ZIP Code is at or above four dollars ($4.00), based upon two common statistical methodologies.

First, four dollars ($4.00) is roughly one standard deviation above the state-wide mean of the average premium per $1,000.00 of Coverage A within each ZIP Code in the state. In other words, one standard deviation means that the premium for $1,000 of Coverage A in nearly 16% of all ZIP Codes (and under standard assumptions, approximately 16% of policies covering residential structures across all ZIP Codes) on average would be more expensive than the $4 threshold; about 68% of all ZIP Codes (and under standard assumptions, 68% of all policies across all ZIP Codes) on average would be roughly between $2 and $4.

Second, and similarly, the $4 threshold also represents the 80th percentile, meaning that any ZIP Code where that metric is at $4 or above is in the top 20% of all ZIP Codes in the state. That means that those ZIP Codes above $4 would be among the 20 most expensive ZIP Codes in the state with respect to the average premium cost for $1,000 of Coverage A.

The Commissioner has determined it is reasonably necessary to set four dollars ($4.00) as the appropriate threshold level because it is roughly one standard deviation from the state-wide mean of the average premium per $1,000.00 of Coverage A.

It is also reasonably necessary to define Undermarketed ZIP Codes to include ZIP Codes where the average premium for residential structures is more expensive than the statewide mean and the median income of the ZIP Code is at or below the fiftieth (50th) percentile statewide, while meeting the requirements set forth in (a)(A)(1), in order to prevent any potential for unintended consequence of specifying these Undermarketed ZIP Codes, by inadvertently excluding areas

with lower-value, lower-income properties, and therefore potentially having an unfairly discriminatory impact on rates; therefore, the Commissioner is adding this provision to capture any such ZIP Codes to ensure against any potential for unfair discrimination.

(B) Distressed counties.

The Commissioner shall publish an initial bulletin containing a list of the distressed counties determined pursuant to this subdivision (a)(1)(B). The Commissioner shall by subsequent bulletins update the list of distressed counties from time to time as conditions warrant, but in any event no less frequently than once per year. For purposes of this section, a county shall be a distressed county if the percentage of structures situated in that county that are at high or very high wildfire risk is no lower than the 50th percentile of counties in the state, as determined by the Commissioner.

As previously discussed, the Commissioner has concluded that insurers that commit to write additional new business and increase the availability of property insurance in high-risk wildfire-prone areas will be presumed to have demonstrated a need to use catastrophe models in their rate calculations because their historic losses may no longer be accurate for ratemaking purposes.

The first line of this subdivision communicates that the Commissioner will publish an initial bulletin listing the names of the distressed counties to be used in insurer commitments. This is reasonably necessary because it addresses the problem of how insurers will be notified of the list of distressed counties as determined by the Commissioner. Publishing the list of distressed counties via bulletin provides a convenient, uniform way to notify insurers of the list of distressed counties, which insurers need to determine which counties they can write additional new policies in to meet their insurer commitments.

The second line of this subdivision communicates that the Commissioner shall issue subsequent bulletins to update the list of distressed counties as conditions warrant but no less than once per year. It is reasonably necessary for the Commissioner to update, to the extent conditions warrant, by subsequent bulletins the identification of distressed counties with specific regularity in order to respond to potential changes in market conditions of QRPI in the statewide admitted market related to wildfire risks and ensure that the identification of distressed counties responds to changing market conditions.

It is reasonably necessary to determine and compare the relative levels of wildfire risk to structures among counties to address the problem of determining which California counties are most likely to be higher-risk wildfire-prone areas such that insurers to committing writing more insurance in those areas are presumed to have demonstrated a need to use catastrophe modeling because their historic data may not be accurate for ratemaking purposes. The Department does not collect comprehensive fire risk data, and therefore, the Department must rely on data and methodologies from external sources to assess comparative levels of wildfire risk.

The identification of both “Undermarketed ZIP Codes” and “distressed counties” is important for achieving a more holistic and accurate approach to identifying the areas most likely to be

impacted by wildfire risks. Undermarketed ZIP Codes alone provide jurisdictional boundaries that do not align with risks. Therefore, the purpose of including "distressed counties" is to provide a complementary approach to Undermarketed ZIP Codes that identifies the counties where high risk is common, and therefore more likely to be higher-risk wildfire-prone areas such that insurers to committing writing more insurance in those areas are presumed to have demonstrated a need to use catastrophe modeling because their historic data may not be accurate for ratemaking purposes.

Such a definition is necessary to most completely identify wildfire distressed areas. Because ZIP Codes are established based on population densities, this county definition helps reduce the likelihood of excluding certain areas that are likely facing similar risk conditions to those in other areas of the same county. In lower wildfire risk counties, ZIP Codes are more appropriate because they are a more granular approach.

The use of the term "structures" clarifies the that this section addresses the wildfire risk to physical structures in a county, which is more aligned with how wildfire risk metrics are used to assess the risk of loss in a particular area when compared to the term dwellings.

The use of the "50th percentile" metric better achieves the goal of this section, which is to identify the counties facing wildfire risk at a threshold that is likely to make insurers' historic loss data less predictive of projected losses. A higher percentile, such as the 60th percentile would be too narrow, capturing fewer of the counties that have seen substantial wildfire risk challenges, and therefore would not align with the objective of the distressed areas. A lower percentile, such as the 40th percentile, would have resulted in the inclusion of more counties with a lower percentage of structures determined to be at high or very high wildfire risk, which would make the distressed areas too broad and would not have achieved the objective of the distressed areas.

It is reasonably necessary to specify the term "structures" because it addresses the problem of how wildfire risk is being evaluated at the county level. Without this term, the text would be unclear on how wildfire risk would be evaluated.

If the text does not specify "50th percentile" then the rule for determining whether a county is identified as a "distressed county" would be unclear and cause confusion for insurance companies and public stakeholders.

(2) Properties insured by the FAIR Plan exposed to wildfire risk.

As previously discussed, the Commissioner has concluded that insurers that commit to write additional new business and increase the availability of property insurance in high-risk wildfire-prone areas will be presumed to have demonstrated a need to use catastrophe models in their rate calculations because their historic losses may no longer be accurate for ratemaking purposes. The purpose of this subdivision is to identify certain properties currently insured by the FAIR Plan that admitted insurers in the voluntary market must write more of in order to presumptively demonstrate a change in their book of business such that it would be more accurate for them to use catastrophe modeling when requesting rate change approvals. The Commissioner has

determined that the FAIR Plan is experiencing significant growth in these higher-risk, wildfire-prone areas that are experiencing normal market insurance unavailability. Accordingly, it is reasonably necessary to include such properties in the types of properties that if insurers commit to writing more of they may be presumed to have demonstrated a need to use catastrophe modeling for ratemaking purposes because their historic losses will likely be less predictive.

> Policies insuring properties that the insurer has classified as moderate to very high wildfire risk and that immediately prior to the insurer's insuring them, on a date subsequent to the approval of its rate application described in subdivision (c) of this section, had been covered under the FAIR Plan.

As previously discussed, the Commissioner has concluded that insurers that commit to write additional new business and increase the availability of property insurance in high-risk wildfire-prone areas will be presumed to have demonstrated a need to use catastrophe models in their rate calculations because their historic losses may no longer be accurate for ratemaking purposes. This subdivision provides another category of QRPI policies that an insurer may write to fulfill its insurer commitments. This subdivision clarifies that in addition to QRPI policies in distressed counties and Undermarketed ZIP Codes, insurers may write certain other QRPI policies covering properties located outside of distressed areas to meet their insurer commitments, but only if those properties were insured by the FAIR Plan immediately prior to the policy written by the insurer as part of that insurer's fulfillment of their insurer commitment.

This subdivision requires such properties to be classified as moderate to very high wildfire risk by the insurer making the commitment. The Commissioner has determined that the FAIR Plan is experiencing significant growth in these higher-risk, wildfire-prone areas that are experiencing normal market insurance unavailability. Accordingly, it is reasonably necessary to include such properties in the types of properties that if insurers commit to writing more of they may be presumed to have demonstrated a need to use catastrophe modeling for ratemaking purposes because their historic losses will likely be less predictive.

This subdivision further clarifies that the policy must have been covered by the FAIR Plan "immediately prior" to the admitted insurer insuring it and the policy also must have been covered by the FAIR Plan after the date the insurer's rating plan containing its commitment was approved. The "immediately prior" language ensures prevents increased insuring of properties that were on the FAIR Plan at some other previous time counting towards fulfilling an insurer commitment. It is reasonably necessary to specifically target policies that are currently insured by the FAIR Plan because the Commissioner has determined that such policies are more likely to be higher-risk, and therefore an insurer that commits to writing more such policies may be presumed to have demonstrated a need to use catastrophe modeling for ratemaking purposes because their historic losses will likely be less predictive.

If a property had in the past been insured by the FAIR Plan but not immediately prior to when the insurer that is making a commitment is providing coverage, then coverage for that property should not count towards the insurer's commitment because that property could have been in the interim insured by another admitted carrier which does not demonstrate increased risk for the applicant insurer as of the time the commitment was approved. This requirement is reasonably

necessary for an insurer to demonstrate that committing to writing such a property is the type of underwriting commitment that makes an insurer's historic losses less accurate for ratemaking purposes such that the insurer is presumed to have demonstrated a need to use catastrophe modeling.

It is also reasonably necessary to specify that the property must have been insured by the FAIR Plan subsequent to the approval date of the insurer's rating plan described in subdivision (c) to ensure that the property was underwritten as part of the insurer's commitment and not a property the insurer underwrote prior to its commitment being approved.

(b) Statewide market calculations.

This purpose of this subdivision is to specify how statewide market calculations are performed. It is reasonably necessary to identify that this subdivision specifies how the Department will perform statewide market calculations. This subdivision promotes transparency and eliminates the potential for confusion regarding how the Department calculated statewide market shares and statewide distressed areas earned exposures, as discussed in the following subdivisions (b)(1) and (b)(2).

(1) Calculation of statewide market share.

This subdivision provides transparency by describing how the Department calculates an estimate of statewide market share and explains that this number will be used as the denominator in calculating the statewide market share for each insurer. It is reasonably necessary to identify how these calculations are performed in order to ultimately determine insurer commitments in a consistent and transparent way.

> For purposes of this section the Department will calculate an estimate of the number of earned exposures of qualifying residential property insurance statewide based on the most recent experience year reported to the Department, such initial evaluation period ending on December 31, 2023, which figure shall be used as the denominator in the calculation of statewide market share for each insurer. The Commissioner shall publish a bulletin with the estimate of statewide earned exposures, no less frequently than once per year.

The purpose of this subdivision is to advise that the Department will calculate an estimate of overall statewide market share and how it will do so. This subdivision also advises that the resulting statewide market share estimate determined by the Department will be the denominator that each insurer must use to calculate its individual market share.

This subdivision specifies that the Commissioner will publish the overall statewide market share estimate, the denominator in the calculation of each insurer's statewide market share, in a bulletin at least once per year. The Department will be responsible for calculating an estimate of the number of earned exposures of qualifying residential property insurance statewide, specifying how it will make that calculation, and identifying how and when insurers can expect to receive that information. This is reasonably necessary to communicate to insurers in a

transparent manner that they themselves are not responsible for making this calculation. The Department will provide such information through a particular means at a particular frequency.

It is reasonably necessary to publish the Department-determined-denominator so that insurers know what denominator they must use to calculate their individual statewide market share. It is also necessary for the Department to rely on data collected from the most recent experience year available as that will most closely reflect the status of the insurance market; relying on older data poses a risk of setting requirements that substantially deviate from current market conditions and would fail to address the changing insurance market and consumer demands.

The number of earned exposure represents the number of structures insured by an insurer in proportion to the total amount of months they were insured over a 12-month period. The Department must establish a baseline to measure insurer commitments and the cut-off year of 2023 is used because it will be the most current and complete information the Department will have to set that baseline by adding all the reported earned exposures from the relevant admitted insurers over the 12-month period.

It is reasonably necessary to use earned exposures as the measuring unit because using any other alternative measurable units may result in inaccuracies, inconsistencies, and deficiencies that limit the ability to use other alternative measurable units as a baseline to monitor commitments.

Additionally, earned exposures reflect both the number of policies and the period of time the risk has been on the insurer's book of business, so unlike other methods it has both count and time elements. Earned exposures also reflect the amount of penetration an insurer has in terms of the number of homes for which it provided insurance in a certain period. It is necessary to use earned exposures versus a point in time policy-count because policies may be cancelled and/or written on the last day of the counted time period. Thus, the regulation specifies using earned exposures because they represent the best data available to the Department as of the time of this rulemaking. Earned exposures are also necessary to compare the data reported by insurers for ratemaking purposes. Insurers report their earned exposures in rate applications, thus it is the best method for comparison of insurers' penetration in distressed areas over time. Finally, earned exposures provide a consistent, verifiable, and commonly known metric and commonly known measurement.

The above statements regarding the necessity of the use of "earned exposures" applies to all instances in which the term is used in the regulation text.

> <u>The numerator to be used in the calculation of each insurer's statewide market share shall be the number of earned exposures of qualifying residential property insurance policies in the most recent 12-month period used in its recorded period as submitted in the insurer's rate application pursuant to subdivision (c) of this section.</u>

The purpose of this provision is to identify the numerator that insurers must use to calculate their individual market share. The individual market share of each participating insurer is one of the

factors that each participating insurer must use in the equation to determine its insurer commitments.

Without this provision, insurers will not know what calculations to perform to determine their insurer commitments. It is reasonably necessary to identify these calculations in order to determine insurer commitments in a consistent way that demonstrates the likelihood that an insurer's historic loss data will not accurately reflect its projected losses such that catastrophe modeling should be used. It is also reasonably necessary to use earned exposures of QRPI policies because the numerator is the same unit of measurement as the denominator.

The purpose of using the most recent twelve (12) month period is to provide uniformity and to match the 12-month period in the denominator. Using a 12-month period to measure earned exposures is necessary since QRPI policies are generally issued for a term of 12 months; thus, a 12-month period is needed to accurately measure if any particular risk was insured for the entire term or for a fraction thereof. Since an insurer's commitment will be made at the time of the rate filing, the insurer's market share at the time of such filing requires an insurer to count the total amount of earned exposures of QRPI policies that are commensurate with their most recent 12-month period used in the recorded period of the rate template. Use of an alternative 12-month period other than the most recent would not accurately reflect or measure the total amount of time each and every risk has been on the insurer's book of business as of the time of the filing and consequently would not accurately reflect the expected cumulative risk for the duration of the newly approved rate.

It is also necessary for the Department to rely on data collected from the most recent experience year available as that will most closely reflect the status of the insurance market; relying on older data poses a risk of setting requirements that substantially deviate from current market conditions and would fail to address the changing insurance market and consumer demands.

> In order to calculate its statewide market share, the insurer shall divide its numerator by the denominator, each as described in this subdivision (b)(1), and the insurer's statewide market share shall be the resulting quotient, rounded to the thousandths place.

The purpose of this section is to further explain the method of calculating an individual insurer's statewide market share using the numerator and the denominator set forth in subdivision (b)(1). Calculating the insurer's statewide market share is reasonably necessary to help determine how many new policies an insurer must commit to write in order to be presumed to have demonstrated a need to use catastrophe modeling in their ratemaking because their historic loss data may be less predictive for ratemaking purposes. It is reasonably necessary to provide a uniform equation so that all insurers that agree to increase writing new business or maintain existing business in higher-risk wildfire-prone areas in order to presumptively demonstrate a need to use catastrophe modeling in their ratemaking will be operating on a level playing field.

It is reasonably necessary to use thousandth place when calculating various ratios to account for certain insurers, including those that represent less than 0.5% of the insurance market. If rounding to the nearest hundredth, some of these insurers that currently write between $10 and

$50 million in premium in distressed areas would be calculated to have 0% market share and thus would be unable to calculate an insurer commitment. Insurers writing less than $10 million are considered low volume and thus exempt from an insurer commitment. Calculating certain ratios to the thousandth place, for example, would allow all insurers, regardless of size, to determine their commitment more accurately.

(2) Statewide distressed areas earned exposures.

For purposes of this section the Department will calculate an estimate of the total number of earned exposures of qualifying residential property insurance in both the voluntary market and the FAIR Plan inside the distressed areas of the state based on the most recent experience year/dataset reporting such relevant information to the Department, such initial evaluation period ending on December 31, 2023, which figure shall be used in the calculation of each insurer's residential commitment inside the distressed areas pursuant to subdivision (d) below. The Commissioner shall publish a bulletin that includes the estimate of statewide distressed areas earned exposures, no less frequently than once per year.

This subdivision explains how the Department will estimate the combined number of earned exposures of QRPI across all distressed areas in the state from either the voluntary market or the FAIR Plan that would represent the total estimated number of QRPI policies available for all insurers to fulfill their commitment. The total number of statewide earned exposures for residential structures inside distressed areas is determined by combining the number of earned exposures in distressed areas written by admitted insurers with the number of earned exposures in distressed areas written by the FAIR Plan. This subdivision furthers explains that the resulting sum will be used as a multiplication factor in a subsequent calculation to determine a residential insurer's commitment inside distressed areas of the state.

This calculation is reasonably necessary for the Department and all insurers to determine how many additional policies in distressed areas each insurer must write in order to be presumed to have demonstrated a need to use catastrophe modeling for ratemaking purposes. The inclusion of policies from both the voluntary market and the FAIR Plan as policies that the insurer may write to fulfill the insurer's commitment is intentional. The Commissioner has determined that the FAIR Plan is experiencing significant growth in these higher-risk, wildfire-prone areas that are experiencing admitted market insurance unavailability. Accordingly, if the regulations only allowed QRPI policies from the voluntary market to fulfill the insurer commitment, it would not be optimized to capture all possible relevant risk exposures to determine whether an insurer's historic loss data is likely to be inaccurate for use in ratemaking. It is therefore reasonably necessary to include the number of QRPI policies available from the FAIR Plan in order to accurately calculate the estimated total number of QRPI policies available in distressed areas for all insurers that make insurer commitments.

This subdivision also communicates that the calculation will be made based on the most recent experience-year dataset reporting and that there will be an initial evaluation period of said data ending on December 31, 2023.

The reason an initial evaluation period is used is to establish a baseline to measure insurer commitments and the cut-off year of 2023 is used is because it will be the most current information the Department will have to establish that baseline. The Department only collects data retroactively, and it is unreasonable and burdensome to require both the Department and insurers to produce real time or near-real time data. It is reasonably necessary for the Department to rely on data from the most recent experience year collected as that will most closely reflect the status of the insurance market; relying on older data poses a risk of setting requirements that substantially deviate from current market conditions and would fail to address the changing insurance market and consumer demands.

This subdivision requires the Commissioner to publish a bulletin that includes the estimate of statewide distressed areas of QRPI policies so that participating insurers will know what that estimate is to calculate their insurer commitment. The Department's estimate will be used by insurers as a multiplication factor in the equations they must perform to determine their insurer commitments under (d)(1) below.

This subdivision further requires the bulletin advising insurers of the Department's estimate of the statewide distressed areas earned exposures to be published no less frequently than one pear year to respond to potential changes in the estimated total number of statewide distressed areas QRPI policies. The purpose of the updates is to ensure that the numbers keep abreast of market conditions within the admitted market. These market conditions are fluid and can change based on complex interactions between various environmental and human-based systems, and because of the cumulative impact from individual decisions by insurance companies offering QRPI in California.

It is reasonably necessary for the Department to update the current statewide distressed areas earned exposures once updated data is collected and analyzed to monitor statewide changes in the distressed areas with respect to QRPI. As it may take more than one year for noticeable changes to QRPI policy numbers in distressed areas and additional time for the Department to collect the relevant data that reflects those changes, the Department is unlikely to be able to issue a bulletin with updated information at more frequently than once per year. Any more frequent notifications or updates would require the Department and insurers to undergo burdensome and unnecessary real time or near-real time data collection efforts. The publishing of the bulletin addresses the problem of how the Department will communicate to insurers the multiplication factor to be used for the insurer commitment calculations based on the statewide distressed areas QRPI policy earned exposures. It is reasonably necessary to communicate this information by bulletin because a bulletin is a uniform, transparent, one-time, resource-conserving vehicle for the communication of this information. It would be burdensome and unnecessary to require the Department to communicate this individually to all insurers regardless of whether they intend to use catastrophe modeling for rate filing purposes and since contact information for individual insurers often frequently changes.

The number of earned exposure represents the number of structures insured by an insurer in proportion to the total amount of months they were insured over a 12-month period. The Department must establish a baseline to measure insurer commitments and the cut-off year of 2023 is used because it will be the most current information the Department will have to set that

baseline by adding all the reported earned exposures from the relevant admitted insurers over the 12-month period.

(c) The insurer shall, as part of a complete rate application filing pursuant to Section 2648.4, submit an insurer commitment as set forth in subdivision (d), (f) and/or (j) of this section.

This subdivision explains that an insurer seeking to rely upon catastrophe modeling for ratemaking purposes must submit an insurer commitment as part of a complete rate application filing, to presumptively demonstrate that its historic loss data is likely to be less accurate for purposes of projecting losses, pursuant to section 2648.4 (the complete rate application regulation) and specifies that the commitment must be made as set forth in subdivisions (d), (f) and/or (j) of this section.

This builds upon the first sentence of the section which provides that "an insurer that opts to make, fulfill and document the fulfillment of its insurer commitments …may use catastrophe modeling as permitted by section 2644.4.5." by specifying which subdivisions clarify requirements surrounding different kinds of insurer commitments.

The insurer commitments shall be filed as part of a complete rate application because it is the insurer's commitment to increase risk in their future book of business that makes the insurer's historical loss trends a potentially less accurate way to calculate rates. When insurers make this commitment, they presumptively demonstrate a need to utilize catastrophe modeling in order to calculate a rate that is commensurate with the associated increased risk of loss, and request that rate in the application. Requiring insurers to submit their commitments separately from their complete rate applications would be less efficient for both the Department and insurers, and would likely result in confusion. It is reasonably necessary to request that insurers file any insurer commitments with the complete rate application which relies upon catastrophe modeling so that the insurer commitments are connected to, and documented within, the complete rate application that seeks to use wildfire catastrophe modeling instead of loss projections based upon historic loss data.

The insurer commitments referenced in this subdivision are reasonably necessary to ensure that insurance companies that commit to increasing their book of business in the higher-risk wildfire-prone areas of the state in order to presumptively demonstrate a need to use catastrophe modeling in rate-making, as the traditional method of relying on historical loss trends may no longer be the most accurate way to calculate a rate that is commensurate with the associated increased risk of loss in their future book of business. This section addresses the current insurance crisis by allowing insurers that write new policies in wildfire-prone areas of the state to use catastrophe modeling in its ratemaking, which will in turn allow insurers to project rates more appropriate to the increased risks they commit to undertake, and thus help address the current insurance availability crisis.

(d) Insurer commitments with respect to qualifying residential property insurance.

This subdivision establishes the commitments an insurer must undertake with respect to qualifying residential property as opposed to commercial property insurance.

It is reasonably necessary to have different criteria and separate commitments for residential and commercial insurance because commercial insurance policies frequently insure multiple structures in separate locations of varying types and uses, unlike residential policies whose coverage, premiums, and other conditions are premised on a primary structure located in a single parcel that's used solely for habitational purposes. Furthermore, commercial insurance policies cover assets and losses that are not tied to habitational uses, such as manufacturing facilities and crop loss indemnity coverages. In addition, the Department collects different types of data and at different time frames and frequencies from commercial insurance carriers compared to residential insurance carriers. Thus, combining residential and commercial policies would distort the commitments for insurance companies that choose to specialize in any particular market segment or insurance product line.

> The insurer shall commit in writing to achieving no later than two years (730 days) after the approval of its rate filing (the insurer's "performance date" hereinafter), or maintaining, the insurer's earned exposure commitment in the distressed areas of the state as follows:

Subdivision (d) identifies that an insurer shall make the commitment described in this subdivision in writing. It is reasonably necessary that the insurer make their commitment in writing to document the commitment and to enable the Department to examine insurer compliance. This subdivision also sets forth a two-year time frame in which an insurer must achieve its commitment. The identified time frame is reasonably necessary to address the problem of insurers not knowing how long they have to meet their commitments and also addresses the problem of providing a reasonable time frame for insurers to meet their commitments. It would be difficult for insurers to immediately increase their market share in distressed areas and this time frame provides for a managed and likely more durable increase in distressed areas for consumers. Subdivision (d) also clarifies that an insurer may potentially commit to maintaining the insurer's earned exposure commitment in the distressed areas of the state for a time as further described in subsequent subdivisions. It is reasonably necessary to specify that there are two different earned exposure commitments that may be made to prevent against potential insurer confusion or misinterpretation of what an insurer commitment must include.

(1) Eighty-five percent standard.

This subdivision establishes one of two standards an insurer may choose as its commitment in order to be presumed to have demonstrated a need to use catastrophe modeling in its ratemaking. It is reasonably necessary to specifically discuss each standard in order for insurers to understand what each requires and identify which standards applies to them, should they choose to make an insurer commitment to increase or maintain their earned exposures in distressed areas of the state.

(A) The insurer shall commit to write in distressed areas a number of policies that is no less than the product of (1) the insurer's statewide market share, as calculated pursuant to subdivision (b)(1), (2) 0.85, and (3) the total number of statewide distressed areas earned exposures pursuant to subdivision (b)(2) of this section; or

This subdivision requires insurers that choose the eighty-five percent standard commit to write in distressed areas of the state a number of policies equivalent to no less than 85% of that insurer's statewide market share. For example, if an insurer's statewide market share is 10%, then that insurer would need to commit to write 8.5% of the total number of statewide distressed areas earned exposures pursuant to subdivision (b)(2) inside distressed areas. As discussed above, the total number of statewide earned exposures for residential structures inside distressed areas is determined in subdivision (b)(2) by combining the number of earned exposures in distressed areas written by admitted insurers with the number of earned exposures in distressed areas written by the FAIR Plan). The number of earned exposures represents the number of structures insured by an insurer in proportion to the total amount of months they were insured over a 12-month period. If there were 1,000,000 such policies in distressed areas, then that insurer would need to write 85,000 policies in distressed areas, which could be met by combining their existing policies with new ones they write.

To determine the number of policies that equals their 85%, insurers must multiply their statewide market share (calculated as set forth in subdivision (b)(1)) by 0.85 to determine the number that represents 85% of that market share. To calculate their insurer commitment in distressed areas, insurers must multiply the resulting product by the number of statewide earned exposures for residential structures inside distressed areas as published by the Department in accordance with subdivision (b)(2). In other words, multiplying the figures represented in (1) x (2) x (3), as referenced in this subdivision, equals the minimum number of policies for residential structures an insurer would need to commit to write in distressed areas such that they represent 85% of that insurer's statewide market share.

This subdivision is additionally intended to address the problem of inaccurate rate-setting in the face of increasing risks, because of climate change impacts and other previously discussed factors, for those insurers who commit to increasing their underwriting in higher-risk areas of the state. Ultimately, this also addresses the issue of the lack of residential insurance availability in the distressed areas.

In setting the 85% standard, the Department looked at the most recent insurer data reported to the Department and determined that about 16% of statewide residential exposures were in distressed areas and about half of admitted insurers were already writing at least 85% of their statewide market share in distressed areas. Given that half of insurers already write 85% of their statewide market share of residential exposures in distressed areas, the Department determined that 85% was a reasonable standard for a substantial number of the other half to try to meet in order to be presumed to have demonstrated a need to use catastrophe modeling in rate making because their historic loss data would likely no longer be sufficiently predictive, especially given that a significant number of insurers are currently at approximately 80%.

(B) In the event the insurer already meets or exceed the eighty-five percent standard set forth above in subdivision (d)(1)(A) of this section at the time of its rate application, the insurer shall commit to maintaining at least the same number of earned exposures in the distressed areas as it reported in the rate application filing pursuant to subdivision (c), for at least three years (1,095 days) after the approval of the rate application.

This subdivision allows an insurer that is already writing 85% of its market share in distressed areas as set forth in subdivision (d)(1)(a) to meet the 85% standard by committing to maintaining their existing expanded market share in distressed areas for a period of at least three years.

The purpose of this subdivision is to allow insurers, whose distressed areas market share demonstrates greater risk exposure, to maintain the same market share without requiring they write additional policies in order to use catastrophe modeling in ratemaking. This acknowledges the fact that these insurers are already carrying a significant market share in distressed areas, and that this market share subjects them to greater risk exposure that may not be accurately represented in historical loss data. Insurers within this subdivision will commit to maintaining their current market share, which meets the 85% standard, and are presumed to have demonstrated a need to use catastrophe modeling for ratemaking purposes. These insurers' historic losses are likely to be less predictive on a forward-looking basis due to climate change increasing risk exposures, among other previously discussed risk factors. Further, the use of catastrophe modeling for those existing insurers carrying a significant market share in distressed areas, and greater risk exposure, will allow them to more accurately calculate their rates in order to maintain this increased presence in distressed areas.

For insurers to maintain writing expanded policies subject to greater risk exposure in distressed areas, it is necessary to provide a mechanism to calculate rates more accurately than through use of historical loss trends alone. This ability to calculate rates more accurately will allow the insurer a greater ability to set its rates more accurately and thus enable it to maintain the commitment to expanded writing in distressed areas, and/or taking out of the FAIR Plan more policies insuring properties impacted by heightened wildfire risk. Historical loss trends no longer accurately reflect that insurer's heightened wildfire risk so it is reasonably necessary to permit such an insurer to use catastrophe modeling to enable that insurer to charge rates commensurate with the associated increased risk of loss. This provision, allowing insurers to maintain their commitment by carrying an existing larger market share in distressed properties, is also reasonably necessary as to provide otherwise would place a disproportionate burden on these insurers and/or possibly cause additional financial stress as they are already writing a significant share of the QRPI policies in distressed areas. Ultimately, these insurers will continue maintaining their number of policies despite the anticipated increase in the number of policies written in distressed areas due to increased competition and market penetration by other insurers. Overall, there will be more policies in distressed areas as the total number of QRPI policies in distressed areas would have increased overall.

This section further clarifies and affirms that insurers, who commit to maintaining the same number of earned exposures in the distressed areas, must maintain that same number of earned exposures in the distressed areas for at least three years (1,095 days) after the approval of the

insurers rate application. This time frame provides certainty for insurers to maintain, and to continue to maintain, this commitment. It also provides stability in the marketplace as other insurers make commitments to expand their writings in distressed areas. The identified time frame is reasonably necessary to address the problem of insurers not knowing how long they have to meet their commitments and also addresses the problem of providing a reasonable time frame for insurers to meet their commitments and demonstrate continued exposure in higher wildfire risk areas.

(2) Five percent increment.

Subdivision (d)(2) establishes the second of two standards an insurer may choose as its commitment in order to be presumed to have demonstrated a need to use catastrophe modeling in its ratemaking. This standard recognizes that each insurer has a different makeup of written policies and therefore the standard for demonstrating the benefits of cat modeling to improve the accuracy of risk assessment in higher risk areas needs to be applicable to the different starting points of admitted insurers. For insurers that were significantly lower than the 85% standard, and for whom increasing to 85% would be burdensome or create financial considerations, it was reasonably necessary for the Department to provide an alternative standard.

> The insurer may instead commit to writing additional policies as specified in subdivision (d)(3) in the voluntary market inside the distressed areas of the state such that, on the performance date, the insurer has increased its number of earned exposures inside the distressed areas by at least the number of policies equal to five percent (5%) of its earned exposures in the distressed areas of the state within the most recent 12 month period used in its recorded period as submitted in the insurer's rate application pursuant to subdivision (c) of the section.

This subdivision sets a five percent increment standard that an insurer may commit to write in distressed areas. Providing the alternate standard was reasonably necessary to recognize that for insurers that are currently writing a lower percentage of their statewide market share in distressed areas, and that commit to growing in distressed areas, would presumptively demonstrate their historic losses may not be accurately predictive enough for ratemaking purposes and where cat modeling would improve the accuracy of loss projections. The five percent increment provides an insurer that is willing to commit to writing at least the number of policies equal to five percent of its earned exposures in the distressed areas with the ability to use catastrophe modeling in their ratemaking. For an insurer currently writing a lower percentage of their statewide market share in distressed areas, it could be overly burdensome and potentially create financial concerns to require them to increase their share by more than five percent. The Department anticipates that requiring an insurer to increase the amount of QRPI policies they write in distressed areas by 5% is unlikely to substantially increase the probability of financial distress, but it would be likely to make the insurer's historic losses less predictive such that it should use cat modeling. Similar to above, this commitment provides expanded writings in distressed areas and/or taking out of the FAIR Plan more policies insuring properties impacted by heightened wildfire risk. These actions will provide greater availability of policies in distressed areas and promotes greater stability in the insurance marketplace. catastrophe modeling.

(3) In the event that one or more of the bulletins described in subdivision (a) of this section that is or are referred to in an insurer's approved rate application pursuant to subdivision (c) of this section (the insurer's "starting bulletin or bulletins" hereinafter) have been updated since the time the application was filed, then the insurer may satisfy its insurer commitment by:

This subdivision clarifies what bulletin an insurer can use to meet its commitment if the bulletin(s) described in subdivision (a) that were effect when the insurer made its rate filing pursuant to subdivision (c) are updated before the insurer fulfills its commitment. It is reasonably necessary to clarify which bulletins may be used to avoid insurer confusion that may occur regarding whether they are expected to use their "starting bulletin," as described above, or subsequently published bulletins to fulfill their insurer commitment.

This subdivision clarifies that, in the event that one or more of the bulletins described in subdivision (a) of this section that is or are referred to in an insurer's approved rate application pursuant to subdivision (c) of this section, that bulletin(s) will be referred to as the insurer's "starting bulletin or bulletins." It is reasonably necessary to provide a name for the bulletin(s) that is or are referred to in an insurer's approved rate application pursuant to subdivision (c) of this section to differentiate between the starting bulletin or bulletins and subsequent bulletin(s). This provision also identifies that the subsequent subdivisions will elaborate on how an insurer may satisfy its insurer commitment in the effect that the bulletin(s) described in subdivision (a) of this section are updated prior to the insurer fulfilling its insurer commitment. This language is reasonably necessary to clarify the different ways insurers may comply with the requirements related to fulfilling insurer commitments.

(A) Writing policies in distressed areas as defined in the insurer's starting bulletin or bulletins and/or in any subsequently updated bulletin as the commissioner may publish from time to time; or

This subdivision allows an insurer to fulfill its commitment to write policies in distressed areas by using the distressed areas identified in the insurer's starting bulletin or bulletins and/or in any subsequently updated bulletin during the time in which an insurer is fulfilling its insurer commitment. If this were not allowed, then an insurer would be limited to fulfilling its commitment based on the definition of distressed areas in effect at the time it made its commitment which could delay increased writings in newly distresses areas that are included in subsequently published bulletins. To protect against that delay, it is reasonably necessary to allow insurers to utilize distressed areas identified the insurer's starting bulletin and/or in any subsequently updated bulletin.

Allowing an insurer to use any bulletin in effect while the insurer is fulfilling its commitment is reasonably necessary to meet changing market conditions. This rule broadens the number of policies that may be used to meet insurer commitments and broadens the number of consumers who may be helped by this section.

(B) If subdivision (d)(1)(B) of this section is applicable to the rate application, maintaining earned exposures in distressed areas as defined in the insurer's

starting bulletin or bulletins and/or in any subsequently updated bulletin as the commissioner may publish from time to time.

Subdivision (d)(3) addresses how insurers that already write 85% of their market share in distressed areas and commit to maintaining at least the same number of earned exposures in the distressed areas as it reported in the rate application filing pursuant to subdivision (c), for at least three years (1,095 days) after the approval of the rate application, may utilize bulletins described in subdivision (a) to fulfill their insurer commitment. This subdivision clarifies that those insurers may fulfill their commitment by using any bulletin(s) in effect during the time in which that insurer is fulfilling its insurer commitment. If this were not allowed, then an insurer would be limited to fulfilling its commitment based on the distressed areas identified in bulletin(s) in effect at the time it made its commitment. Such a rule would mean that an insurer could not fulfill its commitment based on areas subsequently defined as distressed and would prevent insurers from meeting their commitments by offering insurance coverage in newly identified distressed areas. This would mean that although an area was defined as distressed, the insurer could not use it to meet its commitment because that area was not defined as distressed at the time the insurer first made its commitment.

Allowing an insurer to use any bulletin in effect while the insurer is fulfilling its commitment is reasonably necessary to meet changing market conditions. This rule broadens the number of policies that may be used to meet insurer commitments.

(4) The additional policies written in order to satisfy the requirement of this subdivision (d) shall include only the following:

Subdivision (d)(4) clarifies which policies may be used to satisfy insurer commitments which eliminates any ambiguity regarding what types of policies insurers may write to fulfill commitments. It is reasonably necessary to specify what types of policies insurers can count towards meeting their commitment protect against insurers including policies that do not satisfy the requirements of subdivision (d) in their Wildfire Risk Portfolio Register. The Department discusses the Wildfire Risk Portfolio Register further below, in reference to subdivision (g).

(A) Policies of qualifying residential property insurance insuring properties in distressed areas of the state; and/or

Subdivision (d)(4)(A) clarifies that additional policies of qualifying residential property insurance insuring properties in distressed areas of the state are among the policies specified to meet the requirements of subdivision (d). The Department's language decisions and reasonable necessity for using the terms included in this provision are discussed above in reference to the title of this section and to subdivision (a)(1).

This subdivision further communicates by the use of "and/or" that the subsequent subdivision provides another category of policies that insurers may use to meet their commitments.

(B) Policies of qualifying residential property insurance insuring properties that the insurer has classified as moderate to very high wildfire risk and that immediately

prior to the insurer's insuring them, on a date subsequent to the approval of its rate application described in subdivision (c) of this section, had been covered under the FAIR Plan.

An insurer may count a policy described in this subdivision (d)(4)(B) as insuring a property within the distressed areas of the state for purposes of fulfilling its insurer commitment, any contrary provision of this subdivision (d) notwithstanding.

Subdivision (d)(4)(B) clarifies that additional policies of qualifying residential property insurance insuring properties that the insurer has classified as moderate to very high wildfire risk and that immediately prior to the insurer's insuring them, on a date subsequent to the approval of its rate application described in subdivision (c), had been covered under the FAIR Plan, are among the policies specified to meet the requirements of subdivision (d). The Department's language decisions and reasonable necessity for using the terms included in this provision are discussed above in reference to subdivision (a)(2).

This subdivision also clarifies that even though other sections indicate that a commitment to write new policies must be fulfilled by writing policies in Undermarketed ZIP Codes and/or distressed counties, an insurer may also fulfill its insurer commitment by writing properties with moderate to very high wildfire risk that were insured in the FAIR Plan immediately prior to the insurer's insuring them as set forth in subdivision (d)(4)(B). This subdivision is reasonably necessary to make explicit that policies described in (d)(4)(B) qualify as policies that may be used to fulfill insurer commitments.

(e) Low-premium-volume insurers.

Subdivision (e) identifies that a subdivision of this section applies specifically to low-premium-volume insurers. It is reasonably necessary to specify the particular application of this subdivision to ensure that insurers are able to locate the subdivision that is most appropriate to how they may comply with this section.

(1) An insurer whose direct California annual premium from qualifying residential property insurance policies is less than $10 million may comply with this section without making an insurer commitment pursuant to subdivision (d) of this section, until such time as subdivision (e)(2) is applicable to the insurer.

The purpose of subdivision (e)(1) is to identify that a low-premium-volume insurer may comply with this section in a way that is different from insurers who are not low-premium-volume insurers. This provision specifies that an insurer whose direct California annual premium from qualifying residential property insurance policies is less than $10 million may comply with this section without making an insurer commitment pursuant to subdivision (d) of this section, until such time as subdivision (e)(2) is applicable to the insurer.

It is reasonably necessary to allow low-premium-volume insurers to use catastrophe modeling without making an insurer commitment pursuant to subdivision (d) of this section to address the

problem of new market entrants who do not have any current market share on which to base their commitment. It is reasonably necessary to allow those low-premium-volume insurers a reasonable amount of time to establish a more sizeable market share and to prepare for the time when they will need to comply with these regulations by accumulating knowledge and capacity to write policies in the wildland-urban interface. Similarly, it gives time for growing insurance companies who have not previously written in wildfire risk areas to develop their capacity to write in distressed areas in order to be presumed to have demonstrated a need to use catastrophe modeling in future rate filings, as needed.

In addition, the Department only collects data that may be used to measure insurer commitments from insurers writing $10 million or more in homeowners/dwelling fire insurance premium pursuant to California Insurance Code Section 929, which currently represents approximately 98% of the admitted market. The Department believes that utilizing catastrophe modeling in ratemaking incorporates projected losses that are more in line with current heighten climate risk events. Allowing low premium volume insurers to use catastrophe modeling without adding unnecessary resources to report data to the Department allows them to have more accurate rates and offer alternatives to the larger insurers for consumers.

(2) No later than March 31 of the calendar year immediately following the calendar year during which an insurer described in subdivision (e)(1) of this section determines that it has met or exceeded $10 million of direct California annual premium from qualifying residential property insurance policies, the insurer shall submit a rate application as described in subdivision (c) of this section, which application contains an insurer commitment that conforms to subdivision (d) of this section.

This subdivision clarifies that an insurer was previously allowed to use catastrophe modeling without making an insurer commitment, must make a commitment to write more policies in distressed areas and/or take out policies from the FAIR Plan, as provided in subdivision (d), once its direct California annual premium from QRPI has met or exceeded $10 million dollars. This subdivision is reasonably necessary to ensure a level playing field among insurers that are presumptively permitted to use catastrophe modeling pursuant to this section. Once an insurer has grown to an appropriate size, it should be able to comply with these regulations in a responsible manner. The Department determined that $10 million dollars is the appropriate threshold because that number tracks the threshold amount set by the legislature in Section 929, requiring insurers to report their "residential property experience data." Thus, once an insurer's direct annual premium hits the $10 million threshold the insurer must commit to write more policies using the same metrics other insurers used, as set forth in subdivision (d). This subdivision further clarifies that these insurers must make their commitment no later than March 31st of the calendar year following the calendar year in which their direct premium met or exceeded the $10 million threshold. It is necessary to set a time frame which gives insurers a reasonable amount of time to comply and to ensure that these insurers make timely commitments.

(3) An insurer described in subdivision (e)(1) of this section shall calculate its direct California annual premium from qualifying residential property insurance policies annually.

This subdivision requires low premium insurers as described in subdivision (e)(1), to calculate their direct California annual premium from QRPI policies once every year to determine whether they have crossed the $10 million threshold set forth in subdivision (e)(2). This is reasonably necessary to enforce the requirement that insurers that have exceeded the premium threshold submit a complete rate application by March 31 of the following year.

(f) Insurer commitments with respect to commercial property insurance.

Subdivision (f) establishes the commitments an insurer must undertake with respect to commercial property insurance as opposed to QRPI. It is reasonably necessary to have different criteria and separate commitments for residential and commercial insurance because commercial insurance policies frequently insure multiple structures in separate locations of varying types and uses, unlike residential policies whose coverage, premiums, and other conditions are premised on a primary structure located in a single parcel that's used solely for habitational purposes. Furthermore, commercial insurance policies cover assets and losses that are not tied to habitational uses, such as manufacturing facilities and crop loss indemnity coverages. In addition, the Department collects different types of data and at different time frames and frequencies from commercial insurance carriers compared to residential insurance carriers. Thus, combining residential and commercial policies would distort the commitments for insurance companies that choose to specialize in any particular market segment or insurance product line.

(1) For purposes of this subdivision (f), eligible ZIP Codes shall include all ZIP Codes in the state that at least partially overlap a high or very high fire hazard severity zone, as shown on the most current map published by Cal Fire. The Commissioner shall publish an initial bulletin containing a list of the eligible ZIP Codes determined pursuant to this subdivision (f)(1). The Commissioner shall by subsequent bulletins update the list of Undermarketed ZIP Codes from time to time as conditions warrant.

The purpose of subdivision (f)(1) is to provide information on how the Commissioner will identify ZIP Codes where significant wildfire risk is reported to have impacted commercial insurance availability and how the Commissioner will communicate such ZIP Codes. The purpose of this subdivision is to identify how eligible ZIP Codes shall be identified. It is reasonably necessary to specify how eligible ZIP Codes are identified to provide transparency regarding the wildfire risk-related criteria used by the Department to create the list.

It is reasonably necessary to link the eligible ZIP Codes for commercial commitments to fire hazard severity zones published by the Department of Forestry and Fire Protection (Cal Fire)

because of the logical and data-driven link between high levels of wildfire risk and higher levels of insurance unavailability.

Cal Fire is the subject matter expert on statewide wildfire risk with the latest and best data on the most fire-prone severity zones and creates fire hazard maps that can be overlaid over ZIP Code boundaries. By overlaying Cal Fire's high to very high fire hazard severity zones with ZIP Code maps, the Department is able to link those ZIP Codes that contain high or very high wildfire risk. It is reasonably necessary to focus on ZIP Codes with the highest levels of fire hazard risk as it is reasonable to correlate that the same underlying factor for higher risk exposures in the residential sector will also be a factor in the commercial sector.

This subdivision further communicates that the Commissioner will periodically issue subsequent bulletins to update the list of Undermarketed ZIP Codes as conditions warrant but no less frequently than once per year.

It is reasonably necessary for the Commissioner to publish an initial bulletin containing a list of eligible ZIP Codes so that insurers will know which ZIP Codes in which they can write additional policies to meet their insurer commitments. It is reasonably necessary for the Commissioner to update, to the extent that conditions warrant, by subsequent bulletins the identification of eligible ZIP Codes with specific regularity in order to respond to potential changes in the admitted market. The purpose of the updates is to ensure that the identified eligible ZIP Codes reflect high or very high fire hazard severity zones, as shown on the most current map published by Cal Fire.

(2) Insured exposure requirement. At the time of an insurer's first rate application filing subsequent to the effective date of this section, the insurer must commit in writing to increase its writing of policies in the eligible ZIP codes equivalent to five percent (5%) of its total insurable value in eligible ZIP codes as of the end of the most recent 12-month period used in its recorded period, no later than two years (730 days) after the approval of the rate filing in which the insurer includes its insurer commitment.

As previously discussed, the Commissioner has concluded that insurers that commit to write additional new business and increase the availability of property insurance in high-risk wildfire-prone areas will be presumed to have demonstrated a need to use catastrophe models in their rate calculations because their historic losses may no longer be accurate for ratemaking purposes. The purpose of subdivision (f)(2) is to identify the insured exposure requirement for those insurers who elect to make insurer commitments with respect to commercial property insurance. The provision specifies that such insurer commitment must be made in writing and that the insurer commitment may only be submitted as part of a rate application filing submitted subsequent to the effective date of this section. It is reasonably necessary that the insurer make their commitment in writing to document the commitment and to enable the Department to

examine insurer compliance. It is also reasonably necessary to identify how an insurer can submit an insurer commitment to the Department.

Subdivision (f)(2) also specifies what the insurer is committing to achieve, in this case a five percent (5%) of its total insurable value in eligible ZIP codes as of the end of the most recent 12-month period used in its recorded period. It is reasonably necessary to clarify this information as it differs from insurers commitments made with respect to QRPI.

The Department selected total insurable value (TIV) as a reasonable proxy for both increasing the number of policies and coverage provided by commercial policies. Increases in overall coverage amounts may increase an insurer's overall risk exposure, especially with respect to the limits imposed by FAIR Plan policies, by providing higher levels of coverage under existing policies; an insurer could also meet their new higher TIV target by writing and covering new commercial structures or assets. It is reasonably necessary to allow an insurer that is increasing its overall risk exposure to use catastrophe modeling for ratemaking purposes in order to more accurately predict rates because their historic losses may no longer be accurate for ratemaking purposes.

This subdivision also sets forth a two-year time frame in which an insurer must achieve its commitment. The identified time frame is reasonably necessary to address the problem of insurers not knowing how long they have to meet their commitments and also addresses the problem of providing a reasonable time frame for insurers to meet their commitments. It would be difficult for insurers to immediately increase their market share in distressed areas and this time frame provides for a managed and likely more durable increase in distressed areas for consumers.

(3) In the event that the bulletin described in subdivision (f)(1) of this section that is referred to in an insurer's approved rate application pursuant to subdivision (f)(2) of this section (the insurer's "initial bulletin" hereinafter) has been updated since the time the application was filed, then the insurer may satisfy its insurer commitment by writing policies in eligible ZIP Codes as defined in the insurer's initial bulletin and/or in any subsequently updated bulletin as the commissioner may publish from time to time pursuant to subdivision (f)(1).

Subdivision (f)(3) clarifies what bulletin an insurer can use to meet its commitment if the bulletin(s) that were referred to in an insurer's approved rate application pursuant to subdivision (f)(2) of this section are updated before the insurer fulfills its commitment. It is reasonably necessary to clarify which bulletins may be used to avoid insurer confusion that may occur regarding whether they are expected to use their "initial bulletin," as described above, or subsequently published bulletins to fulfill their insurer commitment.

This subdivision clarifies that, in the event that one or more of the bulletins described in subdivision (f)(1) of this section that is or are referred to in an insurer's approved rate application pursuant to subdivision (f)(2) of this section, that bulletin(s) will be referred to as the insurer's "initial bulletin." It is reasonably necessary to provide a name for the bulletin(s) that is or are referred to in an insurer's approved rate application pursuant to subdivision (f)(2) of this section

to differentiate between the initial bulletin or bulletins and subsequent bulletin(s). This subdivision allows an insurer to fulfill its commitment to write policies in eligible ZIP Codes by using the eligible ZIP Codes identified in the insurer's initial bulletin or bulletins and/or in any subsequently updated bulletin during the time in which an insurer is fulfilling its insurer commitment. If this were not allowed, then an insurer would be limited to fulfilling its commitment based on the definition of eligible ZIP Codes in effect at the time it made its commitment which could delay increased writings in newly distresses areas that are included in subsequently published bulletins. To protect against that delay, it is reasonably necessary to allow insurers to utilize eligible ZIP Codes identified the insurer's starting bulletin and/or in any subsequently updated bulletin.

Allowing an insurer to use any bulletin in effect while the insurer is fulfilling its commitment is reasonably necessary to meet changing market conditions. This rule broadens the number of policies that may be used to meet insurer commitments and broadens the number of consumers who may be helped by this section.

(4) In the event the insurer is unable to timely meet the requirement in (f)(2), the insurer shall file a new application pursuant to subdivision (h)(1)(C), if applicable, or subdivision (h)(2), of this section.

Subdivision (f)(4) identifies what an insurer must do if that insurer is unable to meet the requirement described in subdivision (f)(2). To eliminate any potential confusion regarding how to comply with this section, it is reasonably necessary to specify the subdivision to which an insurer that is unable to timely meet the requirement in subdivision (f)(2) should refer to address that insurer's inability to meet that commitment.

(g) Documenting the insurer's fulfilment of its insurer commitment.

Section (g) identifies that an insurer shall document the fulfillment of its commitment. The section's subdivisions go on to specify the manner in which an insurer must document that fulfillment.

If the Department does not include this section in the proposed regulation text, it may not be clear to insurers, and other interested parties, that the Department requires an insurer to keep track of various data points as it progresses towards fulfilling its commitment, that such information should be tracked in a specific format, and that documentation should occur at a particular frequency. If the Department does not specify what an insurer that files a rate application pursuant to subdivision (c) of this section shall do to document the fulfillment of its commitment, the Department would not be able to measure insurer compliance in a consistent and uniform manner. It is reasonably necessary to identify how a compliant insurer documents the fulfillment of its commitment in order to clarify and specify what an insurer is expected to do in advance of their compliance being examined. It is reasonably necessary to include this subdivision to allow the insurer the opportunity to (1) identify any confusion or concern regarding the actions the Departments requires the insurer to take, and (2) offer alternatives regarding other way the Department might require insurers to document the fulfillment of its insurer commitment.

> The insurer shall create and maintain a wildfire risk portfolio. An insured property shall be added to the insurer's wildfire risk portfolio at the time the location and, if applicable, prior FAIR Plan coverage status of the insured property are fully documented pursuant to the provisions of this subdivision (g).

This paragraph of section (g) identifies that the insurer is responsible for creating and maintaining a "wildfire risk portfolio." The purpose of this language is to make clear that the onus is on the insurer to create and maintain this document. This language identifies how the Department will refer to the document insurers will use to memorialize the fulfillment of their commitments. This paragraph also specifies that an insurer must add an insured property to that insurer's wildfire risk portfolio once certain information is documented by the insurer. The requirement to add the insured property to the wildfire risk portfolio is triggered by the insurer's documentation of the insured property's location (address) and, if applicable, prior FAIR Plan coverage status.

By placing the responsibility for creating the document on the insurer, the Department avoids being overly prescriptive in how the insurer must document its records and allows the insurer to create a tracking system that documents the information the Department needs to examine insurer compliance in a way that works for that particular insurer. Allowing insurers this flexibility will avoid unnecessarily increasing insurer expenses which can potentially negatively impact consumers through increased premiums. Requiring that an insured property be added to the insurer's wildfire risk portfolio once certain information is known clarifies how frequently the wildfire risk portfolio must be updated. Specifying that the requirement to update the wildfire risk portfolio is triggered by the document of by the insurer's documentation of the insured property's location (address) and, if applicable, prior FAIR Plan coverage status avoids potential confusion regarding when an insured property must be added to an insurer's wildfire risk portfolio. Specifying when the wildfire risk portfolio must be updated ensures that the insurer will maintain its records in a timely manner.

It is reasonably necessary to identify the insurer is required to create and maintain their wildfire risk portfolio, and to provide that generic name for the required tracking document, to communicate to the insurer that the Department is not responsible for providing the document; nor will it keep track or calculate the insurer's fulfillment of the insurer's commitment for them. It is reasonably necessary to name the document so that every insurer who files a rate application pursuant to subdivision (c) of this section will understand what the Department means when that name is used in reference to the fulfillment of the insurer's commitment. It is reasonably necessary to specify when an insurer must update its wildfire risk portfolio to ensure that insurers are maintaining their records in a timely manner. Timely maintenance of the wildfire risk portfolio will allow insurers to closely monitor whether they are making reasonable progress in fulfilling their commitment. Such timely maintenance will also ensure that insurers are able to

respond to the Department in a reasonably short amount of time, should the Department have need to request information regarding the insurer's progress towards fulfilling its commitment.

(1) For qualified residential insurer commitment.

Subdivision (g)(1) identifies that distinctions exist between how an insurer must document the fulfillment of a commitment made with respect to qualifying residential property insurance versus how an insurer must document the fulfillment of a commitment made with respect to commercial property insurance. This subdivision also serves to identify that insurers should refer to this area of the text for direction on how to document the fulfillment of any commitment it makes with respect to qualifying residential property insurance.

Because insurers may make commitments with respect to QRPI or with respect to commercial property insurance, or potentially with respect to both, this subdivision avoids any potential confusion regarding how an insurer must document the fulfillment of any commitment it makes in filing a rate application pursuant to subdivision (c) of this section.

It is reasonably necessary to identify that requirements regarding how to document the fulfillment of any insurer commitment vary depending on whether the commitment is made with respect to qualifying residential property insurance or with respect to commercial property insurance to ensure that insurers are properly documenting the fulfillment of any commitment it makes in filing a rate application pursuant to subdivision (c) of this section. It is reasonably necessary to communicate what the Department requires in advance of when the required action will take place so that the insurer is prepared and ready to take appropriate and compliant action in documenting the fulfillment of its insurer commitment. It is reasonably necessary to specify what information an insurer must document in order for the insurer to track and measure its progress towards fulfillment. It is reasonably necessary to require an insurer to track specific information in order for the Department to measure whether the insurer is successful in fulfilling its insurer commitment.

(A) In addition to the material called for in subdivision (g)(3) below that is applicable to any property in its wildfire risk portfolio, the insurer shall maintain and keep current a document entitled "Wildfire Risk Portfolio Register," which shall list, for each property added to the portfolio, the following information: the date the property was added to the portfolio; the address of the property, including the ZIP Code; if the property is being added to the portfolio solely on the basis that it lies within a distressed county but not any Undermarketed ZIP Code, the county in which the property is situated; the inception date of the policy; the termination date of the policy, if the policy has terminated; and if the property is being added to the portfolio on the basis of subdivision (g)(1)(B), below, an identification of the insurer's documentation of the property's prior FAIR Plan coverage.

Subdivision (g)(1)(A) clarifies that subdivision (g)(3) also applies to the documentation of the fulfillment of insurer commitments made with respect to QRPI. This subdivision clarifies that the wildfire risk portfolio is a document that the insurer is responsible for creating and maintaining. Subdivision (g)(1)(A) also specifies what the insurer is required to do when documenting the

fulfillment of an insurer commitment made with respect to qualifying residential property insurance, including what information must be documented in the insurer's wildfire risk portfolio.

This subdivision intends to address potential insurer confusion and potentially insufficient or inconsistent documentation of an insurer's fulfillment of its insurer commitment. Because subdivision (g)(1) is specific to insurer commitments made with QRPI, insurers that have made such commitments could potentially think they must only comply with subdivision (g)(1), so clarifying that indeed they must also comply with subdivision (g)(3), which applies to commitments made with respect to both qualifying residential property insurance and commercial property insurance, avoids any misunderstanding of what the Department requires of insurers. If the Department does not include subdivision (g)(1)(A), insurers may not document the fulfillment of their insurer commitments consistently which would make examining insurance compliance challenging, or potentially impossible, for the Department.

It is reasonably necessary to specify that insurers that have made commitments with respect to QRPI must also comply with subdivision (g)(3), in addition to subdivision (g)(1), so that insurers are clear on how they must document the fulfillment of their insurer commitment. It is reasonably necessary to identify the insurer is required to create and maintain their wildfire risk portfolio to communicate to the insurer that the Department is not responsible for providing the document, nor will it keep track or calculate the insurer's fulfillment of the insurer's commitment for them. It is reasonably necessary to require insurers to record the date the property was added to the portfolio to document that the insurer is adding the property to the wildfire risk portfolio as required by subdivision (g). It is reasonably necessary to require insurers to record the address of the property, including the ZIP Code, in order to document that the insured property is located within a distressed area as discussed in subdivision (a)(1). It is reasonably necessary to require insurers to record the county in which the property is situated, if the property is being added to the portfolio solely on the basis that it lies within a distressed county but not any Undermarketed ZIP Code, in order to document that the insured property is located within a distressed area as discussed in subdivision (a)(2). It is reasonably necessary to require insurers to record the inception date of the policy in order to document that the insurer began insuring that policy after the rate filing made pursuant to subdivision (c) of this section was approved. It is reasonably necessary to require insurers to record the termination date of the policy, if the policy has terminated, to document that the insurer continued to write the QRPI through the end of the policy term.

> (B) To document that the FAIR Plan was insuring the property in question immediately prior to the inception, on or after the effective date of this section, of a policy insuring that property that is issued by the insurer seeking to add the property to its portfolio after such effective date, the insurer shall have on file:

Subdivision (g)(1)(B) identifies that this area of the text specifies what information may be used by insurers to document properties insured by FAIR Plan policies that are to be insured by an insurer to fulfill its insurer commitment, as discussed in subdivision (a)(2). This subdivision clarifies that, on or after the effective date of this section, a property must be insured by the FAIR Plan immediately preceding an insurer issuing a policy to insure that property for that

property to be counted as a property described in subdivision (a)(2). This subdivision clarifies that the insurer must document and retain one or both of the items described in the next two provisions. This subdivision specifies that insurers may not add qualifying properties to its wildfire risk portfolio until after this section is effective.

The goal of this subdivision is to avoid insurers potentially documenting what properties may be counted as the properties discussed in subdivision (a)(2) incorrectly, and the potential inconsistent or incorrect inclusion of properties insured by the FAIR Plan in insurers' wildfire risk portfolio. By specifying "immediately prior," this subdivision provides clarity and prevents insurer confusion regarding when a property's prior FAIR Plan coverage is relevant towards fulfilling the insurer's commitment. The subdivision also provides clarity and consistency by specifying how insurers may document prior FAIR Plan coverage. Insurer confusion is avoided by specifying that insurers may not add qualifying properties to their wildfire risk portfolio until after this section is effective. The subdivision also specifies how an insurer demonstrates that it appropriately identified and documented the prior FAIR Plan coverage of an insured policy by requiring that the insurer retain the information the insurer used to make its determination of the prior FAIR Plan coverage.

It is reasonably necessary to clarify how to document that a property insured by the insurer in an effort to fulfill its insurer commitment meets the requirements discussed in subdivision (a)(2). It is reasonably necessary to specify when a property's prior FAIR Plan coverage is relevant to ensure that insurers are targeting the intended properties when issuing policies in an effort to fulfill their insurer commitment. It is reasonably necessary to require that a policy be insured by the FAIR plan immediately prior to the issuance of a policy insuring that property by the insurer seeking to add that property to its portfolio in order to ensure rating accuracy. It is reasonably necessary to specify what information may be used to document prior FAIR Plan coverage so that an insurer understands how the Department will be measuring compliant documentation of the fulfillment of an insurer's commitment. Because the Department will expect to be able to review the documentation the insurer used to determine that the FAIR Plan insured the property in question immediately prior to the inception a property insurance policy issued by the insurer seeking to add the property to its portfolio, it is reasonably necessary to state that the insurer must keep that documentation on file.

1. A carrier discovery report or

The purpose of this provision is to specify one of the forms of documentation that insurers may use to verify and document that a property was insured by the FAIR Plan immediately preceding the insurer issuing a policy for that property. By permitting insurers to verify that immediately preceding prior FAIR Plan coverage, the Department avoids placing the burden producing required documentation solely on insurers or insureds. It is reasonably necessary to include carrier discovery reports as one method through which insurers may verify and document the immediately preceding prior FAIR Plan as this report is an objective, accurate way to document the insurance history of a property and it is a report that insurers already regularly produce in the course of the underwriting process. It is reasonably necessary to include carrier discovery reports as one method through which insurers may verify and document the immediately preceding prior

FAIR Plan coverage because it offers a verification mechanism that allows insurers to complete the verification and that does not place the burden of documentation entirely on the consumer.

2. Other documentation demonstrating that the property had been insured under the FAIR plan immediately preceding the date the insurer issues its policy. Such documentation may include (1) copies of declaration pages from the FAIR Plan, (2) a subscribing loss underwriting exchange report and/or (3) an electronic copy of the entire application completed by the insured and submitted to the insurer, on which application the insured has identified the prior insurer as the FAIR Plan.

It is reasonably necessary to provide guidance to insurers regarding the types of documentation that will be required to demonstrate that a particular property was insured by the FAIR plan. This rule does not require a particular document and is intended to provide insurers with flexibility to mitigate the cost of compliance.

Subdivision (g)(1)(B)2. identifies additional ways in which insurers may verify and document that a property was insured by the FAIR Plan immediately prior to the insurer issuing a policy for that property. By permitting multiple additional methods through which insurers can verify that prior FAIR Plan coverage, the Department avoids placing the burden of producing required documentation solely on insurers or insureds. Allowing these additional methods allows insurers a reasonable measure of flexibility to determine which verification method is most efficient. It is reasonably necessary to include these additional methods because they are documents that are readily available and include the information necessary to verify compliant FAIR Plan coverage. It is reasonably necessary to include multiple documentation options that can satisfactorily verify timely FAIR Plan coverage to provide insurers with reasonable compliance options.

(2) For commercial insurer commitment. In addition to the material called for in subdivisions (g)(3) below that is applicable to any property in its wildfire risk portfolio, the insurer shall maintain and keep current a document entitled "Wildfire Risk Portfolio Register," which shall list, for each property added to the portfolio, the following information: the date the property was added to the portfolio; the address of the property, including the ZIP Code; the total number of exposures insured under each policy; the inception date of the policy; the property's total insurable value, and the termination date of the policy, if the policy has terminated.

The purpose of subdivision (g)(2) is to set forth additional requirements for documenting commercial commitments. It is reasonably necessary to require insurers making a commercial insurer commitment to retain in a Register the information necessary for the Department to ascertain whether the insurer has fulfilled its commitment.

Subdivision (g)(2) identifies that distinctions exist between how an insurer must document the fulfillment of a commitment made with respect to qualifying commercial property insurance versus how an insurer must document the fulfillment of a commitment made with respect to residential property insurance. This subdivision also serves to identify that insurers should refer to this area of the text for direction on how to document the fulfillment of any commitment it

makes with respect to qualifying commercial property insurance. This subdivision clarifies that the insurer must document and retain one or both of the items described in the next two provisions. This subdivision specifies that insurers may not add qualifying properties to its wildfire risk portfolio until after this section is effective. This subdivision clarifies that subdivision (g)(3) also applies to the documentation of the fulfillment of insurer commitments made with respect to commercial property insurance. This subdivision clarifies that the wildfire risk portfolio is a document that the insurer is responsible for creating and maintaining. This subdivision also specifies what the insurer is required to do when documenting the fulfillment of an insurer commitment made with respect to QRPI, including what information must be documented in the insurer's wildfire risk portfolio.

Because insurers may make commitments with respect to QRPI or with respect to commercial property insurance, or potentially with respect to both, this subdivision avoids any potential confusion regarding how an insurer must document the fulfillment of any commitment it makes in filing a rate application pursuant to subdivision (c) of this section. This subdivision intends to address potential insurer confusion and potentially insufficient or inconsistent documentation of an insurer's fulfillment of its insurer commitment.

Because subdivision (g)(2) is specific to insurer commitments made regarding commercial property insurance, insurers that have made such commitments could potentially think they must only comply with subdivision (g)(2), so it is reasonably necessary to clarify that they must also comply with subdivision (g)(3), which applies to commitments made with respect to both qualifying residential property insurance and commercial property insurance, and avoids any misunderstanding of what the Department requires of insurers. If the Department does not include subdivision (g)(2), insurers may not document the fulfillment of their insurer commitments consistently which would make examining insurance compliance challenging, or potentially impossible, for the Department.

It is reasonably necessary to identify that requirements regarding how to document the fulfillment of any insurer commitment vary depending on whether the commitment is made with respect to commercial property insurance or with respect to qualifying residential property insurance to ensure that insurers are properly documenting the fulfillment of any commitment they make in filing a rate application pursuant to subdivision (c) of this section. It is reasonably necessary to communicate what the Department requires in advance of when the required action will take place so that the insurer is prepared and ready to take appropriate and compliant action in documenting the fulfillment of its insurer commitment. It is reasonably necessary to specify what information an insurer must document in order for the insurer to track and measure its progress towards fulfillment. It is reasonably necessary to require an insurer to track specific information in order for the Department to measure whether the insurer is successful in fulfilling its insurer commitment.

It is reasonably necessary to specify that insurers that have made commitments with respect to QRPI must also comply with subdivision (g)(3), in addition to subdivision (g)(1), so that insurers are clear on how they must document the fulfillment of their insurer commitment. It is reasonably necessary to identify the insurer is required to create and maintain their wildfire risk portfolio to communicate to the insurer that the Department is not responsible for providing the

document, nor will it keep track or calculate the insurer's fulfillment of the insurer's commitment for them. It is reasonably necessary to require insurers to record the date the property was added to the portfolio to document that the insurer is adding the property to the wildfire risk portfolio as required by subdivision (g). It is reasonably necessary to require insurers to record the address of the property, including the ZIP Code, in order to document that the insured property is located within a distressed area as discussed in subdivision (a)(1).

It is also reasonably necessary to require insurers to record the inception date of the policy in order to document that the insurer began insuring that policy after the rate filing made pursuant to subdivision (c) of this section was approved. It is reasonably necessary to require insurers to record the total number of exposures insured under each policy because, since there could be multiple buildings insured under a single policy, the insurer must identify how many properties are on the policy, as well as properties' total insurable value in order to document the extent to which writing the policy that insurers that property advances the insurers fulfillment of the insurer commitment described in subdivision (f)(2). It is reasonably necessary to require insurers to record the termination date of the policy, if the policy has terminated, to document that the insurer continued to write the qualifying residential property insurance through the end of the policy term.

(3) For both qualified residential insurer commitment and commercial insurer commitment.

The purpose of subdivision (g)(3) is to set forth the requirements for a Wildfire Risk Portfolio register that are common to both residential and commercial insurers.

Subdivision (g)(3) identifies documentation requirements that apply to both commitments made with respect to qualifying residential property insurance as well as commitments made with respect to commercial property insurance.

This subdivision avoids any potential confusion regarding how an insurer must document the fulfillment of any commitment it makes in filing a rate application pursuant to subdivision (c) of this section by specifying those documentation requirements that apply regardless of whether the insurer commitment is made with respect to qualifying residential property insurance or commercial insurance.

It is reasonably necessary to identify those documentation requirements that apply to the fulfillment of any insurer commitment, regardless of whether the commitment is made with respect to qualifying residential property insurance or with respect to commercial property insurance, to ensure that insurers are properly documenting the fulfillment of any commitment they make in filing a rate application pursuant to subdivision (c) of this section. It is reasonably necessary to communicate what the Department requires in advance of when the required action will take place so that the insurer is prepared and ready to take appropriate and compliant action in documenting the fulfillment of its insurer commitment.

(A) The Wildfire Risk Portfolio Register shall be maintained as a digital file that is sortable by all fields.

Subdivision (g)(3)(A) identifies that the Wildfire Risk Portfolio Register must be a digital file in which all required documentation data points can be sorted.

Identifying that the Department requires the digital file to allow data sorting ensures that insurers will format the Wildfire Risk Portfolio Register in a way that allows the Department to examine and review their documentation but allows some flexibility so that insurers may create and maintain the wildfire risk portfolio in the manner that is most efficient and complementary to their existing computer systems.

It is reasonably necessary to require that the Wildfire Risk Portfolio Register be a sortable digital file to allow the Department to examine insurer records and measure insurer performance and compliance effectively and efficiently.

(B) The insurer shall maintain a digital file for each insured property added to its wildfire risk portfolio, in which file shall be stored an electronic copy of each record necessary for purposes of supporting the property's status of lying within a distressed area of the state for purposes of satisfying the insurer's insurer commitment.

Subdivision (g)(3)(B) identifies that insurers must maintain certain supporting documentation, and specifies the manner in which that documentation must be stored following the approval of an insurer's rate application renouncing the insurer's insurer commitment. This subdivision addresses the potential problem of insurers not retaining all of the information and documentation necessary for the Department to review and measure their compliance with this section. It is reasonably necessary to identify that insurers must maintain specific documentation in connection to their Wildfire Risk Portfolio Register in order to clarify and specify what an insurer is expected to do in advance of their compliance being examined.

(C) The insurer shall maintain its Wildfire Risk Portfolio Register, as well as the digital file described in subdivision (g)(3)(B) of this section for each property added to its wildfire risk portfolio, until such time as at least five years (1,825 days) have passed since:

Subdivision (g)(3)(C) sets forth requirements for retention of records that are applicable to both commercial insurer commitments and residential insurer commitments. It is reasonably necessary to specify this this retention period to ensure that the records required by subdivision

(g) are available for examination by the Commissioner, whenever the Commissioner deems necessary, though not less frequently than once every five years.

1. The date that is two years (730 days) following the approval of the insurer's rate application pursuant to subdivision (c) of this section, in the event that subdivision (d)(1)(A), (d)(2) or (f)(2) of this section is applicable;

Subdivision (g)(3)(C)(1.) identifies the date that marks the first day of the five-year period, or 1,825 days, as described in subdivision (g)(3)(C), from which the Wildfire Risk Portfolio Register shall be maintained for insurer commitments described in subdivisions (d)(1)(A), (d)(2) or (f)(2) of this section. It is reasonably necessary to specify when that countdown is triggered to eliminate any ambiguity regarding how long an insurer must maintain its Wildfire Risk Portfolio Register.

2. The date that is three years (1,095 days) following the approval of the insurer's rate application pursuant to subdivision (d) of this section, in the event that subdivision (d)(1)(B) of this section is applicable;

Subdivision (g)(3)(C)(2.) identifies the date that marks the first day of the five-year period, or 1,825 days, as described in subdivision (g)(3)(C), from which the Wildfire Risk Portfolio Register shall be maintained for insurer commitments described in subdivision (d)(1)(B) of this section. It is reasonably necessary to specify when that countdown is triggered to eliminate any ambiguity regarding how long an insurer must maintain its Wildfire Risk Portfolio Register.

3. The date by which the insurer has committed to fulfill or complete the fulfilment of its alternative commitment, in the event that subdivision (j) of this section is applicable; or

Subdivision (g)(3)(C)(3.) identifies that the date that marks the first day of the five-year period, or 1,825 days, as described in subdivision (g)(3)(C), from which the Wildfire Risk Portfolio Register shall be maintained for insurer commitments described in subdivision (d)(1)(B) of this section will be specified by the insurer if the insurer's commitment is an alternative commitment made pursuant to subdivision (j). It is reasonably necessary to specify when that countdown is triggered to eliminate any ambiguity regarding how long an insurer must maintain its Wildfire Risk Portfolio Register.

4. The date of the approval of the insurer's rate application renouncing the insurer's insurer commitment, in the event that subdivision (h)(2) of this section is applicable.

Subdivision (g)(3)(C)(4.) identifies the date that marks the first day of the five-year period, or 1,825 days, described in subdivision (g)(3)(C), from which the Wildfire Risk Portfolio Register shall be maintained following the approval of an insurer's rate application renouncing its insurer commitment, in the event that subdivision (h)(2) of this section is applicable. It is reasonably

necessary to specify when that countdown is triggered to eliminate any ambiguity regarding how long an insurer must maintain its Wildfire Risk Portfolio Register.

(h) Modification of, or failure to fulfill, insurer commitment.

The purpose of subdivision (h) is to identify that this subdivision specifies how an insurer may modify, or respond to a failure to fulfill, that insurer's insurer commitment. It is reasonably necessary to signpost where insurers may find this information within the regulation text and prevents potential confusion about where to find this information in the future.

(1) Modification when insurer loses significant market share.

The purpose of subdivision (h)(1) is to identify that subsequent subdivisions address how an insurer may modify its insurer commitment when an insurer has lost significant market share. This subdivision is reasonably necessary to clarify the circumstances under which modification may be made in order to communicate how an insurer may take appropriate action. As a result of volatility in the property insurance market, an insurer may experience a significant decline in market share which renders it original commitments overly burdensome. It is reasonably necessary to allow for a recalculation of commitments in this circumstance to enable insurers to enter an insurer commitment that is based on the insurer's current market share.

(A) Residential insurers whose insurer commitment stated in the original rate application filing included an undertaking to write additional policies in distressed areas.

In the event that, subsequent to approval of its rate application described in subdivision (C) of this section (hereinafter, the "original application"), an insurer files a new rate application in which the insurer recalculates its insurer commitment as specified in subdivision (d) of this section on the basis that the insurer's statewide market share as calculated pursuant to subdivision (b)(1) of this section is at least five percent (5%) lower than was used for purposes of calculating the insurer commitment contained in the insurer's original rate application, then the new rate application may contain a modified insurer commitment pursuant to subdivision (d) of this section that reflects the recalculated insurer commitment, which insurer commitment shall become effective if and when the new rate application is approved.

Subdivision (h)(1)(A) specifies how a residential insurer that has lost 5% or more of its market share, as calculated pursuant to subdivision (b)(1) of this section, may modify an insurer commitment. It is reasonably necessary to allow an insurer to modify its insurer commitment in the event it has lost at least 5% of its market share, as calculated pursuant to subdivision (b)(1) of this section, as the quotient that resulted from that calculation would no longer be accurate or valid.

(B) Residential insurers whose performance met or exceeded the applicable standard or requirement at the time of initial rate application filing.

An insurer may modify its insurer commitment that was made pursuant to subdivision (d)(1)(B) of this section as follows: The insurer may reduce its earned exposures in distressed areas of the state by up to five percent (5%) below the level reported in the original application, to the extent that is indicated by the amount of the diminution of the insurer's statewide market share, but in no event below the eighty-five percent standard set forth in subdivision (d)(1)(B) of this section.

Subdivision (h)(1)(B) specifies how a residential insurer whose performance met or exceeded the applicable standard or requirement at the time of an initial rate application filing may modify its commitment. It is reasonably necessary to specify that an insurer described by subdivision (h)(1)(B) may modify its commitment to the reflect the diminution of the insurer's statement market share but that modification may not reduce further than the eighty-five percent standard set forth in subdivision (d)(1)(B) of this section so that an insurer described by subdivision (h)(1)(B) is aware of how it may comply with this section.

(C) Modification of commercial insurer commitments.

An insurer may modify its insurer commitment as follows: In the event the insurer is unable to timely meet the requirement in (f)(2), the insurer shall file a new application in which it modifies its insurer commitment accordingly. The insurer may reduce its insurer commitment in eligible ZIP Codes of the state by no more than the decline in its total insurable value reported in the original rate application filing.

Subdivision (h)(1)(C) describes how insurer commitments made with respect to commercial property insurance may be modified. The purpose of this subdivision is to identify that a commercial insurer may reduce its commitment by no more than the decline in its total insurable value reported in the original rate application filing if that insurer is unable to timely meet the requirement in subdivision (f)(2) and seeks to modify its insurer commitment. This provision is reasonably necessary because, without such a provision, insurers may be unable or unwilling to make commitments due to uncertainty regarding whether they can fulfill their commitments if adverse market conditions cause the insurer to lose market share.

(2) Failure to fulfill an insurer commitment.

If at any time an insurer fails to fulfill its insurer commitment, or within a period of two years after the approval of its original application, or at any point thereafter, fails to make reasonable progress toward timely fulfilling its insurer commitment, then the insurer shall immediately submit a new rate application renouncing its insurer commitment as described in subdivision (d) or (f) of this

section. In this case the new rate application shall not make use of catastrophe modeling as permitted by Section 2644.4.5.

The purpose of Subdivision (h)(2) identifies what action an insurer should take if that insurer fails to make reasonably progress toward timely fulfilling its insurer commitment. Subdivision (h)(2) also specifies that a new rate application that is submitted which renounces its insurer commitment as described in subdivision (d) or (f) of this section shall not make use of catastrophe modeling as permitted by Section 2644.4.5. This subdivision is reasonably necessary to address the problem of an insurer not knowing what actions to take should that insurer want to renounce its commitment as described in subdivision (d) or (f) of this section.

(i) Insurer Attestation.

The purpose of subdivision (i) is to introduce that this section requires attestations by insurers. This subdivision is reasonably necessary to communicate what the Department requires in advance of when the required action will take place so that the insurer is prepared and ready to take appropriate and compliant action in documenting the fulfillment of its insurer commitment.

This subdivision addresses the problem of an insurer making a commitment but then failing to follow through on its commitment without notifying the Commissioner. It is reasonably necessary to require participating insurers to make an attestation because it is the most efficient manner for insurers to advise the Commissioner of their progress in fulfilling their commitments to write more policies in higher-risk distressed areas and on certain properties previously insured by the FAIR Plan, in order to presumptively demonstrate a need to use catastrophe modeling for ratemaking purposes.

An insurer that obtained approval to use catastrophe modeling in its original application shall file one of the following attestations in every subsequent rate application until such time as that insurer has attested that it has fulfilled its commitment:

This subdivision identifies that all insurers that obtain approval to use catastrophe modeling are required to file an attestation in every rate application it subsequently files until such time as that insurer attests in a rate application that that insurers has fulfilled its commitment. This subdivision identifies that there are multiple types of attestation that an insurer may potentially file, and that the various types of required attestations are to be described in subsequent provisions of this subdivision (i). It is reasonably necessary to clarify that there are different ways in which insurers may comply with this section and the onus is on the insurer to review the specified types of insurer attestations described in subsequent provisions and file the insurer attestation that is accurately describes the status of that insurer's fulfillment of its insurer commitment, as described in subdivision (i). This addresses the problem of the insurer making a subsequent rate filing without advising the Commissioner that it is taking reasonable steps to fulfill its insurer commitments or that it has, in fact, fulfilled its insurer commitments. The requirement that an insurer make ongoing attestations until such time as it has attested that it has fulfilled its commitment clarifies that once an insurer has filed an attestation stating it has fulfilled its insurer commitment, the insurer no longer has to make subsequent attestations. It is

reasonably necessary to require an insurer to file an attestation in each rate filing an insurer makes until its commitments have been fulfilled so that the Commissioner knows if the insurer has made progress towards fulfilling, or has fulfilled, its insurer commitment to write more policies in the distressed areas and/or more policies formerly written by the FAIR Plan, in order to presumptively demonstrate a need to use catastrophe modeling for ratemaking purposes.

(1) An attestation that the insurer has fulfilled, or is taking reasonable steps to fulfill, its insurer commitment.

Subdivision (i)(1) describes the attestation that an insurer that has fulfilled, or is taking reasonable steps to fulfill, its insurer commitment should include in every rate application filed subsequent to the approved original rate application described in subdivision (i) until such time as that insurer has attested that it has fulfilled that insurer commitment. The attestation addresses the problem of an insurer making a commitment to write more policies in order to presumptively demonstrate a need to use catastrophe modeling in ratemaking and then failing to notify the Commissioner that it has fulfilled or is taking reasonable steps to fulfill its insurer commitment. It is reasonably necessary for an insurer to make an attestation regarding its insurer commitments so that the Commissioner is kept informed of the status of insurer commitments.

(2) An attestation that the insurer's rate application modifying its insurer commitment pursuant to subdivision (h)(1) of this section has been approved and the insurer has fulfilled, or is taking reasonable steps to fulfill, its modified insurer commitment.

Subdivision (i)(2) requires an insurer to attest that any rate filing in which an insurer modifies its original commitment has been approved and clarifies that an insurer must file an attestation even if it has modified its original insurer commitment. This section further clarifies that the attestation for a modified commitment is otherwise the same as an attestation for an original commitment – the insurer must attest that it has fulfilled or, is taking reasonable steps to fulfill, its modified insurer commitment. This section further clarifies that if an insurer modifies its original commitment, its attestation need only address its modified commitment. It is reasonably necessary for an insurer to make an attestation regarding any modified insurer commitments so that the Commissioner is kept informed of the status of modified insurer commitments and can monitor whether new policies are being written, as promised, in the distressed areas and for certain properties formerly in the FAIR Plan, in order for the insurer to presumptively demonstrate a need to use catastrophe modeling for ratemaking purposes.

(j) Alternative Insurer Commitments.

The purpose of subdivision (j) is to provide flexibility to allow insurers to propose, and the Department to review, alternative commitments for insurers who have unique circumstances that make the insurer commitments set forth in subdivision (d) or (f) impractical. This addresses the problem of insurers that would like to make a commitment to write more policies for properties previously covered by the FAIR Plan and write more policies in distressed areas but are unable to meet the specific commitments set forth in the regulation. It is reasonably necessary to allow for alternative commitments to provide flexibility for insurers who can show that they are not

reasonably able to meet the commitments set forth in subdivision (d) or (f) but can nevertheless commit to a reasonable alternative.

> Any contrary provision of this section notwithstanding, if for any of the reasons stated in subdivision (j)(1) of this section, an insurer is unable, in good faith, to make a commitment as set forth in subdivisions (d) or (f) of this section, then an insurer may propose an alternative commitment in a complete rate application filing pursuant to subdivision (c), as described in subdivision (j)(2) of this section:

The introductory paragraph clarifies that alternative commitments are not generally available and that an insurer must demonstrate that it is unable to make a commitment through set forth in subdivision (d) or (f). This is reasonably necessary because it is anticipated that reviewing proposed alternative commitments will be resource intensive and time consuming for the Department and limiting the number of alternative commitments will assist the Department in efficiently reviewing rate applications.

> (1) An insurer may propose an alternative commitment pursuant to this subdivision (j) on one or more of the following bases:
>
> (A) its size,
>
> (B) its scope of coverages, or
>
> (C) the frequency or severity of recent events impacting the insurer.

The purpose of subdivision (j)(1) is to itemize the circumstances that could potentially support a filing for an alternative commitment. It is reasonably necessary to limit the use of alternative commitments to give effect to the goals of this regulation and to enable the Department to process rate applications efficiently.

> (2) Such rate application filing shall include a statement:
>
> (A) setting forth the reason why this subdivision (j) is applicable, and
>
> (B) describing the proposed alternative commitment in sufficient detail to allow the Commissioner to evaluate whether the alternative increases availability of qualifying residential property insurance and/or commercial property insurance.

The purpose of subdivision (j)(2) is to identify that the rate application described in subdivision (j) must include a statement that provides the information specified in subdivisions (j)(2)(A) and (j)(2)(B). As discussed above, the Commissioner has concluded that insurers that commit to write additional new business and increase the availability of property insurance in high-risk wildfire-prone areas will be presumed to have demonstrated a need to use catastrophe models in their rate calculations because their historic losses may no longer be accurate for ratemaking purposes. For the Department to process rate applications efficiently, it is reasonably necessary to require insurers who are seeking an alternative commitment to provide the Department with

analysis to support a conclusion that the alternative commitment would further the goals of this regulation.

(k) Nothing in this section shall be construed as limiting, in any way, an insurer's ability to offer qualifying residential property insurance or commercial property insurance in this state.

Subdivision (k) clarifies that an insurer's ability to offer QRPI or commercial property insurance in this state is not constrained in any way by this section. The purpose of subdivision (k) is to eliminate any potential ambiguity regarding the effect of this section on whether an insurer is permitted to offer certain types of insurance in the event that they decide to forgo making commitments.

(*l*) If any provision or clause of this section or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this section which can be given effect without the invalid provision or application. To this end, the provisions of this section are hereby declared to be severable.

Subdivision (l) declares the provisions of this section to be severable. It is reasonably necessary to specify that the provisions of this section are severable to ensure that Commissioner is able to implement the regulatory framework designed to provide insurers that commit to writing additional new policies, or maintain existing policies at a certain level, in higher-risk wildfire-prone areas with the ability to use catastrophe modeling to give them the ability to better anticipate future potential catastrophe losses and set more accurate rates, which in turn will help support greater availability of insurance in California.

[Amend] Section 2644.5. Catastrophe Adjustment.

The Department proposes amending Section 2664.5 to provide a process for insurers to base the catastrophe adjustment applied to their noncatastrophe losses on permitted models or on the traditional empirical averaging approach, or a hybrid of both approaches, provided only one approach is selected for a unique peril. Additionally, the Department proposes to amend this section to require that insurers apply a uniform method when determining a catastrophe adjustment based on the traditional empirical averaging approach. The Department proposes amending the initial portion of Section 2664.5 as follows:

In those insurance lines and coverages where catastrophes occur, the actual catastrophic losses of any one ~~accident~~ year in the recorded period are replaced by an adjustment based on the average annual loss generated from one or more catastrophe models as described in Section 2644.4.5, or an adjustment based on a multi-year, long-term average of catastrophe losses net of actual and anticipated salvage and subrogation recoveries, as described in subdivision (b) of this section, or except as prohibited in subdivision (e) of this section a combination of the methods specified in subdivisions (a) and (b).~~:~~

Each insurer that proposes using a catastrophe adjustment defines "catastrophe" as part their rate filing. (See Section 2644.5(c)(10) below.) In the initial portion of Section 2644.5, "actual" is added for clarity, to distinguish from projected catastrophes. Additional language is added to clarify that catastrophic losses, whether from fire following earthquake, wildfire, or some other catastrophe (or a combination of multiple catastrophes), must be removed from the data, and can be replaced with a catastrophe adjustment that is either based on a much longer-term average of historical data or, where permitted by regulation, modeled. It is reasonably necessary to make clear that actual and not projected catastrophe data must be removed from the loss data before applying the catastrophe adjustment in the ratemaking formula, because if the actual catastrophe data is not removed, the catastrophe component of losses would be double-counted in the formula, leading to excessive rates charged to the customers.

(a) For fire following earthquake, wildfire, and terrorism exposures in any line of insurance, an insurer may include an adjustment based on the average annual loss generated from one or more catastrophe models. The use of such models shall comply with the requirements set forth in subdivision (e) of Section 2644.4.5. Further, the average annual loss may be adjusted to include a provision for defense and cost containment expenses (DCCE), either by applying a historical ratio of noncatastrophe DCCE to noncatastrophe loss or by applying a historical ratio of catastrophe DCCE to catastrophe loss.

The purpose this subdivision is to (1) identify those perils for which a catastrophe model is permitted to be used for determining the catastrophe adjustment and (2) address the allowable methods for adjusting the resulting modeled catastrophe losses to include a provision for defense and cost containment expenses (DCCE). This regulation would explicitly condone the common practice of loading DCCE in by means of a historical ratio of DCCE/loss applied to the modeled loss estimate. This subdivision is reasonably necessary because the modeled catastrophe losses do not include a provision for DCCE, but insurers will want to include this expense in their ratemaking formula.

(b) In any event, an insurer may project its catastrophe adjustment ~~loading~~ based on a multi-year, long-term average of catastrophe ~~claims~~ losses and DCCE, net of actual and anticipated salvage and subrogation recoveries. Catastrophe adjustment for perils other than those that are permitted to be modeled under subdivision (a) of this section or pursuant to subdivision (c) of Section 2644.4.5 must be based on such multiyear long-term average.

(1) For residential and commercial property lines, the adjustment shall be based on the average of the ratio of ultimate catastrophe losses and DCCE to amount of insurance years (AIY). For purposes of this section, the term AIY shall reflect the total combined limits (dwelling, additional structures, personal contents and loss of use) pertaining to the property coverages underling each policy. For private passenger and commercial automobile physical damage, the adjustment shall be based on the average of the ratio of ultimate catastrophe losses and DCCE to ultimate noncatastrophe losses and DCCE.

(2) The number of years over which the average shall be calculated shall be at least 20 years for ~~homeowners multiple peril fire,~~ residential and commercial property lines and at least 10 years for private passenger, and commercial, auto physical damage. Where the insurer does not have enough years of data, or has a limited amount of data for years for which it does have data, the insurer's data shall be supplemented by appropriate data for those years. The number of years over which the average shall be calculated for any other line with catastrophe exposure that is permitted under this subdivision (b) to have a catastrophe adjustment shall be based on the most actuarially sound assumptions. There shall be no catastrophe adjustment for private passenger, or commercial, auto liability.

The purpose of subdivision (b) is to clarify that, for insurers that opt to derive their catastrophe adjustment based on the traditional approach, or for perils for which a catastrophe adjustment is not permitted to be based on a catastrophe model, a multi-year long-term average shall be used when calculating that catastrophe adjustment. Further, this subdivision requires a single methodology for determining that adjustment for various lines of insurance. Finally, for lines of insurance not explicitly referenced that may also be subject to catastrophe adjustment, this subdivision requires that the assumptions under which the adjustment is calculated be based on the most actuarially sound assumptions. Due to the low-frequency, high-severity nature of catastrophe losses, subdivision (b) is reasonably necessary to make clear that insurers are required to use a long-term average to ensure that insurers are calculating their non-modeled loss projections using sufficient years of historic catastrophe data or experience in order to produce actuarially sound rates.

Subdivision (1) requires that amount of insurance years (AIY) reflect total combined limits. This is reasonably necessary because total limits better capture the insurer's exposure to loss. In addition, catastrophe models use total combined limits to determine the average annual loss. Therefore, clarifying that insurers must use total limits for AIY is necessary to provide consistency between the two methods and enable comparisons.

Existing language in this subdivision only addresses the private passenger auto physical damage lines of insurance, and the fire peril within the homeowners multiple peril line of insurance. The revised language treats all property coverages under residential property (which includes perils within the homeowners multiple peril line) and commercial property lines of insurance similarly with regard to catastrophe adjustment. This is reasonably necessary since all such lines are subject to losses from catastrophe events. The revised language also treats commercial auto physical damage the same as private passenger auto physical damage (catastrophe adjustment permitted). Again, this is reasonably necessary because all such lines are subject to losses from catastrophe events.

(c) Regardless of which method is used for catastrophe adjustment, insurers shall submit all of the following, based on the data aggregation method used for the recorded period, whether the recorded period is expressed in terms of accident years, policy years or report years, through the most recent year of the recorded period:

(1) The insurer's history, by year, of California catastrophe losses, displayed separately for paid losses, case-incurred losses and Incurred But Not Reported (IBNR) reserves.

(2) The insurer's history, by year, of California noncatastrophe losses, displayed separately for paid losses, case-incurred losses and IBNR reserves.

(3) The insurer's history, by year, of California catastrophe Defense and Cost Containment Expenses (DCCE), displayed separately for paid DCCE, case-incurred DCCE and IBNR reserves.

(4) The insurer's history, by year, of California noncatastrophe DCCE, displayed separately for paid DCCE, case-incurred DCCE and IBNR reserves.

(5) The insurer's history, by year, of California received salvage and subrogation recoveries. Subrogation recoveries shall include the proceeds of any actual sale or divestiture of subrogation rights.

(6) The insurer's history, by year, of California anticipated salvage and subrogation recoverables. Subrogation recoverables shall include the reasonably foreseeable proceeds of any anticipated sale or divestiture of subrogation rights.

(7) The insurer's history, by year, of California AIY for residential and commercial property lines.

(8) For residential and commercial property lines, the insurer's projected AIY for the policy effective period. The trend factor that is used to project AIY shall be based on the exponential curve of best fit. Insurers shall file the most recent 27 quarters of company-specific AIY and earned exposure data. The insurer shall file its rate change application loss trend, which data period the insurer determines to be the most actuarially sound. The Commissioner may require the use of an alternative data period if the Commissioner determines that use of such alternative data period is the most actuarially sound approach.

(9) For private passenger and commercial auto physical damage, the insurer's projected ultimate noncatastrophe losses for the most recent year in the recorded period, as determined by the application of Sections 2644.6 and 2644.7.

(10) The insurer's current definition of catastrophe and the period of time it has used such definition.

(11) The insurer's definition of wildfire and the period of time it has used such definition.

(12) The name of any major event or events contributing to the year's catastrophic losses, for instance, the "Cedar Fire," and the peril or perils associated with those losses.

The Department proposes adding subdivision (c) to itemize the data and calculations that insurers shall submit to the Rate Regulation Branch as part of a complete rate application.

Subdivision (c)(1)-(12) makes clear what information insurers are required to provide as part of a complete rate application in order to determine projected losses, regardless of whether they use catastrophe modeling or the traditional approach. The purpose of requiring insurers to provide the information itemized as subdivision (c)(1) through (12) is to enable the Department to evaluate the insurer's proposed rates and determine whether the requested rate is appropriate and not excessive, inadequate, or otherwise not compliant with Proposition 103.

It is reasonably necessary to require insurers to report the data required by subdivision (c)(1) through (7) using the same data aggregation method as the recorded period in order to facilitate the Department's evaluation of the insurer's rate request.

Additionally, it is reasonably necessary to require insurers to provide a set of historical data and information, even if the catastrophe adjustment is based on a catastrophe model, because the data can be used as a basis of comparison to the output provided by the model. Further, if the catastrophe adjustment is based on historical data, the level of granularity of data required can facilitate both the Department's evaluation of assumptions underlying the filing for reasonableness and as well as reconciliation of the data to other areas of the rate application.

In addition, insurers providing property coverage will be required to provide the supporting trend analysis used to project their AIY, which is the exposure base required to project catastrophe losses and DCCE for those coverages as itemized in subdivision (c)(1) through (12). It is reasonably necessary to require insurers to submit such data in order to allow the Department to adequately evaluate the complete rate application, and insurers should have this data readily available or it is information that can only be obtained from the insurer.

(d) The catastrophe adjustment shall reflect any changes between the insurer's historical and prospective exposure to catastrophe due to a change in ~~the~~:

(1) The insurer's coverage or other policy terms; or

(2) The insurer's mix of business. ~~There shall be no catastrophe adjustment for private passenger auto liability.~~

The Department proposes adding subdivision (d) and amending language in the current regulation to address changes in circumstances that must be reflected in the catastrophe adjustment. One purpose of this regulation is to allow insurers that increase underwriting new policies in areas that are expected to be more likely than other areas to experience catastrophe losses to use catastrophe modeling for ratemaking purposes. This is reasonably necessary

because where an insurer's prospective exposure differs from that insurer's historical data, a catastrophe adjustment may facilitate an insurer's ability to charge adequate rates.

The sentence "There shall be no catastrophe adjustment for private passenger auto liability" is also removed from this subdivision and is now included in subdivision (b)(2) of Section 2644.5. This is reasonably necessary to provide for better organization and readability of the regulations.

(e) For any individual peril, projected aggregate catastrophe losses cannot be based upon a combination of modeled and historical losses associated with that peril.

The purpose of subdivision (e) is to prohibit using a combination of both modeled and historical losses to project aggregate catastrophe losses for any one peril. This is reasonably necessary to ensure that there is no double-counting of catastrophe losses in the projected losses. Modeled losses, if used to project catastrophe losses for a particular peril, are intended to project the total loss exposure due to catastrophes associated with that peril. Consequently, including nonmodeled losses based on historical data to project losses in addition to modeled losses for the same peril will result in double-counting of those losses for that peril, which in turn would lead to excessive rates charged to consumers.

(f) Catastrophe adjustment, whether based on modeled or nonmodeled losses as prescribed by 2644.5(a) or (b) above, shall apply as a single annual projection once all other adjustments to loss have been made. The catastrophe adjustment shall be expressed as a dollar amount of catastrophe losses per earned exposure, where earned exposure is taken from the most recent year of the recorded period.

The purpose of subdivision (f) is to specify that there is only one catastrophe adjustment, which is to be added to the projected ultimate noncatastrophe data to arrive at the total projected ultimate losses and DCCE (catastrophe and noncatastrophe). It is reasonably necessary to make clear that there should be application of a single catastrophe adjustment, rather than one applied to each year in the recorded period, in order to be consistent with standard actuarial practice.

(g) For residential and commercial property lines, no trend shall be applied to the catastrophe adjustment except for the trend factor that is used to project AIY as described in subdivision (c)(8) of this section.

The purpose of subdivision (g) is to clarify that, with a single exception, trends shall not be applied to a catastrophe adjustment. This clarification is reasonably necessary because trends are already considered in the AIY factor, and so allowing an additional trend to be applied to the catastrophe adjustment would result in double-counting.

[Amend] Section 2644.8. Projected Defense and Cost Containment Expenses.

(a) The meaning of the term "~~P~~projected defense and cost containment expenses (DCCE)" ~~means~~ includes both the company's noncatastrophe historic costs ~~per exposure~~ associated with the defense and cost containment of noncatastrophe claims, ~~adjusted for catastrophes,~~ developed and trended in the manner described

in ~~s~~Sections ~~2644.5,~~ 2644.6 and 2644.7, and the company's costs associated with the defense and cost containment of catastrophe claims, as prescribed in Section 2644.5.

(1) DCCE associated with noncatastrophe losses shall be developed:

(A) separately from losses;

(B) with losses; or

(C) as a ratio to losses.

(2) DCCE associated with noncatastrophe losses shall be trended:

(A) separately from losses; or

(B) with losses.

(3) Any provision for DCCE associated with catastrophe losses shall be determined in accordance with subdivisions (a) and (b) of Section 2644.5.

The purpose of the amendments to this section is to reflect changes made to other sections discussed above, including Section 2644.4 "Projected Losses." Because catastrophe adjustments underlying the formulas for minimum and maximum permitted earned premiums specified in Sections 2644.2 and 2644.3 are no longer multiplicative, but rather additive, the different treatment of DCCE for catastrophe claims is reasonably necessary, requiring the different treatment here.

In this subdivision (a), the "s" in "Sections" has been capitalized. This nonsubstantive amendment makes a stylistic change to the formatting of the citation of a specific section of the California Code of Regulations.

(b) ~~Defense and cost containment expenses may be added to losses for loss development and trend or may be developed using ratios of defense and cost containment expenses to losses.~~ The insurer shall provide its data separately for loss and DCCE, and demonstrate that its selections of development and trend for DCCE ~~is~~ are the most actuarially sound selections.

The purpose of amending subdivision (b) is to clarify ambiguities that exist in the current regulation text to more clearly define the data that needs to be submitted and to ensure that insurers submit the data appropriately and consistently in their rate applications. This clarification is reasonably necessary because it should shorten the time needed to review rate filings by eliminating the need to request this data from the insurer after the initial application is filed.

(c) The projected DCCE shall be reflected per exposure for purposes of subdivision (a)(1)(A) of Section 2644.2 and subdivision (a)(1)(A) of Section 2644.3.

(d~~e~~) For professional liability and errors and omissions coverage, the insurer shall tender an alternative computation of projected ~~defense and cost containment expenses~~ DCCE, which the Commissioner shall approve if the Commissioner finds the projection to have been made in the most actuarially sound ~~actuarial~~ manner. The insurer shall also provide projected DCCE in a manner specified in subdivisions (a) through (c) of this Section 2644.8 and in any other manner as may be required by the Commissioner. ~~Nothing in this section precludes the Commissioner from requiring the additional filing of projected defense and cost containment expenses computed in the manner specified in sections (a) and (b).~~

The purpose of moving most of the language in current subdivision (c) to subdivision (d) and adding a new subdivision (c) is to clarify that when calculating minimum and maximum permitted earned premium, in order to correctly apply the formulas found in Sections 2644.2 and 2644.3, DCCE needs to be on a per exposure basis. This is reasonably necessary to ensure consistent treatment of the data in a complete rate application, because losses are also evaluated on a per exposure basis.

The purpose of subdivision (d) is to clarify that insurers are required to provide projected DCCE using the standard methods specified in Section 2644.8 as well as the "alternative computation of projected DCCE." This clarification is reasonably necessary to ensure that insurers' complete rate applications appropriately account for total DCCE associated with catastrophe losses.

In addition, there is a nonsubstantive clarifying edit to ensure consistency of language with the explicit definition of "most actuarially sound" as defined in Section 2642.8.

[Amend] Section 2644.27. Variance Request

(f) The following are the valid bases for requesting a variance:

(7) That the insurer should be granted relief from using its in-force business as specified in subdivision (e) of Section 2644.4.5 because the insurer's in-force exposures do not reflect the insurer's prospective exposure to risk, such that the modeled catastrophe adjustment in subdivision (a) of Section 2644.5 does not produce the most actuarially sound result

(8~~7~~) That the loss development formula in Section 2644.6 does not produce an actuarially sound result because

(A) There is not enough data to be credible;

(B) There are not enough years of data to fully calculate the development to ultimate;

(C) There are changes in the insurer's reserving or claims closing practices that significantly affect the data; ~~or~~

(D) There are changes in coverage or other policy terms that significantly affect the data; ~~or~~

(E) There are changes in the law that significantly affect the data; or

(F) There is a significant increase or decrease in the amount of business written or significant changes in the mix of business.

(9~~8~~) That the trend formula in Section 2644.7 does not produce the most actuarially sound result because

(A) There is a significant increase or decrease in the amount of business written or significant changes in the mix of business;

(B) There are not enough years of data to calculate the trend factor;

(C) There is a significant change in the law affecting the frequency or severity of claims;

(D) It can be shown that a trend calculated over a period of at least 4 quarters other than a period permitted pursuant to Section 2644.7, subdivision (b) is more reliable prospectively;

(E) There are changes in the insurer's claims closing practices that significantly affect the data; or

(F) There are changes in coverage or other policy terms that significantly affect the data.

(10~~9~~) That the maximum permitted earned premium would be confiscatory as applied. This is the constitutionally mandated variance articulated in *20th Century v. Garamendi* (1994) 8 Cal.4th 216 which is an end result test applied to the enterprise as a whole. Use of this variance requires a hearing pursuant to Section 2646.4.

The purpose of this amendment is to add subdivision (f)(7) and renumber subsequent subsections. This is reasonably necessary because the addition of subdivision (f)(7) will permit insurers to obtain a variance when writing business in new and/or risky areas where the modeled catastrophe adjustment does not reflect their prospective exposure. This change is consistent with the other regulatory changes discussed above.

[Adopt] Section 2648.5. Pre-Application Required Information Determination ("PRID") Procedure

(a) Definitions.

As used in this section, each of the following terms has the meaning set forth below:

The purpose of this subdivision is to include definitions of eight new terms used throughout the proposed new regulation in Section 2648.5. Specifically, this section defines "pre-application required information determination," "pre-application required information determination procedure," "model," "required model information," "complete rate application," "public information," "confidential PRID information," and "Model Advisor." It is necessary to define these terms up front for clarity and efficiency because many of the terms could have multiple meanings depending on the context of their usage and may cause confusion unless specifically defined. Defining these terms clarifies the meaning of the proposed regulation and helps eliminate any misunderstanding or confusion so that the regulation can be implemented, interpreted, and made specific in a manner that is clear, uniform, and understandable. Further, defining these terms ensures consistency and prevents interested parties from contemplating any unintended interpretation, allowing parties to act in accordance with the proposed regulation without undue confusion which has the benefit of preserving the resources of insurers, consumers, and the Department.

(1) "Pre-application required information determination" or "PRID" means a nonadjudicative determination the California Department of Insurance issues before an insurer submits a complete rate application and that specifies all information and data regarding a model that are required to be provided to the Commissioner as part of a complete rate application that relies upon the model for purposes of requesting a proposed rate change pursuant to Insurance Code section 1861.05.

The proposed regulation in Section 2648.5 sets forth a new process where insurers, before submitting a complete rate application to the Commissioner, can submit information and data regarding a model and obtain a nonadjudicative determination specifying all information and data regarding a model that are required to be submitted as part of a complete rate application that relies upon the model for purposes of requesting a proposed rate change. The determination is nonadjudicative because it is an evidentiary ruling that does not require evidence or a hearing. The Commissioner will not review a proposed PRID for acceptance, rejection, or mitigation pursuant to the procedures set forth in Insurance Code section 1861.08 and Government Code section 11517; rather, the Commissioner will review the relevant model information submitted as part of a complete rate application and, if the Commissioner finds the information submitted is sufficient, the Commissioner will approve or reject the rate application accordingly. If the Commissioner determines that more information regarding the model is required, the Commissioner may reject the rate application and require the insurer to provide more information regarding the model.

The purpose of subdivision (a)(1) is to define a new term for this nonadjudicative determination and to present a shorthand reference for the term. The definition of "pre-application required information determination" or "PRID" is necessary for clarity since this is a novel term that has not been defined elsewhere in the ratemaking regulations. The definition is reasonably necessary because without a separately defined term, there may be confusion over the new nonadjudicative procedure set forth in the proposed regulation versus the existing process where information and data would have to be provided to the Commissioner under Insurance Code section 1861.05. Moreover, the shorthand, "PRID," makes the regulation more readable and thus, easier to understand.

(2) "Pre-application required information determination procedure" or "PRID procedure" means a nonadjudicative procedure before the California Department of Insurance that takes place before an insurer submits a complete rate application and the purpose of which is to determine all information and data regarding a model that are required to be provided to the Commissioner as part of a complete rate application that relies upon the model for purposes of requesting a proposed rate change pursuant to Insurance Code section 1861.05.

The purpose of subdivision (a)(2) is to define a new term as well as present a shorthand reference for the new nonadjudicative procedure set forth in Section 2648.5. The definition of "pre-application required information determination procedure" or "PRID procedure" is necessary for clarity since this is a novel term that has not been defined elsewhere in the ratemaking regulations. This procedure is a nonadjudicative procedure that takes place before an insurer submits a complete rate application, in order to determine what information and data regarding the utilization of models are required to be provided to the Commissioner as part of a complete rate application. The definition is reasonably necessary because without a separately defined term, there may be confusion over the new nonadjudicative procedure set forth in the proposed regulation versus the existing process where information and data would have to be provided to the Commissioner under Insurance Code section 1861.05. The definition clarifies that the procedure set forth in the proposed regulation is entirely separate and takes place before an insurer submits a complete rate application as part of the rate approval process, when information and data would have to be provided to the Commissioner under Insurance Code section 1861.05 and made public under Insurance Code section 1861.07. Moreover, the shorthand, "PRID procedure," makes the regulation more readable and thus, easier to understand.

(3) The term "model" means any simplified representation of relationships among real world variables, entities, responses, actions, or events using appropriate statistical, financial, economic, mathematical, non-quantitative, or scientific concepts and equations, or any combination thereof, and that consists of three components: one or more information input components, which deliver data and assumptions to the model; one or more processing components, which transform input into output; and one or more results components, which translate the output into useful business information. Types of models include, without limitation, "catastrophe risk models," "complex catastrophe models," "probabilistic catastrophe models," "third-party models," "wildfire models," "wildfire risk models," "risk models," and models referencing other perils; the meaning of the

term "model" also includes without limitation a "Wildfire Risk Model" as described in Section 2644.9, subdivision (b)(6)(A).

The purpose of subdivision (a)(3) is to define the term "model" as that term is used in Section 2648.5, since the term "model" does not have a single universally accepted definition and is ambiguous unless given a definite meaning. This definition is necessary to clarify that the proposed regulation's use of the term applies only to certain models that fit within the definition. Because insurers use different types of modeling tools, subdivision (o) defines "model" broadly enough to avoid being underinclusive, borrowing language from the Actuarial Standards of Practice (ASOP) Nos. 38 and 56. The ASOP provides guidance on procedures and methods that reflect appropriate actuarial practices in the United States. The Actuarial Standards Board began working on standards for modeling in the late 1990's and understands the importance of modeling in actuarial science. Incorporating the ASOP's definition of "model" is reasonably necessary here to ensure that the definition properly captures the scope of models that may be used to calculate rates.

Following the Department's public workshops, some expressed concern that the definition may be too broad and that the proposed regulation would essentially require all models to undergo the PRID procedure. There was also some confusion because the title of the text is "Catastrophe Modeling and Ratemaking" but the definition is not limited to catastrophe models. The Department has considered these comments but believes the current definition is the most effective in achieving the regulation's purpose. The PRID procedure is voluntary. A model is not required to go through the PRID procedure so the concern that all models would have to undergo the PRID procedure is unfounded. Further, while this proposed regulation is primarily focused on catastrophe modeling, the Department recognizes that there are numerous other types of models already used in ratemaking. Accordingly, the PRID procedure is designed to be flexible enough so that it can be used as a tool by the public, insurers, and modelers for not just catastrophe models but for other models as well. This definition prevents interested parties from contemplating any unintended limited interpretation, allowing parties to act in accordance with the proposed regulation without undue confusion which has the benefit of preserving the resources of insurers, consumers, and the Department.

(4) "Required model information" means all required information and data regarding a model, that the Commissioner requires to be submitted as part of a complete rate application that relies upon the model, because such information and data will aid the Commissioner in determining whether the model is reliable to perform the functions for which an insurer proposes to use the model, for purposes of the Commissioner's evaluation of a complete rate application.

The purpose of subdivision (a)(4) is to define the term "required model information" as the term is used in Section 2648.5, since the term may not have a widely accepted definition and is ambiguous unless given a definite meaning. The definition provides that "required model information" means all information and data regarding a model that the Commissioner requires to be submitted as part of a complete rate application relying upon the model, in order to aid the Commissioner in determining whether the model is reliable to perform the functions for which an insurer proposes. The definition is reasonably necessary to clarify that "required model

information" is distinct from the broader group of information and data that may be submitted during a PRID procedure but not all of which may be determined to be required as part of a complete rate application that relies upon the model. Without the definition of "required model information," inconsistent definitions may be asserted by the parties and frustrate the regulation's purpose.

(5) "Complete rate application" means an application submitted by an insurer desiring to change any property and casualty rate pursuant to Insurance Code section 1861.05 and shall include without limitation all required model information and all information and data specified in Section 2648.4, regardless of whether any such information and data is included in its initial complete rate application submission or is subsequently submitted as part of the rate proceeding, including without limitation in response to requests for further information and data by the Department.

The purpose of subdivision (a)(5) is to define the term "complete rate application" as the term is used in Section 2648.5. The definition is necessary for clarity because without the definition, there may be ambiguity over what constitutes a "complete rate application," which is separate from the PRID procedure. A complete rate application is submitted by an insurer desiring to change any property and casualty rates pursuant to Insurance Code section 1861.05 as well as Section 2648.4 and other regulations. This is again separate from the PRID procedure which takes place *before* an insurer submits a complete rate application. The separation of the two processes allows the parties to a PRID procedure to confidentially explore a larger universe of information and data, until a determination is made as to what required model information must be included in a complete rate application. The information and data included in a complete rate application is submitted to the Commissioner and therefore becomes public information. Without the definition of "complete rate application," inconsistent definitions may be asserted by the parties and frustrate the regulation's purpose.

(6) "Public information" means all information provided to the Commissioner as part of a complete rate application submitted pursuant to article 10 of division 1, part 2, chapter 9 of the Insurance Code.

The purpose of subdivision (a)(6) is to define the term "public information" as the term is used in Section 2648.5. The definition is necessary to clarify that only required information ultimately provided to the Commissioner as part of a complete rate application is "public information." Accordingly, not all information submitted during a PRID procedure automatically becomes "public information." The definition only includes what is provided to the Commissioner as part of a complete rate application for rate review, not the potentially broader universe of information that may be confidentially exchanged during the nonadjudicative PRID procedure that takes place before an insurer submits a complete rate application. This definition is necessary to avoid ambiguity because without the definition, inconsistent definitions of the term may be asserted by the parties and frustrate the regulation's purpose. This subdivision is also reasonably necessary to keep uniformity in the implementation of Insurance Code section 1861.07.

(7) "Confidential PRID information" means information, data, testimony, evidence, hearings, briefs, pleadings, correspondence, discovery, working papers, and other material created or exchanged for purposes of a PRID procedure, and that are not included in any complete rate application subsequently submitted or otherwise provided to the Commissioner.

The purpose of subdivision (a)(7) is to define the term "confidential PRID information" as the term is used in Section 2648.5. The definition is necessary to clarify that any "PRID information" such as information, data, testimony, evidence, hearings, briefs, pleadings, correspondence, discovery, working papers, and other material created or exchanged for the purposes of a PRID procedure is confidential unless later included in any complete rate application or otherwise provided to the Commissioner. This definition is necessary to avoid ambiguity because without the definition, inconsistent definitions of the term may be asserted by the parties and frustrate the regulation's purpose. This definition prevents interested parties from contemplating any unintended interpretation, allowing parties to act in accordance with the proposed regulation without undue confusion which has the benefit of preserving the resources of insurers, consumers, and the Department.

(8) "Model Advisor" means the person within the Department of Insurance who oversees a PRID procedure.

The purpose of subdivision (a)(8) is to define the new term, "Model Advisor," as that term is used in Section 2648.5, since the term may not have a widely accepted definition and is ambiguous unless given a definite meaning. The definition provides that a "Model Advisor" means the person within the Department of Insurance who oversees a PRID procedure. The definition is reasonably necessary to establish that the Commissioner is delegating responsibility to Department staff for determining the universe of information about a model that the Commissioner requires in order to review a complete rate application relying upon that model. The definition also allows the Department flexibility in making staffing decisions to designate an appropriate person to oversee a PRID procedure. This will in turn benefit the public. Moreover, having this newly defined term makes the regulation more readable and thus, easier to understand.

(b) For purposes of determining appropriate rates for a property and casualty line of business, the Commissioner requires insurers seeking to rely upon modeled information, including without limitation modeled financial projections such as aggregate catastrophe loss projections and other types of projected losses, to submit all required model information as part of a complete rate application. Required model information shall include, in addition to any information specified in the complete rate application requirements set forth in Section 2648.4, information that demonstrates the model uses established concepts, data, equations, and principles, as well as best available scientific information and data, insurance claims expertise, and other assumptions appropriate for the risk or peril being modeled.

Insurance Code section 1861.05 requires any insurer desiring to change its rates for property and casualty insurance to file a complete rate application with the Insurance Commissioner for

review and approval prior to using the proposed rates. In order to fully evaluate an insurer's request to change its rates and determine whether the requested rate change is appropriate and not excessive, inadequate, or unfairly discriminatory, the Commissioner must be able to review all information that may have a potential impact on the requested rate during the projected rating period. The purpose of this subdivision is to make clear that all insurers who use models for ratemaking are required to submit specified model information as part of a complete rate application in addition to other information regarding the utilization of the model that the Commissioner may require. This provision is necessary for clarity to provide context on how the PRID procedure is a separate and distinct process from the rate review process.

Moreover, the purpose of this subdivision is to set forth at minimum, what information and data regarding models the Commissioner requires as part of a complete rate application. This includes information that demonstrates the model uses established concepts, data, equations, and principles, as well as best available scientific information and data, insurance claims expertise, and other assumptions appropriate for the risk or peril being modeled. This is reasonably necessary to reduce confusion and uncertainty over what information and data regarding models are required to be submitted for review. This will prevent potential dispute over what exactly is minimally required and therefore promote consistency. Reducing confusion and uncertainty as well as potential dispute over the contents of a model will help decrease unnecessary delays in not only the PRID procedure but also the rate review and approval process.

(c) The purpose of a pre-application required information determination procedure or PRID procedure shall be for the Department of Insurance to issue a PRID that specifies all required model information to be included in a complete rate application that relies upon the model. The purpose of the PRID procedure shall not be to determine how a specific model shall apply in any particular complete rate application, nor shall the parties examine any nonaggregated insurer-specific information as part of the PRID procedure.

The purpose of this subdivision is to establish what the outcome of the new PRID procedure is and to clarify that when an insurer files a complete rate application that relies upon a model, the insurer is required to submit all information identified in the PRID. The information identified in the PRID is the set of "required model information" that must be included in a complete rate application provided to the Commissioner and the information provided to the Commissioner becomes public information under Insurance Code section 1861.07. This is reasonably necessary to reduce confusion and uncertainty as well as potential dispute over what model information is required in an initial complete rate application. It is also reasonably necessary to clarify that a PRID is not an order or decision that the model is actually reliable for ratemaking purposes. Whether a model is reliable for purposes of a specific rate application must be made in the context of an individual rate application. The PRID is not specific to any insurer and this subdivision makes clear that the purpose of the PRID is not to determine how a model applies to a particular rate application by a specific insurer. The PRID does, however, specify the set of information which will help the Commissioner determine whether a model is reliable for setting the rate at issue. Reducing confusion and uncertainty as well as potential dispute over the contents of a complete rate application will help decrease unnecessary delays in the rate review and approval process.

(d) Required model information specified in a PRID shall not be provided to the Commissioner and shall not be public information until or unless an insurer subsequently submits a complete rate application to the Commissioner that relies upon the model.

The purpose of this subdivision is to establish that the model information specified in a PRID is not provided to the Commissioner and will not become public information until or unless an insurer subsequently submits a complete rate application that relies upon the model. This provision is consistent with Insurance Code section 1861.07 and is reasonably necessary to clarify that despite any nondisclosure agreements or any private agreements entered into during the PRID procedure, once a PRID is issued and model information specified in the PRID is provided to the Commissioner as part of a complete rate application, that information is publicly disclosable. However, the PRID procedure is a separate nonadjudicative procedure and information and data submitted to the Model Advisor in the PRID procedure is not information "provided to the commissioner" subject to public inspection. It is possible that a PRID will be issued but the information identified in the PRID is never provided to the Commissioner because the model is not relied upon in a subsequent rate application. To state differently, a PRID is not tied to any individual rate application or specific insurer and nothing becomes public information until or unless an insurer subsequently submits a complete rate application to the Commissioner that relies upon the model. This provision is necessary to ensure that there is no confusion, uncertainty, or dispute over when "required model information" is subject to the public disclosure requirements of Insurance Code section 1861.07.

(e) Confidential PRID information shall not be public information and shall be considered to be information received in official confidence by the Department of Insurance. Accordingly, confidential PRID information shall not be subject to disclosure in response to requests pursuant to the California Public Records Act (commencing with Government Code section 7920.000).

The purpose of this subdivision is to ensure that information exchanged for purposes of a PRID procedure remain confidential. This includes any testimony, evidence, hearings, briefs, pleadings, correspondence, discovery, working papers, and other documents related to a PRID procedure, unless such information is later submitted as part of a complete rate application and/or otherwise provided to the Commissioner. This provision is necessary to distinguish "Confidential PRID information" which is received in official confidence by the Department of Insurance from any information that may be provided to the Commissioner, which is public information subject to disclosure under Insurance Code section 1861.07. This subdivision also places explicit limitations on the disclosure of "Confidential PRID information" by keeping such information exempt from the California Public Records Act. This is necessary because the PRID procedure is only effective if confidentiality can be guaranteed for sensitive, proprietary, or trade secret information that is never provided to and relied upon by the Commissioner. The purpose of the regulation is that within the PRID procedure, parties are fully able to investigate the models with confidentiality protections in place. Without this subdivision, inconsistent positions may be asserted by the parties and frustrate the regulation's purpose.

(f) The Commissioner shall delegate authority to oversee a PRID procedure and issue a pre-application required information determination to the Model Advisor. The Model Advisor is authorized to hire outside consultant(s) with relevant knowledge and subject matter expertise to assist in determining required model information.

The purpose of this subdivision is to establish that the Commissioner delegates the authority to oversee a PRID procedure and issue a PRID to the "Model Advisor," who is a person within the Department. This is to separate the PRID procedure from any subsequent complete rate application submitted to the Commissioner. Moreover, this subdivision allows the Model Advisor to hire outside consultants with relevant knowledge and subject matter expertise to assist in determining required model information that must be included in a complete rate application. This is reasonably necessary since models may be extremely complex and technical, and specialized knowledge and expertise may be required to review models and determine what information regarding a model should be submitted as part of a complete rate application relying upon that model. During public workshops, many commented that the Department may need to consult with a broad set of experts across various disciplines to review the accuracy of models. Furthermore, since the definition of "model" for the purposes of the regulation is broad and covers multiple perils, it is necessary that this subdivision allows the hiring of outside consultants who are subject matter experts to really identify what information and data within a model is necessary to be provided to the Commissioner in a complete rate application. Following public workshops, some proposed that instead of Department staff, an administrative law judge or a panel of experts would be better fit to oversee the PRID procedure. Such alternatives have been considered and rejected as noted below.

(g) The Department of Insurance may initiate a PRID procedure by submitting a Notice of PRID procedure to the Model Advisor.

The purpose of this subdivision is to establish that the Department itself may initiate a PRID procedure like any other person if the Department so chooses. This is reasonably necessary because there may be situations where the Department may want to investigate models outside of the rate review process. This provision is necessary to ensure that there is no confusion, uncertainty, or dispute over whether the Department can initiate the PRID procedure. The proposed regulation in no way limits the Commissioner's discretion to ask for more information during the rate review process.

(h) Any person other than the Department may petition to initiate a PRID procedure, or petition to participate in a PRID procedure, by following the procedure set forth in Section 2661.4 and may be eligible for compensation pursuant to Insurance Code section 1861.10 and Sections 2661.1 through 2662.8 and this Section. A petition to initiate a PRID procedure may be combined with a petition to participate in a PRID procedure.

The purpose of this subdivision is twofold. The first purpose is to allow for broad public participation by allowing any person to petition to initiate or participate in a PRID procedure by following the Department's existing regulation in Section 2661.4, limited by the protections set forth in subdivision (h)(1) below. During public workshops, some expressed the idea that there

should not be public participation at all in the PRID procedure since Proposition 103 already allows for public intervention in the ratemaking process. The Department has considered but rejects this idea because the purpose of the proposed regulation is to encourage public review of models at the outset, avoiding individual disputes regarding the same model in multiple individual rate applications, which would surely delay rate review and approval. With that said, subdivision (h)(1) places certain limitations on when a PRID procedure can be initiated in order to preserve the integrity of the PRID procedure and avoid unnecessary backlogs. To facilitate the filing and review of a petition to initiate and/or participate, this subdivision allows both to be combined in one filing. The second purpose is to allow consumer participants reasonable advocacy and witness fees, thereby incentivizing public participation. Subdivision (h)(4) below further sets forth the standards for reasonable advocacy fees for the PRID procedure, with emphasis on discouraging unnecessarily duplicative work that only delays the process and does not further the purpose of the proposed regulation.

(1) The Model Advisor shall grant the petition to initiate a PRID procedure only if the Model Advisor determines that the petitioner has demonstrated it is more likely than not that the Commissioner would benefit from a PRID and either of the following conditions exist: (i) there is no currently valid PRID under this Section; or (ii) the model has not been previously been subject to public review in any other forum in California, including without limitation as part of a complete rate application, within the prior four years.

The purpose of this subdivision is to establish standards for the Model Advisor's discretion to grant or deny a petition to initiate a PRID procedure. This subdivision requires the Model Advisor to determine that the petitioner has demonstrated it is more likely than not that the Commissioner would benefit from a PRID and either (i) there is no currently valid PRID under this Section; or (ii) the model has not been previously been subject to public review in any other forum in California, including without limitation as part of a complete rate application, within the prior four years. Following public workshops, some expressed concern about models that have already been subject to extensive public review having to be re-reviewed through the PRID procedure if any person can petition to initiate at any time. The Department recognizes that in order to not overburden the PRID procedure and waste limited public resources reviewing models that have already been reviewed, there must be reasonable limitations in place. This subdivision is necessary to clarify that a PRID procedure is not to be initiated if there is already a valid PRID or if a model has already been publicly reviewed within the prior four years. This four-year time period is reasonably necessary and intended to preserve limited public resources. The PRID procedure is not intended to invalidate previously approved models. It is a voluntary procedure and intended as a forum for confidential review of models while also providing for public participation. Re-reviewing previously reviewed or approved models would not further the purpose of the proposed regulation.

(2) The Model Advisor shall rule on a petition to initiate the PRID procedure, a petition to participate in a PRID procedure, or a combined petition, within 10 business days after receipt of the petition by the Model Advisor.

The purpose of this subdivision is to place a 10-business day timeframe for granting or denying a petition to initiate and/or participate in a PRID procedure. This timeframe is reasonably necessary to aid the expedient processing of a PRID.

(3) The owner or vendor of a model may decline to participate as a party in a PRID procedure as to that model, but shall provide witness testimony, documents, and other information in response to subpoena.

The purpose of this subdivision is to make clear that an owner or vendor of a model is not required to participate in a PRID procedure as to their model. The PRID procedure is voluntary and the owner or vendor of a model cannot be required to appear, argue, brief, or otherwise participate in the PRID procedure. However, the owner or vendor of a model is still subject to subpoena and must provide testimony, documents, and other information in response to a subpoena. This subdivision is reasonably necessary to ensure that there is no confusion, uncertainty, or dispute. Should an insurer submit a complete rate application that relies upon a model that has not been subject to a PRID procedure, the owner or vendor of that model may be subject to full nonconfidential discovery as part of individual rate applications pursuant to Insurance Code section 1861.07.

(4) The Commissioner shall decide any requests for compensation by participants to a PRID procedure in accordance with Section 2662.6 and this Section. For purposes of a request for compensation based upon participation in a PRID procedure, the following additional standards shall apply:

The purpose of this subdivision is to establish that Section 2662.6 applies, but for the PRID procedure, a request for compensation is also based on additional standards as set forth below. This subdivision is reasonably necessary since the PRID procedure is a separate process, and in order to ensure that compensation is fair and reasonable, a separate criterion for when fee awards are appropriate for PRID procedure participants must be set forth. This subdivision prevents interested parties from contemplating any unintended interpretation, allowing parties to act in accordance with the proposed regulation without undue confusion which has the benefit of preserving the resources of insurers, consumers, and the Department.

(A) The Model Advisor shall determine a participant has made a "substantial contribution" to a PRID procedure only where the participant demonstrates that as a result of its participation, the Model Advisor has included in the PRID additional information or data regarding the model that would not otherwise have been identified without the requestor's participation in the PRID procedure, Section 2661.1(k) notwithstanding.

Section 2661.1, subdivision (k), defines "substantial contribution" for intervenors in a rate proceeding. The purpose of this subdivision is to establish a "substantial contribution" standard for

a PRID procedure. Under this subdivision, the participant has the burden to demonstrate that as a result of its participation, the Model Advisor has included in the PRID additional information or data regarding the model that would not otherwise have been identified without the requestor's participation. This subdivision is reasonably necessary to award and limit compensation to consumer participants who bring valuable contribution. The PRID procedure is a voluntary procedure and limitations must be placed on consumer compensation. Without certain limitations, it would be unfair to have the industry pay additional costs.

(B) A party may not request compensation for fees and expenses based upon work that unnecessarily duplicates the work of another party. Work that materially supplements, complements, or contributes to the substantial contribution of another party shall not be considered unnecessarily duplicative.

The purpose of this subdivision is to establish that a party may not request compensation based upon unnecessarily duplicative work of another party. This is reasonable and necessary to protect against potential abuse and to ensure that only consumer participants who bring valuable contribution that is not duplicative of another party is ultimately compensated. This subdivision is also intended to encourage participants in PRID procedures to work together to minimize or eliminate duplicative data requests about the model and thus be more efficient.

(C) To the extent the substantial contribution claimed by a participant duplicates the substantial contribution of another party to the PRID procedure, the Commissioner may find that neither party has made a substantial contribution.

The purpose of this subdivision is to establish that the Commissioner has discretion to find that neither party has made a substantial contribution where there is duplicative work. This will prevent potential dispute over what is duplicative and in turn expedite the review and approval of requests for compensation.

Subdivisions (h)(4)(A) – (h)(4)(C) prevent interested parties from contemplating any unintended interpretation, allowing parties to act in accordance with the proposed regulation without undue confusion which has the benefit of preserving the resources of insurers, consumers, and the Department. This subdivision is also intended to encourage participants in PRID procedures to work together to minimize or eliminate duplicative data requests about the model and thus be more efficient.

(5) The insurer shall pay any award of compensation arising out of a PRID procedure initiated to examine a model created by that insurer or its affiliates.

The purpose of this subdivision is to establish that an insurer is required to pay any award of compensation arising out of a PRID procedure initiated to examine a model created by that insurer or its affiliates. Following public workshops, there were questions over whether participants would be compensated and if so, who would be responsible for paying for the costs. This subdivision clarifies that an insurer is responsible for participants' costs if its own model is being examined. This subdivision is necessary to ensure that there is no confusion, uncertainty, or

dispute regarding the party responsible for paying compensation awards to participants that make a substantial contribution to a PRID procedure.

(i) The Model Advisor shall publicly notice a PRID procedure within three (3) business days after receiving a petition to initiate a PRID procedure or a Notice of PRID Procedure from the Department. Petitions to participate shall be considered timely if submitted within five (5) business days after the Model Advisor issues public notice of the PRID procedure. The PRID procedure shall be initiated five (5) business days after the Model Advisor has issued a ruling granting any petition to participate in the PRID procedure.

The purpose of this subdivision is to establish timeframes for when a Model Advisor is required to publicly notice a PRID procedure, when a petition to participate must be filed, and when the PRID procedure is officially initiated. The timeframes set forth are reasonable and intended to aid the expedient processing of a PRID. Once a petition to initiate a PRID procedure is granted, this subdivision requires the Model Advisor to publicly notice a PRID procedure within three business days. This notice requirement is intended to ensure that anyone who wants to participate in the process is given an opportunity.

(j) Within 15 business days after a PRID procedure has been initiated, all parties to a PRID procedure under this section shall:

The purpose of this subdivision is to set forth necessary requirements in a PRID procedure intended to further the purpose of the regulation. The 15-business day timeframe is reasonably necessary to aid the expedient processing of a PRID.

(1) File a statement with the Model Advisor describing how the parties will avoid duplication. The statement shall disclose without limitation working agreements among the parties, lead counsel arrangements on certain issues, sharing of expert witnesses among the parties, and intent to file joint documents; and

The purpose of the proposed regulation is to give interested parties a fulsome opportunity to review the inner workings of models but also to encourage participants to work together to streamline the PRID procedure. The Department values and encourages public participation but in order to ensure that a PRID is processed expeditiously, this subdivision requires that all participants file a statement with the Model Advisor describing how the parties will avoid duplication. This is reasonable and necessary to avoid overburdening the PRID procedure and to preserve limited public resources focusing on relevant issues. Following public workshops, some expressed concern over the timing of the PRID procedure, especially because under subdivision (m) any party in a PRID procedure may proffer expert testimony and cross-examine other parties' experts regarding the reliability of the model and what constitutes model information. The Department seeks to streamline the procedure as much as possible to achieve the regulation's purpose of increasing insurance availability.

(2) Enter into a stipulated nondisclosure agreement that shall only govern the treatment of all confidential PRID information. The agreement shall specify, at a minimum,

that (i) the representatives of the parties that participate in the PRID procedure shall not share any confidential PRID information with any other person, including without limitation persons employed by the same party but not involved in the PRID procedure; and (ii) the parties that participate in the PRID procedure shall return or destroy all confidential PRID information within an agreed-upon length of time after a PRID has been issued. After all parties have entered into the agreement, the parties shall submit a stipulation and proposed protective order based upon the parties' nondisclosure agreement to the Model Advisor for review. Alternatively, if the parties are unable to agree upon a stipulated nondisclosure agreement, any party may, no later than the fifteenth business day after the initiation of the PRID procedure as determined pursuant to Subdivision (h), submit a proposed protective order to the Model Advisor. No later than 10 business days after a proposed protective order has been received by the Model Advisor, the Model Advisor shall determine whether there is a significant public interest in the non-disclosure of confidential PRID information, and, upon a finding there is, enter an order thereon. Following the conclusion of the PRID procedure, the Model Advisor shall retain jurisdiction to enforce the terms of the protective order.

The purpose of this subdivision is to ensure that all parties to a PRID procedure enter into a nondisclosure agreement for all information and documents exchanged and produced during the course of the PRID procedure. The purpose of the PRID procedure itself is to allow interested parties an opportunity to fully vet models and accordingly, any party is free to engage in discovery regarding the model to achieve that purpose. However, in order to safeguard against misappropriation of sensitive information, it is necessary that all parties enter into a nondisclosure agreement with at least the two requirements specified in this subdivision. This is reasonably necessary to reduce potential disputes over what is required in a nondisclosure agreement. Once the parties enter into a nondisclosure agreement, a proposed protective order shall be submitted to the Model Advisor. This is reasonably necessary to ensure that the agreements entered into meet the minimum requirements set forth in this subdivision and sufficiently protects the confidential PRID information exchanged.

Being mindful that there may be situations where parties are unable to come to an agreement, this subdivision also allows any party to submit a proposed protective order to the Model Advisor. The deadline to file the stipulated nondisclosure agreement or the proposed protective order to the Model Advisor is the same at 15 business days. This timeframe is reasonably necessary and should allow parties sufficient opportunity to review terms, consider any issues, and to meet and confer. This timeframe will aid in the expedient processing of a PRID.
No later than 10 business days after a proposed protective order has been received by the Model Advisor, the Model Advisor will issue an order determining whether there is significant public interest in the nondisclosure of confidential PRID information. This timeframe is reasonably necessary and will aid in the expedient processing of a PRID. This subdivision also allows the Model Advisor to retain jurisdiction to enforce the terms of the protective order. This is reasonably necessary to ensure that confidential information is protected.

Because all model information ultimately determined in the PRID are required to be provided to the Commissioner as part of a complete rate application and therefore made public, the proposed

regulation fully upholds the public transparency requirements in Insurance Code section 1861.07.

(3) Unless a party is the Department of Insurance or demonstrates that it represents the interests of consumers, the Model Advisor may, upon a finding that the disclosure of certain confidential PRID information to such non-Department or nonconsumer-party would cause irreparable harm to the owner or vendor of the model, enter an order specifying the confidential PRID information that party shall not receive.

The purpose of this subdivision is to establish that the Model Advisor has authority to enter an order specifying confidential PRID information where the Model Advisor finds that disclosure of certain information to a non-Department or nonconsumer-party would cause irreparable harm to the owner or vendor of the model. Through public workshops, modelers and vendors continually expressed concern over proprietary information. One major concern was that exposing such sensitive information and data could enable competitors to extract information and have a chilling effect on innovation. This subdivision is necessary to balance the need for public participation in the PRID procedure with the need to protect proprietary, trade secret information of the modelers from model competitors. By giving the Model Advisor specific authority to enter an order specifying confidential PRID information that a non-Department or nonconsumer-party will receive, this subdivision adds a layer of protection from potential participants like competitors who might participate in bad faith. To be clear, the Department fully anticipates that proprietary information will be exchanged during the PRID procedure. The intent of the PRID procedure is to allow the disclosure of sensitive information but in a closed confidential forum. Further, such sensitive information may still be disclosed in a complete rate application that relies upon that model if the Model Advisor determines that such information is required to be provided to the Commissioner.

(k) To the extent not otherwise specified herein, the Model Advisor may, without limitation: control the course of the PRID procedure; grant or deny a petition to initiate or participate in the PRID procedure; administer oaths; issue subpoenas; rule on motions to compel discovery; receive evidence and testimony; upon notice, hold appropriate conferences before and during the procedure; rule upon procedural objections or motions; receive offers of proof; hear argument; and fix the time and place for the filing of any briefs.

The purpose of this subdivision is to ensure that the Model Advisor will have the necessary powers to control the course of the PRID procedure. This subdivision is necessary because in order to have a procedure that is fair, effective, and efficient, the Model Advisor needs a wide scope of authority to control the procedure. Without it, the integrity of the PRID procedure may be compromised.

(l) During a PRID procedure, all parties may propound discovery on the owner or vendor of the model to provide information and data regarding the model, including the production of documents and testimony. The parties shall not otherwise engage in discovery.

The purpose of this subdivision is to ensure that discovery in a PRID procedure be limited to information and data regarding the model. This subdivision is necessary in order to guard the PRID procedure from potential frivolous or bad faith fishing expeditions that may unnecessarily taint or delay the procedure. The focus of the PRID procedure is on the model and what information regarding a model is required to be submitted in a complete rate application. Thus, the parties are prohibited from otherwise engaging in discovery as to each other. Moreover, this prohibition is intended to encourage interested parties to participate in the process without fear that the PRID procedure will subject themselves to discovery. Without this subdivision, inconsistent interpretations may be asserted by the parties and frustrate the regulation's purpose.

(m) During a PRID procedure, any party may proffer expert testimony and cross-examine other parties' experts regarding the reliability of the model and what constitutes required model information.

The purpose of this subdivision is to ensure that parties are able to proffer expert testimony and cross-examine other parties' experts regarding the reliability of the model and what constitutes model information required to be submitted as part of a complete rate application. This subdivision is necessary because models are extremely complex and technical. Experts from various backgrounds can speak on specific components of a model, help parties understand nuanced information, and assist in determining required model information. This subdivision is reasonably necessary since allowing expert testimony and cross-examination will allow parties to thoroughly vet the models. Moreover, during pre-notice public discussions, many commented that independent review of the models by experts in various fields would be helpful. This subdivision allows for that possibility.

(n) The terms of the confidentiality order notwithstanding, the inclusion of any required model information in a subsequent complete rate application proceeding shall make such information public information.

The purpose of this subdivision is to clarify that any information or data later submitted in a complete rate application is public. This includes any model information submitted in a subsequent complete rate application, even if such information is not specified in the PRID, since all information provided to the Commissioner is made public under Insurance Code section 1861.07. This subdivision is necessary for clarity since other interpretations may be asserted by the parties and frustrate the regulation's purpose. In turn, this subdivision allows the affected parties to act in accordance with the proposed regulation without undue confusion which has the benefit of preserving the resources of insurers, consumers, and the Department.

(o) In a complete rate application that is submitted by an insurer subsequent to a PRID procedure, any person may rely upon the PRID to determine what is required model information. A PRID is not specific to any one complete rate application but may be relied upon in multiple complete rate applications by unaffiliated insurers. A PRID shall be valid in any complete rate application proceeding relying upon that model through the four-year anniversary date of its issuance, provided that the model has not been substantively updated, amended, altered, or changed

subsequent to the issuance of the PRID. The validity of a PRID shall be determined as of the date of the submission of the complete rate application relying upon the PRID.

The purpose of this subdivision is to establish that in a subsequent complete rate application filed after a PRID procedure, a PRID may be relied upon to determine what is required model information to be provided in support of a complete rate application. If a PRID cannot be relied upon in a complete rate application, the PRID procedure would be meaningless and the proposed regulation will not achieve the goal of eliminating discovery disputes regarding models in a specific rate filing. This subdivision also clarifies that a PRID is not specific to any one rate application but may be relied upon in multiple complete rate applications by insurers that rely upon the model subject to the PRID. Without this clarification, there may be confusion over how the PRID is to be used in a subsequent rate application provided to the Commissioner and frustrate the regulation's purpose.

This subdivision also establishes that a PRID is valid for four years after the PRID is issued, unless the model is substantively updated, amended, altered, or changed. To avoid any confusion, this subdivision clarifies that a PRID is valid through the four-year anniversary date of its issuance. This subdivision is necessary for various reasons. The purpose of the PRID procedure is to expedite the Department's review and approval of rate filings that rely upon models by eliminating any unnecessary discovery disputes regarding models that delay the process. If a PRID does not remain valid for a sufficient period of time, the PRID procedure may be overburdened with multiple petitions and ultimately backlog the system. By allowing the PRID to remain valid for four years, there is certainty for insurers seeking to rely upon models in multiple rate filings.

Further, the four-year validity period is reasonable and necessary to ensure that the PRID remains up-to-date and hence, reliable. In an earlier version of the proposed regulation, the Department initially considered a two-year restriction on a PRID's validity. During public workshops, some raised concern that a two-year restriction would be too short as various existing models are not updated as frequently. After considering the comments and evaluating how often models are generally updated, the Department has increased the timeframe to four-years. This subdivision also specifies that the validity of a PRID shall be determined as of the date of the submission of the complete rate application relying upon the PRID. Meaning, if the PRID is valid as of the submission date of the complete rate application, the PRID can be relied upon during the course of the rate review process so long as the model has not been substantively updated, amended, altered, or changed. This is reasonably necessary to avoid situations where a PRID expires during the rate review process. Without the clarifying sentence, inconsistent interpretations may be asserted by the parties and frustrate the regulation's purpose.

(p) In the event a model is substantively updated, amended, altered, or changed subsequent to the issuance of a PRID but prior to the submission of a complete rate application using or relying upon the model as substantively updated, amended, altered, or changed, then (i) the original PRID is no longer valid for purposes of determining required model information, and (ii) any party may initiate or participate in, pursuant to this Section, a subsequent PRID procedure

limited to the issue of whether and how the prior PRID should be substantively updated, amended, altered, or changed.

The purpose of this subdivision is to establish that if a model is substantively updated, amended, altered, or changed after the issuance of a PRID but before the submission of a complete rate application relying upon the PRID, then the PRID is no longer valid. This subdivision is necessary because model technology is continuing to evolve, and modeling companies frequently update, amend, alter, and/or change models such that a PRID may no longer be valid after a model has been updated, amended, altered, and/or changed. For example, there may be data updates or algorithmic changes that alter the output of the model and shift the validity of the model. There are so many components of a model that any update could have significant impacts on the output. By invalidating a PRID if there are substantive changes, this subdivision ensures that a PRID is up-to-date and remains reliable for purposes of specifying required model information in a complete rate application.

This subdivision also provides parties with an option to initiate or participate in a subsequent PRID procedure to inquire into how the prior PRID should be substantively updated, amended, altered, or changed. The issues in a subsequent PRID procedure should be limited to the relevant changes in question. This is reasonable and necessary to avoid overburdening the PRID procedure and to preserve limited public resources focusing on relevant issues. It will also aid in the expedient processing of an updated PRID.

(q) The PRID procedure shall stand submitted when the Model Advisor closes the record. The Model Advisor shall close the record no later than 90 business days after issuing the confidentiality order specified in this Section unless all parties agree or the Model Advisor determines there is good cause to keep the record open. The Model Advisor shall issue a final pre-application required information determination that specifies all required model information within 15 business days after the PRID procedure is submitted.

The purpose of this subdivision is to establish that the Model Advisor is responsible for closing the record and issuing a final PRID that sets forth all required model information to be submitted in a rate application. This subdivision also places time limits on how long the Model Advisor has to close the record and issue a final PRID after the procedure stands submitted. During public workshops, some expressed concern that the PRID procedure would be so time consuming that it would inadvertently exacerbate market challenges as opposed to alleviating them. The specified 90 business day and 15 business day timeframes are reasonably necessary and will aid in the expedient processing of a PRID. To allow flexibility to the Model Advisor, this subdivision makes clear that the 90-business day timeframe can be extended if all parties agree or the Model Advisor determines there is good cause to keep the record open.

(r) As an alternative to issuing a PRID, the Model Advisor may issue a declination to specify a set of required model information after a PRID procedure, if the Model Advisor determines that there is no set of required model information that could reasonably be relied upon to support the use and inclusion of any of the modeled financial projections, modeled catastrophe adjustments, modeled projected losses,

or any other type of modeled loss outputs and projections for purposes of reviewing an insurer's complete rate application. In the event the Model Advisor declines to specify a set of required model information, any insurer may still seek to rely upon the model in a subsequent complete rate application but shall publicly produce any information and data the Commissioner requires regarding that model as part of the complete rate application.

The purpose of this subdivision is to establish that the Model Advisor also has the authority not to issue any determination that sets forth the required model information. This subdivision specifies that a declination to specify a set of required model information is not a determination that a model cannot be relied upon in a rate application. In fact, this subdivision is reasonably necessary to clarify that an insurer is still free to submit a rate application relying upon that model. However, the difference is, the insurer will not have a PRID that pre-specifies the required model information that must be included in a complete rate application. Insurers who rely upon a model in a complete rate application without a PRID should be ready and able to produce any information and data the Commissioner requires consistent with the requirements in Insurance Code section 1861.07.

(s) At any time prior to the Model Advisor issuing a PRID, the parties to a PRID procedure may stipulate to a set of required model information. The parties shall submit any such stipulation and a proposed set of required model information to the Model Advisor for review. No later than 15 business days after submission of the stipulation and proposed set of required model information, the Model Advisor shall determine whether the proposed required model information satisfies the standards set forth herein and issue an order either adopting or declining to adopt the proposed set of required model information as the PRID for that model.

The purpose of this subdivision is to ensure that parties have the option to enter into a stipulation specifying a set of required model information to be submitted in a complete rate application. This subdivision is necessary since parties may choose not to go through the entirety of the PRID procedure to obtain a PRID. Parties may have a need to expedite the PRID procedure, save costs, or simply narrow the issues and agree on a set of required model information to be submitted. By allowing parties to stipulate at any time, this subdivision promotes settlement. At the same time, this subdivision requires parties to submit their stipulation to the Model Advisor who will have authority to adopt or decline to adopt the proposed stipulation. This is reasonably necessary to ensure that the stipulated set of required model information is consistent with the requirements of this new regulation. This further helps decrease any unintended delays in the rate review and approval process. This subdivision also provides a timeframe for when the stipulated PRID is required to be approved or disapproved. The 15-business day timeframe is reasonably necessary and will aid in the expedient processing of a PRID.

(t) A PRID shall be subject to judicial review in accordance with Insurance Code sections 1858.6 and 1861.09. For purposes of judicial review, a declination by the Model Advisor shall not be considered a final decision.

The purpose of this subdivision is to clarify that the PRID is subject to judicial review. This provides a layer of protection for any party who may be adversely affected or aggrieved by the PRID. Although a PRID is not an adjudicative final decision of the Commissioner, this subdivision is necessary for purposes of judicial efficiency because a single PRID may affect multiple rate applications and rate orders. It would be judicially inefficient if multiple rate orders depending upon a disputed PRID were subject to judicial review, instead of a single PRID. This subdivision clarifies, however, that a declination by a Model Advisor to specify a set of required model information is not a final decision and therefore not subject to review by the courts. This subdivision is necessary to ensure that there is no confusion, uncertainty, or dispute over what is subject to judicial review.

(u) Any Department costs associated with a PRID procedure shall be construed to be administrative and operational costs arising from the provisions of article 10 of division 1, part 2, chapter 9 of the Insurance Code.

The purpose of this subdivision is to clarify that any Department costs associated with a PRID procedure, such as outside consultant fees, are part of the Department's costs of administering Proposition 103. Accordingly, such costs must be recouped from the recoupment fee assessment process under California Code of Regulations, Title 10, Chapter 5, Subchapter 4.8, Article 7, section 2647.1, which ensures that each insurer pays a fair share of the Department's actual cost of administering Proposition 103. This subdivision is necessary to ensure that there is no confusion, uncertainty, or dispute over how the Department's costs are construed.

(v) Nothing in this section shall be construed as prohibiting the creation of a publicly available model for use in projecting annual aggregate catastrophe losses.

The purpose of this subdivision is to make clear that the proposed regulation is not intended in any way to prohibit the creation or use of a public model. This subdivision is also reasonably necessary to prevent interested parties from contemplating any unintended interpretation against the creation or use of a public model. During public workshops, many advocated for the creation of a public catastrophe model that would be open and available for public use. The Department recognizes the benefits of a public model but currently, there is no existing option that can be used. In order for the Department to create a public model, it would take years of time, resources and funding that are not currently allocated and/or available. For example, Florida has a public model for hurricanes but it took five years to create and millions of dollars to fund. Since the insurance market today necessitates urgent measures that even the Governor has recognized, it is critical that the Department moves forward in allowing private models that are widely used today in the insurance industry and across the nation in both ratemaking and underwriting.

ECONOMIC IMPACT ANALYSIS

Overview of the Proposed Regulation

The proposed regulations will change the way insurers calculate rates for property insurance in California. The regulations provisions will be grouped into three main areas for analysis of potential economic impacts. First, the regulations establish a pre-application required information determination (PRID) procedure to determine what information and data relating to the use of a catastrophe model in ratemaking is provided to the Commissioner in a complete rate application. Second, the regulations set conditions that allow insurers to use catastrophe models to project annual aggregate losses and calculate the catastrophe adjustment for wildfire exposure. Third, the regulations set standards for insurer commitments to increase writing of residential and commercial insurance policies in distressed areas with high wildfire risk exposure.

Establishing a Baseline and Impacted Entities

Without the proposed regulation, the Department expects that many insurance companies would continue, or escalate, their current practice of pausing, or reducing, the number of policies they write in the state. Insurers have cited exposure to catastrophic weather events, higher construction repair costs, global inflation, and greater reinsurance premiums as the primary drivers of their decision to pull back from the California market. Since the beginning of 2022, 7 of the top 12 insurance companies have paused or restricted new business, despite having rate increases approved or pending with the Department.[5] In 2023, two of California's largest insurance carriers, representing more than 27 percent of the voluntary insurance market, announced they would stop issuing new homeowners and commercial property insurance policies in the state.[6] The current actions by insurers in the voluntary market have left some consumers without many options, often leading them to seek coverage through the California Fair Access to Insurance Requirements Plan (FAIR Plan). This can negatively financially impact some consumers as FAIR Plan policies often cost more and do not provide the same coverage options as voluntary market insurance policies.

The Department assumes that insurance companies are already familiar with models, both through their use in other states and their use in California. In California, deterministic scoring models are allowed for assigning wildfire risk scores and catastrophe models are used in other perils, such as earthquake and fire following earthquake. With many insurers frequently filing for new rates, the Department does not anticipate significant insurer costs due to new rate filings resulting from the regulation. This analysis assumes that the regulation will not significantly alter the timing of when an insurance company files their rate application, but parts of the regulation may increase the workload on insurance company staff.

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[5] California Department of Insurance. California's Sustainable Insurance Strategy. https://www.insurance.ca.gov/0400-news/0100-press-releases/2023/upload/California-s-Sustainable-Insurance-Strategy-slides.pdf. pg.4. Accessed June 13, 2024.

[6] Executive Department State of California. Executive Order N-13-23. https://www.gov.ca.gov/wp-content/uploads/2023/09/9.21.23-Homeowners-Insurance-EO.pdf. pg.1. Accessed June 17, 2024.

Some monetary benefits will only accrue to insurers or policyholders should a catastrophic loss event occur. Given these events are random, have a low frequency of occurrence, and vary greatly in the magnitude of losses, it is not feasible to accurately estimate monetary values for some potential benefits (e.g. quicker economic recovery in the aftermath of a catastrophic loss event). Still, these are important regulatory benefits.

PRID Procedure

The proposed regulation creates the PRID procedure to allow complex catastrophe models to be reviewed in a way that protects third-party modelers' data from competitors and facilitates public participation in the ratemaking process consistent with Proposition 103. The PRID procedure is optional, and a single PRID procedure may result in a determination of required model information that may be used in multiple rate applications by unaffiliated insurers. Not going through a PRID procedure with a new model could potentially slow down the approval of an insurer's rate application seeking to rely upon that model. The PRID procedure does not currently exist, so all impacts resulting from the PRID procedure are new impacts.

There are currently seven companies that have developed wildfire risk models and provided documentation on those models to the National Association of Insurance Commissioners (NAIC) that would likely be subject to a PRID procedure. Absent the regulation, the Department would not expect any new companies to be incentivized to develop models for use in California.

Catastrophe Models

Use of catastrophe models to project wildfire losses for ratemaking is not currently allowed in California. The use of catastrophe models is not expected to significantly change the total amount of aggregated premiums collected by the insurance industry. One of the main benefits of using catastrophe models is that they are forward-looking. After the regulation is adopted, some insurance companies or consumers may have higher rates, and some may have lower rates. Specifically, property owners who mitigate wildfire risks could see lower rates as catastrophe models are expected to improve risk quantification and consideration of mitigation efforts.

The insurer commitments were designed to be achievable, so catastrophe models could be available to insurers that want to use them. However, just allowing the use of catastrophe models is not expected to result in an impact on aggregate premiums collected by insurers.

Insurer Commitments

Insurer commitments will be made in rate filings submitted to the Department. The Department reviewed rate filings received over the last 5 years in order to estimate that insurers will submit 83 rate filings in the 12 months after the regulations effective date. This estimate includes residential and commercial rate filings.

This analysis assumes that all new voluntary market residential policies are transfers from the FAIR Plan, and are not previously insured through a nonadmitted insurer or were uninsured. This assumption was made for multiple reasons. First, individuals with properties currently insured through the FAIR Plan are still in the insurance market and are encouraged to look for voluntary market policies, so barriers (e.g. financial ability to pay for insurance, desire for insurance coverage, risk profile of the property) to voluntary market insurance coverage are likely less than

for an uninsured property. Second, voluntary market policies are typically a more cost-effective option for insurance consumers, so individuals with a property insured through the FAIR Plan would be financially motivated to pursue voluntary market insurance coverage. Lastly, section 2248.4.8, subdivision (d)(3)(B), allows for moderate to very high fire risk properties previously covered by the FAIR Plan to count towards the insurer commitment, even if they are not in a distressed area.

In order to presumptively demonstrate a need to use catastrophe models, voluntary market insurers are expected to increase the number of residential policies in distressed areas that they write. Between September 2021 and March 2024, the FAIR Plan has seen its total exposure increase to $340 billion from $195 billion, a 74% increase. Without the proposed regulation, the Department estimates that the FAIR Plan will continue to gain approximately 42,200 new residential policies per year.

Table 1. Average Increase for FAIR Plan Residential Policies in Force

Date	FAIR Plan Policies in Force[7]	Yearly Change
September 2019	154,494	
September 2020	202,897	48,403
September 2021	234,277	31,380
September 2022	264,012	29,735
September 2023	320,581	56,569
March 2024	365,694	*45,113
	Average	**42,240**

*data only covers six months

In the FAIR Plan, the number of commercial policies has increased by 116 percent since 2019, and the FAIR Plan's commercial written premium has increased by more than 300 percent since 2021.[8] Without the proposed regulation, the Department assumes that the FAIR Plan will continue to increase its number of commercial policies every year.

Benefits Anticipated from the Proposed Regulation

PRID Procedure

- Increasing openness and transparency in business and government by establishing a procedure to allow for thorough investigation of a model to determine what information and data is pertinent to using that model in ratemaking.
- Clarifying and expediting the review of modeled catastrophe loss projections and overall rate review process by establishing the role of a Model Advisor to direct a new procedure specified by these regulations and make determinations as to what constitutes required model information in a rate application. Without this procedure, model disputes would

[7] California FAIR Plan. Key Statistics & Data. March 2024.https://www.cfpnet.com/key-statistics-data/. Accessed June 13, 2024.
[8] *Ibid*, California FAIR Plan.

likely occur during the rate application, potentially leading to lengthy delays in the rate review and approval process.

The PRID procedure benefits both the public and modelers by protecting the modeler's sensitive information from competitors, while at the same time allowing for public participation. It is anticipated that the PRID procedure could speed up the model review process and help facilitate faster approvals of rate applications.

Catastrophe Models

- Improving pricing accuracy and rate stability by allowing insurers to use additional tools to assess prospective exposure to catastrophe losses in their rate calculations.
- Promoting availability of insurance in areas that have been underserved by improving pricing accuracy and encouraging a more competitive market.
- Promoting fairness as models can more timely account for risk mitigation trends as a result of risk mitigation actions taken at community and property levels.
- Encouraging uniformity and consistency in insurance ratemaking by allowing the use of scientifically, computationally, and actuarially sound models to project catastrophe losses in property and casualty lines, a practice allowed in other states.
- Standardizing the usage of nonmodeled losses to streamline the rate review approval process, minimize disputes, and allow for the more focused review and faster approval of rate applications.

The proposed regulation allows insurers to use catastrophe models to project annual aggregate losses for wildfire exposure. The American Academy of Actuaries found, "*Historical information is generally insufficient for predictions related to future catastrophes. As a result, catastrophe modeling—which is more accurate, stable, and flexible—has been developed. Catastrophe models have become an important element in actuarial practice."* [9] Catastrophe models are currently used in most, if not all, other states. Allowing California insurers to use models is anticipated to increase rate stability and aid insurers with calculating Risk-Based Capital requirements. The use of models will help insurers better estimate expected losses from low-frequency, high-severity events; account for future circumstances; and allocate costs to specific lines of business or perils.[10]

The ability to better evaluate and quantify risks is estimated to lead to fewer future insurance company insolvencies. This expected benefit is consistent with the experience other states had after implementing catastrophe models. *"In 1992, Hurricane Andrew caused $30 billion in losses and caused 11 insurers to become insolvent. In 2005, Hurricane Katrina caused $87 billion in losses, yet no insurers faced insolvency. Between Andrew and Katrina, insurers*

[9] American Academy of Actuaries. Uses of Catastrophe Model Output. July 2018. https://www.actuary.org/sites/default/files/files/publications/Catastrophe_Modeling_Monograph_07.25.2018.pdf. Pg.1. Accessed May 2, 2024.

[10] Canadian Institute of Actuaries, Casualty Actuarial Society, Society of Actuaries. Incorporation of Flood and Other Catastrophe Model Results into Pricing and Underwriting. 2018. https://www.soa.org/49345c/globalassets/assets/files/resources/research-report/2018/incorporation-flood-catastrophe.pdf. pg. 12. Accessed June 13, 2024.

adopted catastrophe models to better understand their hurricane risk. This allowed them to have more adequate pricing and reinsurance to survive Katrina."[11]

Following the Camp Fire in 2018, the Department took over Merced Property & Casualty, liquidating assets and transferring liabilities to the California Insurance Guarantee Association (CIGA).[12] CNN reported that Merced Property & Casualty had $64 million in outstanding liabilities in the town of Paradise when it was liquidated.[13] Therefore, the Department estimates that this regulation may save one insurance company from insolvency in the next 7 years, preventing $64 million in liabilities from being transferred to CIGA, where outstanding liabilities would be paid by the remaining solvent insurers. By mitigating the risk of future insolvencies, the regulation is projected to save CIGA members (insurance companies) an estimated $9.1 million per year ($64 million /7) over 7 years.

A potential future insurer insolvency would also lead to a loss of coverage for all of the insurer's policyholders, even for properties not directly impacted by a catastrophic event. Additionally, an insurer insolvency is likely to lead to a worsened economic recovery in an area affected by wildfire, increased insurance availability issues, increased problems with refinancing or obtaining a mortgage that requires insurance coverage, and insurers nonrenewing more policies to account for increased market risks. An insolvency may also impact individuals whose claim exceeds the statutory limit for CIGA benefits.

In total, the catastrophe model regulations are expected to save insurance companies an average of $9.1 million per year over 7 years.

Insurer Commitments

- Promotes market efficiency by affording to insurers who commit to writing more business in distressed areas, and/or taking out of the FAIR Plan more policies insuring properties impacted by heightened wildfire risk, a mechanism for calculating rates more accurately than may be possible using historical loss trends, thus enabling insurers to charge rates commensurate with the associated increased risk of loss.
- Promotes fairness by creating an attainable standard that all companies must follow should they want to presumptively demonstrate a need to use catastrophe modeling in ratemaking.
- Increases competition in the voluntary insurance market for qualified residential insurance policies in distressed areas, as an insurance company will now need to write additional policies to meet, or maintain, its insurer commitment.
- Decreases the likelihood of a FAIR Plan assessment of normal market insurers in the event of a large wildfire. Currently, the FAIR Plan is experiencing significant growth in higher-risk, wildfire-prone areas. In the event of a large wildfire, normal market insurers

[11] Dietzen, Greg and Chamberlain, Matt, Milliman. *Taking catastrophe models out of the black box*. July 25 2022. https://www.milliman.com/en/insight/taking-catastrophe-models-out-of-the-black-box. Accessed June 13, 2024.
[12] California Department of Insurance. Press Release: Regulator takes control of small failing insurer. November 30, 2018. https://www.insurance.ca.gov/0400-news/0100-press-releases/2018/release141-18.cfm. Accessed June 18, 2024.
[13] Yan, Holly and Boyettte, Chris. *Insurance company goes under after California's most destructive wildfire*. December 4, 2018 https://www.cnn.com/2018/12/04/us/camp-fire-insurance-company-liquidation/index.html. Accessed June 13, 2024.

could be assessed to help fund the FAIR Plan's obligations. A FAIR Plan assessment would be an additional cost for insurers and cause further instability in the voluntary property insurance market. By helping insurers that commit to writing more specified types of higher-risk policies to set more accurate rates through the use of catastrophe modeling, a side benefit of these regulations will be to decrease the number of FAIR Plan policyholders and also alleviate insurer uncertainty due to high levels of risk in the FAIR Plan.

- Increases the availability of commercial insurance policies in higher wildfire risk areas by requiring companies to write a number of additional policies equivalent to five percent of the company's total insurable value in order to presumptively demonstrate a need to use catastrophe models.

The Department assumes that requiring insurers to make an insurer commitment will allow such insurers to presumptively demonstrate a need to use catastrophe models in their rate calculations because their historic losses may no longer be accurate for ratemaking purposes. Enabling insurers who increase their coverage of higher-risk properties to set more accurate rates is expected to have two main impacts on the voluntary insurer market. First, insurers will need to write additional policies in distressed areas to meet their insurer commitment. Second, because the proposed regulation also allows insurers to include properties previously covered by the FAIR Plan as part of meeting their commitment, it is expected to stop the current trend of FAIR Plan policy growth. The full number of policies expected to be added to the voluntary market over the pre-regulatory baseline is estimated as the sum of new policies needed to achieve the insurer commitment and the policies that are no longer expected to be nonrenewed and forced to seek coverage through the FAIR Plan (yearly average FAIR Plan increase calculated in Table 1). This increase over the baseline is expected because the insurer commitment requires an increase in policies to maintain, or achieve, their insurer commitment. Any nonrenewals of policies in distressed areas would result in an additional deficit that an insurer would have to offset by writing more policies in distressed areas. Based on feedback from insurance companies and the benefits that are anticipated from using catastrophe models, this analysis assumes that all insurers will make a good faith effort to fulfill their insurer commitment.

The Department analyzed the residential voluntary insurance market data reported for 2021 and attempted to estimate how many earned exposures each insurance company would have to add in order to meet the residential insurer commitment requirements, as outlined in section 2644.4.8(d). As a result, requiring insurers to write additional policies in order to presumptively demonstrate a need to use catastrophe models in ratemaking is estimated to lead to an increase of approximately 15,000 voluntary market policies in distressed areas over the two-year period specified in the regulation, or a gain of 7,500 policies annually. This estimate accounts for an increase in the number of FAIR Plan policies in distressed areas by using FAIR Plan data from 2023, but at the time of this analysis the most recent voluntary market data was for 2021. Therefore, this estimate does not reflect any change to an insurer's market share, or any nonrenewals of policies in distressed areas, that has occurred since 2021. The estimate also does not consider the inclusion of any new distressed ZIP codes or counties that could increase the statewide distressed area total and affect the insurer commitments. As such, this estimate should be viewed as a lower-bound estimate, and the Department expects that the number of voluntary market policies in distressed areas that is needed to meet insurer commitments will be larger.

In the baseline scenario, the FAIR Plan is expected to gain approximately 42,200 new policies per year and would be expected to continue that trend absent the regulation. Therefore, the regulation is expected to result in a net gain of approximately 49,700 (42,200 + 7,500) new residential voluntary market policies in the first year after full implementation, over the baseline scenario. By the end of year two, when insurer commitments are assumed to be complete, the Department assumes that 99,400 (42,200 + 7,500 + 42,200 + 7,500) more properties will have voluntary market insurance than would absent the regulation.

In an interview with KCRA news, Phil Irwin a public relations representative for the California FAIR Plan, noted that the customers insured through the FAIR Plan with a difference in condition policy pay an average of $3,200 in annual premiums.[14] According to a review of average home insurance rates in each state conducted by insurance.com, the average cost of homeowners insurance for policies with $600,000 in dwelling coverage was approximately $2,600 per year in California.[15] The Department estimates that individuals who switch from a FAIR Plan policy to a voluntary market policy will save, on average, $600 ($3,200 - $2,600) per year.

Table 2. Insurance Consumer Premium Savings

Consumer Impacts	Year 1	Year 2
Voluntary Market Policies (over baseline)	49,700	99,400
Voluntary Market Savings (per policy)	$600	$600
Total Consumer Savings	$29,800,000	$59,600,000

As shown in Table 2, insurance consumers are expected to save $29.8 million in premiums the first year, and $59.6 million in premiums in year two. Voluntary market insurers are also expected to benefit from collecting premiums of $129.2 million in the first year, and $258.4 million in year two, as shown in Table 3. Please note, that the corresponding estimated cost impact to the FAIR Plan will be discussed in the Costs Anticipated from the Proposed Regulation section, under Insurer Commitments.

[14] Flores, Hilda. *California FAIR Plan wildfire insurance: What is it, and how can I get it?* KCRA 3 News: https://www.kcra.com/article/california-fair-plan-wildfire-insurance-what-is-it-how-can-i-get-it/40574517. Posted: July 12, 2022. Accessed: June 19, 2024.

[15] Kasperowicz, Leslie. ***Average homeowners insurance rates by state in 2024.*** Insurance.com. https://www.insurance.com/home-and-renters-insurance/home-insurance-basics/average-homeowners-insurance-rates-by-state. Updated: June 20, 2024. Accessed: June 28, 2024.

Table 3. Voluntary Market Insurer Benefit

Insurer Impacts	Year 1	Year 2
Voluntary Market Policies (over baseline)	49,700	99,400
Average Voluntary Market Premium (per policy)	$2,600	$2,600
Total Insurer Benefit	$129,200,000	$258,400,000

The regulation is also expected to lead to an increase in insurance coverage offered through the commercial property insurance market. Commercial policies are very different from residential policies, and cover many different types of risk such as property damage, business interruption, theft, liability, and worker injury. Some commercial polices cover many different business locations throughout the state. The premium amounts for commercial policies will differ greatly depending on the location of the business, the size of the business, and the business' exposure to loss (fire or other perils). The commercial commitments are also expected to stop the current trend of FAIR Plan policy increases.

The regulation requires commercial insurers to increase their number of policies in distressed areas by an amount equal to 5 percent of their total insurable value. However, the Department does not collect the data that would be needed to estimate how a five percent increase in total insurable value would translate into an increased number of commercial policies. The following analysis estimates the potential number of impacted structures that may obtain voluntary market commercial insurance coverage to provide a frame of reference, and inform the public of the potential scope of the regulation.

Department data shows there are 1,025,300 commercial structures insured through the voluntary market. Assuming that a 5 percent increase in total insurable value is roughly equivalent to the percentage increase in commercial structures that would obtain new insurance coverage, the regulation would help approximately 51,300 (1,025,300 x 5%) commercial structures gain voluntary market coverage. This assumed relationship between insured structures and total insurable value is an imprecise estimate. The actual number of new commercial insurance policies will largely be dependent upon the insurable value of properties. Because of the large variance in coverage options and premiums for commercial policies it is not feasible to estimate how many policies an insurer might add, and it is not feasible to estimate monetary benefits that may accrue to specific businesses or industries. Additionally, the FAIR Plan has a low commercial concentration, with nearly 20,000 insured structures in 2022. The commercial insurer requirements may require some insurers to write properties that are currently uninsured, or insured through the nonadmitted market, in order to meet their commitment.

The largest monetary benefit to businesses from increased commercial insurance coverage options will only accrue if a catastrophic event happens. In that instance, increased insurance coverage will be vital for promoting a quick economic recovery for businesses and communities. Studies have found that increases in insurance coverage can reduce or eliminate GDP declines in the quarter immediately following a catastrophic event. *"These estimated coefficients suggest that if a large disaster of 1% of GDP hits a country, the quarterly GDP growth rate declines by 0.25 percentage points in case of no insurance coverage. However, if 25% of the losses are*

insured, the GDP growth rate is estimated to only decline by around 0.15 percentage points. The effect is even smaller, around 0.06 percentage points, if half of the losses are insured. For unusually high shares of insured losses – e.g. a 75% insured share corresponding to the 90th percentile of the distribution – our empirical model even suggests an almost immediate (within quarter) rebound in GDP growth."[16] Even if a catastrophic event does not reach the 1 percent of GDP threshold that the study analyzed, businesses and communities should still see a monetary benefit and a quicker economic recovery resulting from increased commercial insurance coverage.

Summary Matrix: Estimated Monetary Benefits

	Households	Insurance Companies
PRID Procedure	$0	$0
Catastrophe Models	$0	$9,100,000
Insurer Commitments	$29,800,000	$129,200,000
Total	**$29,800,000**	**$138,300,000**

Costs Anticipated from the Proposed Regulation

PRID Procedure

The Department estimates that nine companies will have wildfire models that could be subject to the PRID procedure and be used by insurance companies within the first three years after the regulation is implemented. This estimate includes seven companies who have already submitted model information to the NAIC and two additional companies that the Department anticipates may be incentivized to enter the California market.

Representatives from the insurance industry and trade groups, modeling companies, and consumer intervenors are anticipated to provide arguments, question witnesses, or provide expert testimony during a PRID procedure. The Department anticipates that attorneys, actuaries, and research scientists, or similar occupations with comparable job duties and pay, would be the most likely occupations to be a part of a PRID procedure. The estimates of the number of hours assumes PRID procedures will be conducted on a full-time equivalent basis for some occupations, with supporting staff and expert witnesses likely to be less involved. The full breakdown of anticipated cost impacts on private industry that are expected to result from the PRID procedure regulation are estimated in Table 4, below.

[16] European Insurance and Occupational Pensions Authority. Climate Change, Catastrophes and the Macroeconomic Benefits of Insurance. 2021. https://www.eiopa.europa.eu/system/files/2021-07/thematic-article-climate-change-july-2021.pdf. Accessed: June 13, 2024.

Table 4. Estimated Private Industry Costs Related to a PRID Procedure

Industry	Occupation	Hours	Hourly Wage[17]	Cost
Insurance	Attorney	2,000	$100.61	$201,200
Insurance	Actuaries	1,000	$76.26	$76,300
Modelers	Computer and Information Research Scientists	2,000	$115.93	$231,900
Intervenor	Attorney	1,000	$100.61	$100,600
Intervenor	Actuaries	500	$76.26	$38,100
Intervenor	Computer and Information Research Scientists	500	$115.93	$58,000

Owners or vendors of models may decline to participate in a PRID procedure, but are still required to provide witness testimony, documents, and other information in response to a subpoena. Intervenors may be reimbursed by insurers for nonduplicative, substantial contributions to the PRID procedure, but this cost estimate does not attempt to forecast what percentage of additional intervenor costs might be reimbursed.

In total, the PRID procedure is anticipated to result in a direct cost of $277,500 to the insurance industry and insurer trade groups, $231,900 to modeling companies, and $196,700 to consumer intervenors.

Catastrophe Models

Use of catastrophe models is not expected to significantly change the total amount of aggregated premiums collected by insurance companies. However, some insurance consumers will have higher rates and some will have lower rates. Property owners who mitigate wildfire risk could see lower rates as catastrophe models will do a better job of capturing both individual and community mitigation efforts. *"For the same selected base risk with estimated building replacement costs of $400,000, community mitigation could result in individual credits varying between 26% and 97%, a decrease of up to $535 of AAL, and a reduction in premium of as much as $823. The additional effect that community mitigation could have after individual mitigation ranges between 1% and 43%, up to a $244 decrease of AAL, and as much as $375 in premium reduction."*[18]

It is unclear that using a catastrophe model will immediately result in significant rate impacts for insurers, and catastrophe losses are one of many perils that get priced into a standard homeowners policy. Over time it is expected that models will better account for infrequent climate-related catastrophic events, and models will become more accurate as they incorporate more wildfire loss data. But given the number of recent wildfires it is not a given that catastrophe models will initially lead to increased rates when compared to historical data.

[17] Employment Development Department, Labor Market Information Division (EDD LMID). OEWS Employment and Wage Statistics, July 2023. https://labormarketinfo.edd.ca.gov/data/oes-employment-and-wages.html. Mean Hourly Wages were used for Lawyers and Computer and Information Research Scientists, Actuaries use the 75th Percentile Hourly Wage. Accessed June 17, 2024.

[18] Casualty Actuarial Society. Catastrophe Models for Wildfire Mitigation: Quantifying Credits and Benefits to Homeowners and Communities. 2022. https://www.casact.org/sites/default/files/2022-10/RP_CatCatastrophe_Models_for_Wildfire_Mitigation.pdf. Pg. 7. Accessed June 18, 2024.

Insurer Commitments

The regulation on distressed areas and insurer commitments is anticipated to result in additional costs to insurance companies. First, the insurer will need to submit a rate filing to the Department that documents its insurer commitment before the insurer can use catastrophe models. Second, the insurer must create and maintain the Wildfire Risk Portfolio Register. Third, for new policies that previously received insurance coverage through the FAIR Plan and count towards the insurer commitment, the insurer will need to retain specific documentation. The insurer will need to have on file a carrier discovery report, or other documentation such as copies of declarations pages from the FAIR Plan. Finally, the FAIR Plan is expected to collect less in premiums as more properties are insured through the voluntary market.

The insurer needs to calculate its statewide market share pursuant to section 2644.4.8(b)(1). Then the insurer will multiply (1) the statewide market share (2) 0.85, and (3) the number of statewide qualifying residential property insurance policies inside distressed areas that is provided via bulletin (as described in section 2644.4.8 (b)(2)) to calculate the distressed area target. Alternatively, the insurer could choose the five percent increment method and multiply their total number of policies in distressed areas by five percent to calculate their insurer commitment. In either case, the Department estimates that this calculation will take approximately 30 minutes, assuming that the insurer's Wildfire Risk Portfolio Register is up-to-date. The Department assumes this task will be completed by a Financial Manager, or an occupation with similar skills and pay. The calculation of the insurer commitment is expected to cost insurers an additional $4,400 ($106.61 x .5 x 83).[19]

The insurer must also create and maintain the Wildfire Risk Portfolio Register. The register will be used to track the insurer's policies in distressed areas and monitor progress towards fulfilling the insurer commitment. For each property added to the portfolio, the insurer must track: the date the property was added to the portfolio; the address of the property, including the ZIP Code; if the property is being added to the portfolio solely on the basis that it lies within a distressed county but not any Undermarketed ZIP Code, the county in which the property is situated; the inception date of the policy; and the termination date of the policy, if the policy has terminated. The Department assumes that most insurers already track most of the required information, but some additional costs will accrue to insurers to assign and track distressed areas. This analysis assumes that most companies will elect to modify existing software systems to automate this process. However, some smaller insurers may elect to track this information manually, at an anticipated comparable or lower cost. This task is anticipated to require 200 hours of a software developer and 150 hours from insurance claims and policy processing clerks, or occupations with similar skills and pay. The development and maintenance of the Wildfire Risk Portfolio Register is expected to cost insurers an additional $1.7 million [($82.05 x 200 x 83) + ($24.36 x 150 x 83)].[20]

The insurer will need to have on file a carrier discovery report, or other documentation such as copies of declarations pages from the FAIR Plan. As estimated above, the Department projects

[19] *Ibid.* EDD LMID. 75th percentile hourly wage for Financial Managers.
[20] *Ibid.* EDD LMID. Median hourly wage for Software Developers and Insurance Claims and Policy Processing Clerks.

the proposed regulation will result in at least 15,000 new residential voluntary market policies over two years, or 7,500 per year. This analysis assumes that an insurance sales agent (broad occupational title; includes both agents and brokers), will have to spend an additional 15 minutes per policy to document the property's prior FAIR Plan status. This provision is expected to cost insurers $61,500 ($32.78 x .25 x 7,500).[21]

For the purpose of this analysis, the impact on the estimated total premium collected by the FAIR Plan is analyzed as a direct cost, similar to how the estimate for increased premiums collected by voluntary market insurers was treated as a direct benefit. This separation is made to inform the public about which businesses are expected to experience cost or benefit impacts, but the context around these impacts are different. Depopulating the FAIR Plan is identified as a benefit of the regulation, and the FAIR Plan's current expansion has associated risks. *"The FAIR Plan continues to grow in size as consumers find themselves without coverage. As a result, we have doubled in size in the last three years,"* said FAIR Plan President Victoria Roach. *"As those numbers climb, our financial stability comes more into question."*[22] If the FAIR Plan did not have enough money available to cover liabilities, voluntary market insurers would be liable, via assessment, to cover the shortfall. Insurers would then be expected to pass the additional cost to consumers. Uncertainty regarding the risk of a FAIR Plan assessment could cause voluntary market insurers to further withdraw from the market. Having an increasing number of properties insured through the FAIR Plan poses more risk than if those properties were insured through a healthy, competitive voluntary market.

Table 5. Cost to FAIR Plan: Decreased Premiums

FAIR Plan Impacts	Year 1	Year 2
FAIR Plan Policies (reduction from baseline)	49,700	99,400
Average FAIR Plan Premium (per Policy)	$3,200	$3,200
Total Cost to FAIR Plan	$159,000,000	$318,100,000

As previously calculated above in the *Benefits Anticipated from the Proposed Regulation: Insurer Commitments* section, 49,700 properties are expected to be impacted, resulting in a reduction in premiums collected by the FAIR Plan of $159 million in year 1, and $318.1 million in year 2. The premium reduction is the expected change from the baseline scenario and represents a loss in premiums from policies that the FAIR Plan cedes to, or does not assume from, the voluntary market.

[21] *Ibid.* EDD LMID. Median hourly wage for Insurance Sales Agents.
[22] Ramos, John. California FAIR Plan warns major disaster could wipe out insurer of last resort. CBS News: https://www.cbsnews.com/sanfrancisco/news/california-fair-plan-insurer-of-last-resort-warns-major-disaster-could-wipe-out-funds/ March 25, 2024. Accessed: July 1, 2024.

Summary Matrix: Estimated Monetary Costs

	Insurance Companies	Modeling Companies	Consumer Intervenors
PRID Procedure	$277,500	$231,900	$196,700
Catastrophe Models	$0	$0	$0
Insurer Commitments	$160,765,900	$0	$0
Total	**$161,043,400**	**$231,900**	**$196,700**

Fiscal Impact on Other State and Local Government Agencies

There is no provision in the regulations that requires another state or local government agency to act. (Note: While the California FAIR Plan's creation was mandated by state law, it is a private association funded and controlled by member insurance companies)

Fiscal Impact on the Department

PRID Procedure

The regulations state the Commissioner shall delegate the authority to oversee a PRID procedure to a Model Advisor, who has the authority to issue subpoenas, administer oaths, and control the course of the PRID procedure. The Department will incur costs in the administration of the PRID procedure, the review and analysis of catastrophe models, bringing in outside consultants, questioning expert witnesses, and judicial review of decisions. The Department anticipates that the Model Advisor will be dedicated full-time to running PRID procedures for three years. The Model Advisor is expected to need support from attorneys and legal staff in order to efficiently conduct proceedings and serve subpoenas. The Department also anticipates the Model Advisor will need support from actuaries and data specialists in order to properly evaluate catastrophe models. Additionally, attorneys will be needed to represent the Department's position during the PRID procedure, and to conduct judicial reviews. The expected additional time commitments from Department staff is equivalent to approximately 9 full-time positions and is calculated to result in a fiscal impact of $1,894,000 in year 1, $1,959,000 in year 2, and $1,958,000 in year 3.

The Model Advisor has the ability to bring in outside consultants to assist with model review. The Department anticipates needing support from outside consultants who are experts in the fields of fire science, applied mathematics, civil and mechanical engineering, actuarial science, and software development. The Department's reliance on outside consultants is expected to decrease as staff becomes more adept at evaluating models and running PRID procedures. The additional cost to bring in outside consultants is expected to result in a fiscal impact of $327,000 in year 1, $292,000 in year 2, and $179,000 in year 3.

In total, the PRID procedure is expected to result in a fiscal impact to the Department of $2,221,000 in year 1, $2,251,000 in year 2, and $2,137,000 in year 3.

Catastrophe Models

The fiscal impact analysis of the catastrophe model regulation assumes that the PRID procedure is effective in evaluating models so that additional actuarial review time of rate filings is limited. The Department assumes that senior actuarial staff will need to spend additional time in order to validate results of catastrophe models in the most complex rate filings and to redesign rate

templates and indications. The Department also anticipates that staff involved in the rate approval and rate enforcement process will require additional training on catastrophe models and the new rate templates in the first year. Additional time commitments from Department staff is expected to result in a fiscal impact to the Department of $309,000 in year 1, $71,000 in year 2, and $47,000 in year 3.

Insurer Commitments
The regulation text requires the Department to update the distressed areas and data needed for insurer commitment calculations, no less than once per year. Department staff, both specialists and managers, involved in data analysis are expected to spend additional hours to calculate the data needed to populate the bulletin. The involvement of additional Department staff, including deputy commissioners, attorneys, and managers is expected to be necessary to create, write, and publish the bulletin. The fiscal impact from the bulletin is expected to decrease after the first year, as subsequent bulletins can use the first bulletin as a template.

The Department also anticipates reviewing the Wildfire Risk Portfolio Register as part of routine examinations already being conducted by Department staff. The Department conducts an average of 12 examinations, annually. The regulation is anticipated to result in an increase in the amount of time spent on each examination, as additional time is needed to analyze the register and related data, select a random sample of policies from the register, and to review polices and their underwriting files to confirm that the information in the register is correct and that the policy should count towards fulfilling the insurer commitment.

In total, the insurer commitments regulation is expected to result in a fiscal impact to the Department of $74,000 in year 1, $72,000 in year 2, and $72,000 in year 3.

Summary Matrix: Fiscal Cost Impacts

	Year 1	Year 2	Year 3
PRID Procedure	$2,221,000	$2,251,000	$2,137,000
Catastrophe Models	$309,000	$71,000	$47,000
Insurer Commitments	$74,000	$72,000	$72,000
Total	**$2,604,000**	**$2,394,000**	**$2,256,000**

Results of the Economic Impact on California Business Enterprises and Individuals

Below is a summary of the results of the results of the Economic Impact on California Business Enterprises and Individuals. A detailed analysis of the conclusions follows.

A. **The creation of jobs within the state:** The proposed regulation is estimated to result in the creation of 1053.4 jobs within the State of California. Overall, the estimated net impact of the proposed regulation on jobs is less than one-thousandth of a percent of the total projected nonfarm employment in California (68.2 / 18,083,200= 0.0004%).[23]

[23] California Department of Finance. California Economic Forecast-May Revise 2024-25, April 2024. https://dof.ca.gov/forecasting/economics/economic-forecasts-u-s-and-california/ Accessed June 13, 2024.

B. **The elimination of jobs within the state:** The proposed regulation is estimated to result in the elimination of 985.2 jobs within the State of California. Overall, the estimated net impact of the proposed regulation on jobs is less than one-thousandth of a percent of the total projected nonfarm employment in California (68.2 / 18,083,200= 0.0004%).

C. **The creation of new businesses within the state:** It is not anticipated that the proposed regulation will have a significant impact on the creation of new businesses in California. However, the Department does anticipate that voluntary market insurers and modeling companies will expand operations in the state.

D. **The elimination of existing businesses within the state:** It is not anticipated that the proposed regulation will have a significant impact on the elimination of existing businesses in California. However, the Department does anticipate that the FAIR plan will reduce operations in the state.

E. **The competitive advantages for businesses currently doing business within the state:** Companies that do a better job of modeling risks more granularly could have a competitive edge over those who are not using catastrophe models to quantify risk. If insurers can better quantify the charge for risk in higher wildfire risk areas, they will be more likely to target those risks.

F. **The competitive disadvantages for businesses currently doing business within the state:** Insurers who do not use catastrophe models to quantify risk may not be as competitive in higher wildfire risk areas. As a result, some policyholders that the insurer would wish to maintain may elect to leave for another insurer that is better at pricing risk.

G. **The increase of investment in the state:** Inadequate residential and commercial insurance coverage can hinder investment in California by increasing the economic and financial risks associated with those investments. Many mortgages for home purchases require the property to be insured. Increased insurance availability may increase bank lending for mortgages, an investment in California. Without properties having proper access to insurance coverage, banks will likely invest in other markets (states) where their assets will have greater protection.

   Construction and development investments are dependent on consumer demand and commercial insurance coverage. Any hinderance to consumers or businesses can impact investment into these spaces. Housing projects may end up limited in some areas with increased wildfire risk if the related costs to insure projects in those areas are too high or if consumer demand in those areas is decreased due to the perception of lack of adequate coverage and costly premiums.

H. **The decrease of investment in the state:** Permitting catastrophe modeling will involve an adjustment period in which the market will be adapting to new risk information. It is possible that better risk quantification could lead to the identification of more wildfire risks in areas lacking mitigation. Specific areas could be categorized as too high-risk, which would deter individuals and businesses from investing in these areas.

I. **The incentives for innovation in products, materials, or processes:** As modeled catastrophe losses will be a new methodology permitted in California the state could see significant innovation in the number of, and quality of models. Expanded use of advanced predictive models and enhancement of underlying datasets may improve the overall performance of future catastrophe models. Several insurers have suspended writing residential insurance policies in California, while others have left the state completely. A market with less competition often has less innovation, the goal is to bring back insurers for a more balanced and competitive marketplace.

   Advanced modeling that can better identify the locations with the highest wildfire risk may lead to more precise, targeted mitigation strategies.

J. **The benefits of the regulations to the health, safety, and welfare of California residents:** The proposed regulation is expected benefit the welfare of California insurance consumers by reducing their financial risk exposure. With catastrophe modeling providing a clearer understanding of risk, insurers should be more willing to offer coverage in high wildfire risk areas, ensuring more Californians have access to coverage.

   Insurance companies and government agencies may be able to use data from models to proactively educate the public on risks and preparedness, leading to better prepared communities.

The Economic Impact on Jobs, Businesses, and the State Economy

The Department evaluated the potential changes to output and employment that could result from the proposed regulation. Employment and total output impacts were assessed using the Regional Input-Output Modeling System (RIMS II) multipliers.[24] In the following analysis, detailed industry level RIMS II multipliers were used to assess the indirect and induced impacts resulting from the estimated direct economic impacts on insurers, modelers, consumer intervenors, and households. RIMS II multipliers are used to estimate the economic impacts resulting from changes to demand and work best as a modeling tool during periods of economic stability. The RIMS II model is dependent on assumptions that predict how households and businesses will react to economic stimuli. The impact of major events that cause supply shocks to the economy are not modeled by RIMS II, and may result in changes to the initial demand assumptions.

[24] U.S. Department of Commerce, Bureau of Economic Analysis: Table 1.5 Regional Input-Output Modeling System (RIMS) Multipliers Type II (2017/2022). RIMS multipliers calculate how changes in economic activity result in new rounds of spending. For example, building a new road requires increases in production of asphalt and concrete. Workers who benefit will spend more, by dining out or seeing a movie. RIMS multipliers estimate that a new $1 million road creates 8.6 new jobs and increases total output by $2 million. Similarly, a decrease in initial economic activity would lead to a decrease in jobs and total output.

Creation or Elimination of Jobs within the State

The job impact estimates are based on aggregated data presented as full-time equivalents, not necessarily full-time jobs. The Department expects there will a minimal net impact to statewide employment. The job impacts for insurers were calculated using the RIMS II multiplier for insurance carriers, except direct life insurance. Because the regulation is expected to impact property and casualty insurers, this detailed multiplier is the most accurate available to measure the indirect and induced impacts of the regulation. The RIMS II multiplier for insurers is a ratio of 6.0908 jobs gained throughout the economy for every one million dollars in added benefit. The ratio multiplied by the estimated direct monetary benefit of the regulation to insurance companies of $138.3 million, equals the projected number of jobs gained, which is 842.4 (6.0908 x 138.3).

Additionally, households are expected to benefit from the regulations by gaining better access to voluntary market insurance policies. The RIMS II multiplier for households is a ratio of 7.0812 jobs gained throughout the economy for every one million dollars in added benefit. The ratio multiplied by the estimated total direct monetary benefit of the regulation to households of $29.8 million equals the projected number of jobs gained, which is 211 (7.0812 x 29.8). The total number of jobs estimated to be gained as a result of the proposed regulation is 1053.4 (842.4 + 211).

There is anticipated added costs to insurance companies (the FAIR Plan, through decreased premiums received), modeling companies, and consumer intervenors that are expected to result in a decrease to employment. Using the insurers RIMS II multiplier of 6.0908, the projected direct cost of $161 million is expected to result in a loss of 980.6 jobs (161 x 6.0908). The RIMS II multiplier of 9.0664, for the broad industry scientific research and development services, was multiplied by the projected direct cost of $0.232 million to estimate the job loss due to the direct cost impact on modeling companies, an expected loss of 2.1 jobs (0.232 x 9.0664). The RIMS II multiplier of 12.7894, for the broad industry grantmaking, giving, and social advocacy organizations, was multiplied by the projected direct cost of $0.197 million to estimate the job loss due to the direct cost impact on consumer intervenors, an expected to loss of 2.5 jobs (0.197 x 12.7894). In total, the regulation is estimated to result in a loss of 985.2 (980.6 + 2.1 + 2.5) jobs.

Since insurance companies fund the California FAIR Plan, it is reasonable to expect there may be some offsetting of job impacts within the aggregate insurance industry sector. These job impact estimates represent an upper bound on the magnitude of expected job impacts. Additionally, while this job impact analysis estimates a job loss for modeling companies, it is expected that these losses may be negated by future increased business opportunities resulting from the regulation.

The proposed regulation is estimated to result in a net gain of 68.2 (1053.4 – 985.2) jobs. Overall, the estimated net impact of the proposed regulation on jobs is less than one-thousandth of a percent of the total projected nonfarm employment in California (68.2 / 18,083,200= 0.0004%).

Creation of New Businesses and the Elimination of Existing Businesses

To determine the potential effect of the proposed regulation on the creation of new businesses and the elimination of existing businesses within the state, the Department uses a broad approach. Factors affecting the creation and elimination of businesses are intertwined and similar, so they are analyzed together.

The Department calculated the effect of the regulation on California's total economic output. Output measures the total market value, including the value of all intermediary goods and services, used in the production of a final good or service. The output RIMS II multiplier of 1.8607 results in an impact of $1.86 million on total economic output (accounting for all direct, indirect, and induced costs/benefits) for every one million dollars of direct monetary benefits to insurers. Multiplying the direct benefit of the regulation on insurers by the RIMS II output multiplier results in an estimated gain to total economic output of $155.7 million (1.8607 x $83.7 million). Additionally, the RIMS II output multiplier of 1.2598 multiplied by the direct benefit to households is expected to result in an additional gain to total output of $106.5 million (1.2598 x $84.5 million). The expected initial gain to total economic output is estimated to be $262.2 million (155.7 + 106.5).

There is also an expected decrease to total economic output because of the estimated direct costs to insurers, modelers, and consumer intervenors. The estimated $161 million direct cost to insurance companies (the FAIR Plan, through decreased premiums received) is calculated to result in a decrease to total output of $299.6 million ($161 million x 1.8607). The RIMS II multiplier of 2.2636, for the broad industry scientific research and development services, was multiplied by the projected direct cost of $0.232 million to estimate a loss to total output of $0.5 million ($0.232 million x 2.2636). The RIMS II multiplier of 2.2381, for the broad industry grantmaking, giving, and social advocacy organizations, was multiplied by the projected direct cost of $0.197 million to estimate a loss to output of $0.4 million ($0.197 million x 2.2381). The estimated total initial loss to economic output resulting from the regulation is $300.5 million (299.6 + 0.5 + 0.4).

In total, the regulation is estimated to result in a net loss of $38.3 million to total output. (262.2 – 300.5). As noted above, the regulation is anticipated to prevent one future insurer insolvency in the next seven years. This would be a major benefit to insurance companies and consumers. The rest of the estimated gains and losses to output are nearly entirely due to the movement of insurance policies from the FAIR Plan to the voluntary insurance market. Since the voluntary market insurers already fund the FAIR Plan, the transfer of policies is not likely to lead to an impact on the creation or elimination of existing businesses.

Adverse Impact on Small Business

The proposed regulation is projected to have a direct adverse impact on insurers as discussed in the foregoing analysis, however by law insurance companies are not considered small businesses (Government Code § 11342.610(b)(2)).

PRID Procedure
The PRID Procedure regulation is not expected to adversely impact small businesses.

Catastrophe Models
The proposed regulation may impact the insurance rates paid by all businesses, including small businesses. Due to the regulation changing how insurance rates are calculated, some small businesses may pay more for insurance and some may pay less. There is no provision in the regulation that is expected to negatively impact small businesses disproportionately. Any changes in the insurance rate paid by an individual small business is expected to be tied to how much of the property's wildfire risk has been mitigated and how well the insurer's catastrophe model accounts for mitigation.

Insurer Commitments
The implementation of insurer commitments is not expected to result in an adverse economic impact on small businesses. Nothing in the regulation requires a small business to pay for a commercial insurance policy. This analysis assumes that businesses will act to maximize profits and protect their investments in both property and durable goods. Some small businesses may experience an increase in costs if they elect to pay for a new commercial insurance policy and were previously uninsured. Some small businesses may pay less for insurance coverage if they were previously insured by the FAIR Plan. This analysis does not consider a business electing to purchase new or increased insurance coverage an adverse impact, as there are substantial business benefits to risk management and asset protection.

Investment, Incentives for Innovation, Health and Welfare Effects, and the Impact on Worker Safety and Environmental Effects

The Department has also assessed whether and to what extent the proposed regulations affect other criteria.

Impact on Investment in the State

The increase of investment in the state: Inadequate residential and commercial insurance coverage can hinder investment in California by increasing the economic and financial risks associated with those investments. Many mortgages for home purchases require the property to be insured. Increased insurance availability may increase bank lending for mortgages, an investment in California. Without properties having proper access to insurance coverage, banks will likely invest in other markets (states) where their assets will have greater protection.

Construction and development investments are dependent on consumer demand and commercial insurance coverage. Any hinderance to consumers or businesses can impact investment into these spaces. Housing projects may end up limited in some areas with increased wildfire risk if the related costs to insure projects in those areas is too high.

The decrease of investment in the state: Permitting catastrophe modeling will involve an adjustment period in which the market will be adapting to new risk information. It is possible that better risk quantification could lead to the identification of more wildfire risks in areas

lacking mitigation. Specific areas could be categorized as too high-risk, which would deter individuals and businesses from investing in these areas.

Effect on Incentives for Innovation in Products, Materials, or Processes

As modeled catastrophe losses will be a new methodology permitted in California the state could see significant innovation in the number of, and quality of models. Expanded use of advanced predictive models and enhancement of underlying datasets may improve the overall performance of future catastrophe models. Several insurers have suspended writing residential insurance policies in California, while others have left the state completely. A market with less competition often has less innovation, the goal is to bring back insurers for a more balanced and competitive marketplace.

Advanced modeling that can better identify the locations with the highest wildfire risk may lead to more precise, targeted mitigation strategies.

Worker Safety and Environmental Effects

Compliance with the proposed regulation does not change the job responsibilities of employees in the affected industries in a way that would impact their safety. Thus, the proposed regulation will neither increase nor decrease worker safety.

Health and Welfare Effects

The proposed regulation is expected benefit the welfare of California insurance consumers by reducing their financial risk exposure. With catastrophe modeling providing a clearer understanding of risk, insurers should be more willing to offer coverage in high wildfire risk areas, ensuring more Californians have access to coverage options.

Insurance companies and government agencies may be able to use data from models to proactively educate the public on risks and preparedness, leading to better prepared communities.

Analysis of Alternatives to the Proposed Regulation

Alternative 1: Do not change the current regulatory scheme to allow insurers to use models to estimate projected losses, and continue to require insurers to only rely on historical data for such estimates.

This alternative envisions that this proposed rulemaking does not occur and there are no changes to the current regulatory scheme for estimating losses.

Reasons for rejecting Alternative #1

The overwhelming consensus from the scientific community is that climate change will increase the frequency and severity of extreme weather events in the near future. As such, in a changing environment, insurers may not be able to use historical data to accurately estimate projected

losses because the environment of the past will differ greatly from the environment of the future. Models are claimed to be able to more precisely evaluate the risks in the future environment to allow insurers to accurately estimate projected losses. Specifically, insurers' estimates of their catastrophe risk using historical losses (the traditional approach provided for in current Section 2644.5) are not necessarily reflective of their prospective catastrophe exposure because they do not account for:

- Climate change and its impact on the frequency and severity of wildfires and floods;
- Continued development and increased population density in the wildland urban interface (WUI) and other areas susceptible to wildfire, flood, or other perils;
- Changes in building construction and building codes;
- Recent mitigation efforts by public utilities, communities, and homeowners; and
- Changes in an insurer's underwriting practices which result in changes in the insurer's mix of business and exposure to catastrophes.

Alternative 2: Require the Department to create a public catastrophe model for California. This alternative would require the Department to spearhead the creation of a public model that could be used by insurance companies to estimate wildfire losses in California. This model could be used by insurers in lieu of, or in combination with, a model developed by a private modeling company.

Reasons for rejecting Alternative #2

The Department is open to considering a public model in the future, and nothing in the proposed regulation prohibits a public model. However, the current regulation and its resulting benefits are concerned with taking quick action to improve risk assessment in rate-making, and to stabilize the voluntary insurance market. It would be time- and cost-intensive to develop and maintain a public model. In 2014, South Carolina estimated that the development of a public model for hurricanes would cost more than $7.3 million over 5 years to develop and $900,000 a year to maintain.[25] Creating a public wildfire catastrophe model for California today would likely be more time-intensive and expensive because wildfire risk is different than hurricane risk and such a model requires substantial new analysis. Currently, no dedicated funding source for the creation of a public model has been identified. A public model with a large annual cost and significant implementation time-period is not expected to initially offer additional benefits over an already existing and available private model. Therefore, a public model would not be the most cost-effective or timely regulatory choice for solving the immediate issues in the voluntary insurance market, and many outstanding questions would need to be analyzed and addressed.

Alternative 3: The information and data regarding a model should be approved by either the Insurance Commissioner or an expert panel of outside consultants.

The proposed rulemaking empowers the Model Advisor to oversee the PRID procedure to determine all information and data required to be provided to the Commissioner as part of a

[25] Brannon, et al. Report on the Feasibility of Developing a South Carolina Hurricane Model. Published 2014. https://www.doi.sc.gov/DocumentCenter/View/7964/Report-on-the-Feasibility-of-Developing-a-South-Carolina-Hurricane-Model-12-31-14. Pg. 18. Accessed June 21, 2024

complete rate application. This alternative would empower the Commissioner or an expert panel to review and approve such information and data.

Reasons for rejecting Alternative #3

The proposed rulemaking provides the Model Advisor, with the possible assistance of outside consultants with subject matter expertise, to determine what information and data regarding a model is required to be included as part of a complete rate application. Such an approach more directly aligns with the rate-review and rate-making role of the Insurance Commissioner. This ensures that the proposed rulemaking does not overstep statutory boundaries, protecting all parties involved in a rate application. Moreover, the Commissioner retains discretion to accept, reject, or amend a rate decision that relies in part upon a PRID, should the Commissioner desire additional information regarding the model.

SPECIFIC ACTIONS AND PROCEDURES PRESCRIBED

The adoption of these regulations will not mandate the use of specific technologies or equipment.

IDENTIFICATION OF STUDIES, REPORTS, DOCUMENTS

The Catastrophe Modeling Task Force of the General Committee of the Actuarial Standards Board published and adopted Actuarial Standard of Practice No. 38 on July 2021.[26] The Board also published and adopted Actuarial Standard of Practice No. 56 on December 2019.[27] The Department has reviewed the Board's definition of "model" within the Actuarial Standard of Practice Nos. 38 and 56 and relies upon that definition in determining the scope of models subject to the proposed regulations.

REASONABLE ALTERNATIVES

See above in the Analysis of Alternatives to the Proposed Regulation. No alternatives that are less burdensome and equally effective in achieving the purposes of the proposed regulations in a manner that achieves their purpose have been proposed.

PERFORMANCE STANDARD CONSIDERED

The regulation considers and adopts a performance standard. The 85 percent standard is an objective with defined criteria that must be met to achieve the objective. The regulation prescribes specific actions that are needed to meet the standard.

[26] Shawna Ackerman, David A. Brentlinger, and Bradley Davis (Catastrophe Modeling Task Force of the General Committee of Actuarial Standards Board), "Actuarial Standard of Practice No. 38, Catastrophe Modeling (for All Practice Areas)," Actuarial Standards Board, Doc. No. 201, July 2021.
[27] David Hagstrom, et al. (Modeling Task Force of the General Committee of Actuarial Standards Board), "Actuarial Standard of Practice No. 56, Modeling," Actuarial Standards Board, Doc. No. 195, December 2019.

PRE-NOTICE PUBLIC DISCUSSIONS

Pre-Notice Public Discussions were held on July 13, 2023, September 28, 2023, April 23, 2024, and June 26, 2024. Members of the public were invited to provide comments on the ideas expressed in the proposed regulations.

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

PROPOSED TEXT OF REGULATION

CATASTROPHE MODELING AND RATEMAKING

August 16, 2024 **REG-2023-00010**

Title 10. Investment
Chapter 5. Insurance Commissioner
Subchapter 4.8 Review of Rates
Article 4. Determination of Reasonable Rates

Amend Section 2644.4. Projected Losses.

(a) Unless projected losses are based on catastrophe models as permitted pursuant to subdivision (d) of this Section 2644.4, ~~P~~projected losses means the insurer's historic noncatastrophe losses per exposure, adjusted by catastrophe adjustment, as prescribed in ~~s~~Section 2644.5, by loss development, as prescribed in ~~s~~Section 2644.6, and by loss trend, as prescribed in Section 2644.7.

(b) Projected losses shall be calculated by applying the loss development and loss trend factor separately to data from each accident ~~-~~year, report year or policy year, as applicable, in the recorded period.

(1) For occurrence policies, projected losses shall be calculated on an accident-year basis. ~~However,~~

(2) ~~f~~For claims-made policies, projected losses shall be calculated on a report-year basis.

(3~~e~~) For mechanical breakdown and similar insurance as defined in subdivision (b) of Section 2642.7~~policies providing multi-year coverage, such as mechanical breakdown~~, projected losses may be calculated on a policy-year basis.

(c~~d~~) For professional liability and errors and omissions coverage, the insurer shall, in lieu of the computation of projected losses specified in ~~s~~Sections 2644.5 through 2644.7, tender an alternative computation of projected losses, which the Commissioner shall approve if the Commissioner finds the projection to have been made in the most actuarially sound ~~actuarial~~ manner. ~~Nothing in this section precludes the Commissioner from requiring the additional filing of~~The insurer shall also provide projected losses computed in the manner specified in ~~s~~Sections 2644.5 through 2644.7 and in any other manner as may be required by the Commissioner.

(d) For the earthquake, flood, or any other line of insurance for which projected losses are permitted to be modeled pursuant to subdivision (c) of Section 2644.4.5, projected losses may be based on catastrophe models.

~~(e) For the earthquake line of business and for the fire following earthquake exposure in other lines, projected losses and defense and cost containment expenses may be based on complex catastrophe models using geological and structural engineering science and insurance claim expertise. The use of such models shall conform to the standards of practice as set forth by the Actuarial Standards Board and the applicant shall have the burden of proving, by a preponderance of the evidence, that the model is based upon the best available scientific information for assessing earthquake frequency, severity, damage and loss, and that the projected losses derived from the model meet all applicable statutory standards.~~

Adopt Section 2644.4.5. Use of Catastrophe Models.

(a) Permitted uses.

(1) For the earthquake and flood lines, projected annual aggregate losses may be based on catastrophe models.

(2) The catastrophe adjustment for the fire following earthquake exposure, and for terrorism exposure, in lines other than earthquake and flood may be based on projected annual aggregate losses derived from catastrophe models.

(b) Wildfire exposure.

The catastrophe adjustment for wildfire exposure in lines of insurance other than earthquake and flood may be based on catastrophe models, provided that the insurer complies with Section 2644.4.8.

(c) Additional lines or exposures.

(1) In addition to the permissible uses of catastrophe models specified in subdivisions (a) and (b) of this Section 2644.4.5, at the Commissioner's discretion, models may be used in cases where limited historic insurance data is available:

(A) To project annual aggregate losses in lines of insurance other than those specified in subdivision (a)(1) of this section, or

(B) To determine the catastrophe adjustment for exposures to perils other than those specified in subdivision (a)(2) or (b) of this section.

(2) The Commissioner may allow modeling for such additional lines or exposures only if, taking into account the circumstances under which, and the conditions pursuant to which, modeling for the additional line or coverage in question is to be permitted, it is in the Commissioner's judgment reasonably foreseeable that permitting modeling would serve two or more of the following purposes of Proposition 103:

(A) Protecting consumers from arbitrary insurance rates and practices.

(B) Encouraging a competitive insurance marketplace.

(C) Ensuring that insurance is fair, available and affordable to all Californians.

(3) In the event the requirement of subdivision (c)(2) of this section is satisfied, the Commissioner's decision as to whether to allow modeling for additional lines or exposures shall be based upon the following factors:

(A) The degree to which the peril is an emerging or a newly recognized peril for ratemaking purposes.

(B) The degree to which a model is likely to be reliable for ratemaking purposes.

(C) The extent to which any historical insurance data is unavailable.

(D) The degree to which available historical insurance data is not predictive of future costs.

(d) Under no circumstances, however, will modeling be permitted for the reason that an individual company lacks data that is otherwise available.

(e) Catastrophe models shall be run on the insurer's in-force business as of the end of the most recent year in the recorded period.

(f) The use of catastrophe models shall conform to the standards of practice as set forth by the Actuarial Standards Board, and the applicant shall have the burden of demonstrating that

(1) the model is based upon what in the Commissioner's assessment is the best available scientific information for assessing frequency, severity, damage and loss,

(2) the applicant's use of its selected model(s) produces the most actuarially sound estimate of projected catastrophe losses,

(3) the projected losses derived from the model meet all applicable statutory, regulatory and other legal standards, and

(4) the model incorporates what in the Commissioner's assessment is the best available scientific information on risk mitigation at the property, community, and landscape scales including, but not limited to forest management, prescribed fire, and risk mitigation initiated by local and regional utility companies.

(g) This section is hereby expressly included within the range of regulations sections specified in subdivision (a) of Section 2648.4, notwithstanding that this section's adoption is subsequent in time to the adoption of, or the effectiveness of any amendments to, Section 2648.4.

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805.

Adopt Section 2644.4.8. Distressed Areas; Insurer Commitments.

An insurer that opts to make, fulfill and document the fulfillment of its insurer commitments in the manner specified in this Section 2644.4.8 may use catastrophe modeling as permitted by Section 2644.4.5 for purposes of modeling the catastrophe adjustment for wildfire exposure for commercial property insurance and qualifying residential property insurance.

As used in this section, the term "qualifying residential property insurance" shall mean a policy of residential property insurance as defined in Insurance Code section 10087, except that renter's insurance policies do not fall within the meaning of qualifying residential property insurance. Additionally, an HO-6 policy, or its equivalent, is not included within the meaning of qualifying residential property insurance.

(a) Distressed areas, and properties insured by FAIR Plan policies, that are to be used in insurer commitments.

(1) Distressed areas.

For purposes of this section distressed areas shall include the following:

(A) Undermarketed ZIP Codes.

The Commissioner shall publish an initial bulletin containing a list of the Undermarketed ZIP Codes determined pursuant to this subdivision (a)(1)(A). The Commissioner shall by subsequent bulletins update the list of Undermarketed ZIP Codes from time to time as conditions warrant, but in any event no less frequently than once per year. For purposes of this section, an Undermarketed ZIP Code shall mean a ZIP Code, as determined by the Commissioner, which at least partially overlaps a high

or very high fire hazard severity zone as shown on current maps published by the Department of Forestry and Fire Protection (Cal Fire) and in which ZIP Code either:

1. At least fifteen percent (15%) of the sum of the following are insured by the FAIR Plan:

   a. The number of residential properties in the ZIP Code that are insured by the FAIR Plan, and

   b. The number of residential properties in the ZIP Code that are insured in the voluntary market by admitted insurers under a policy of qualifying residential property insurance; or

2. The average premium per $1,000.00 of Coverage A in the ZIP Code is at least four dollars ($4.00) while the median income of the ZIP Code is no higher than the fiftieth (50th) percentile for California.

(B) Distressed counties.

The Commissioner shall publish an initial bulletin containing a list of the distressed counties determined pursuant to this subdivision (a)(1)(B). The Commissioner shall by subsequent bulletins update the list of distressed counties from time to time as conditions warrant, but in any event no less frequently than once per year. For purposes of this section, a county shall be a distressed county if the percentage of structures situated in that county that are at high or very high wildfire risk is no lower than the 50th percentile of counties in the state, as determined by the Commissioner.

(2) Properties insured by the FAIR Plan exposed to wildfire risk.
Policies insuring properties that the insurer has classified as moderate to very high wildfire risk and that immediately prior to the insurer's insuring them, on a date subsequent to the approval of its rate application described in subdivision (c) of this section, had been covered under the FAIR Plan.

(b) Statewide market calculations.

(1) Calculation of statewide market share.

For purposes of this section the Department will calculate an estimate of the number of earned exposures of qualifying residential property insurance statewide based on the most recent experience year reported to the Department, such initial

evaluation period ending on December 31, 2023, which figure shall be used as the denominator in the calculation of statewide market share for each insurer. The Commissioner shall publish a bulletin with the estimate of statewide earned exposures, no less frequently than once per year.

The numerator to be used in the calculation of each insurer's statewide market share shall be the number of earned exposures of qualifying residential property insurance policies in the most recent 12-month period used in its recorded period as submitted in the insurer's rate application pursuant to subdivision (c) of this section.

In order to calculate its statewide market share, the insurer shall divide its numerator by the denominator, each as described in this subdivision (b)(1), and the insurer's statewide market share shall be the resulting quotient, rounded to the thousandths place.

(2) Statewide distressed areas earned exposures.

For purposes of this section the Department will calculate an estimate of the total number of earned exposures of qualifying residential property insurance in both the voluntary market and the FAIR Plan inside the distressed areas of the state based on the most recent experience year/dataset reporting such relevant information to the Department, such initial evaluation period ending on December 31, 2023, which figure shall be used in the calculation of each insurer's residential commitment inside the distressed areas pursuant to subdivision (d) below. The Commissioner shall publish a bulletin that includes the estimate of statewide distressed areas earned exposures, no less frequently than once per year.

(c) The insurer shall, as part of a complete rate application filing pursuant to Section 2648.4, submit an insurer commitment as set forth in subdivision (d), (f) and/or (j) of this section.

(d) Insurer commitments with respect to qualifying residential property insurance. The insurer shall commit in writing to achieving no later than two years (730 days) after the approval of its rate filing (the insurer's "performance date" hereinafter), or maintaining, the insurer's earned exposure commitment in the distressed areas of the state as follows:

(1) Eighty-five percent standard.

(A) The insurer shall commit to write in distressed areas a number of policies that is no less than the product of (1) the insurer's statewide market share, as calculated pursuant to subdivision (b)(1), (2) 0.85, and (3) the total number of statewide distressed areas earned exposures pursuant to subdivision (b)(2) of this section; or

(B) In the event the insurer already meets or exceed the eighty-five percent standard set forth above in subdivision (d)(1)(A) of this section at the time

of its rate application, the insurer shall commit to maintaining at least the same number of earned exposures in the distressed areas as it reported in the rate application filing pursuant to subdivision (c), for at least three years (1,095 days) after the approval of the rate application.

(2) Five percent increment.

The insurer may instead commit to writing additional policies as specified in subdivision (d)(3) in the voluntary market inside the distressed areas of the state such that, on the performance date, the insurer has increased its number of earned exposures inside the distressed areas by at least the number of policies equal to five percent (5%) of its earned exposures in the distressed areas of the state within the most recent 12 month period used in its recorded period as submitted in the insurer's rate application pursuant to subdivision (c) of the section.

(3) In the event that one or more of the bulletins described in subdivision (a) of this section that is or are referred to in an insurer's approved rate application pursuant to subdivision (c) of this section (the insurer's "starting bulletin or bulletins" hereinafter) have been updated since the time the application was filed, then the insurer may satisfy its insurer commitment by:

(A) Writing policies in distressed areas as defined in the insurer's starting bulletin or bulletins and/or in any subsequently updated bulletin as the commissioner may publish from time to time; or

(B) If subdivision (d)(1)(B) of this section is applicable to the rate application, maintaining earned exposures in distressed areas as defined in the insurer's starting bulletin or bulletins and/or in any subsequently updated bulletin as the commissioner may publish from time to time.

(4) The additional policies written in order to satisfy the requirement of this subdivision (d) shall include only the following:

(A) Policies of qualifying residential property insurance insuring properties in distressed areas of the state; and/or

(B) Policies of qualifying residential property insurance insuring properties that the insurer has classified as moderate to very high wildfire risk and that immediately prior to the insurer's insuring them, on a date subsequent to the approval of its rate application described in subdivision (c) of this section, had been covered under the FAIR Plan.

An insurer may count a policy described in this subdivision (d)(3)(B) as insuring a property within the distressed areas of the state for purposes of fulfilling its insurer commitment, any contrary provision of this section notwithstanding.

(e) Low-premium-volume insurers.

(1) An insurer whose direct California annual premium from qualifying residential property insurance policies is less than $10 million may comply with this section without making an insurer commitment pursuant to subdivision (d) of this section, until such time as subdivision (e)(2) is applicable to the insurer.

(2) No later than March 31 of the calendar year immediately following the calendar year during which an insurer described in subdivision (e)(1) of this section determines that it has met or exceeded $10 million of direct California annual premium from qualifying residential property insurance policies, the insurer shall submit a rate application as described in subdivision (c) of this section, which application contains an insurer commitment that conforms to subdivision (d) of this section.

(3) An insurer described in subdivision (e)(1) of this section shall calculate its direct California annual premium from qualifying residential property insurance policies annually.

(f) Insurer commitments with respect to commercial property insurance.

(1) For purposes of this subdivision (f), eligible ZIP Codes shall include all ZIP Codes in the state that at least partially overlap a high or very high fire hazard severity zone, as shown on the most current map published by Cal Fire. The Commissioner shall publish an initial bulletin containing a list of the eligible ZIP Codes determined pursuant to this subdivision (f)(1). The Commissioner shall by subsequent bulletins update the list of eligible ZIP Codes from time to time as conditions warrant.

(2) Insured exposure requirement. At the time of an insurer's first rate application filing subsequent to the effective date of this section, the insurer must commit in writing to increase its writing of policies in the eligible ZIP codes equivalent to five percent (5%) of its total insurable value in eligible ZIP codes as of the end of the most recent 12-month period used in its recorded period, no later than two years (730 days) after the approval of the rate filing in which the insurer includes its insurer commitment.

(3) In the event that the bulletin described in subdivision (f)(1) of this section that is referred to in an insurer's approved rate application pursuant to subdivision (f)(2) of this section (the insurer's "initial bulletin" hereinafter) has been updated since the time the application was filed, then the insurer may satisfy its insurer commitment by writing policies in eligible ZIP Codes as defined in the insurer's initial bulletin and/or in any subsequently updated bulletin as the commissioner may publish from time to time pursuant to subdivision (f)(1).

(4) In the event the insurer is unable to timely meet the requirement in (f)(2), the insurer shall file a new application pursuant to subdivision (h)(1)(C), if applicable, or subdivision (h)(2), of this section.

(g) Documenting the insurer's fulfilment of its insurer commitment.

The insurer shall create and maintain a wildfire risk portfolio. An insured property shall be added to the insurer's wildfire risk portfolio at the time the location and, if applicable, prior FAIR Plan coverage status of the insured property are fully documented pursuant to the provisions of this subdivision (g).

(1) For qualified residential insurer commitment.

(A) In addition to the material called for in subdivision (g)(3) below that is applicable to any property in its wildfire risk portfolio, the insurer shall maintain and keep current a document entitled "Wildfire Risk Portfolio Register," which shall list, for each property added to the portfolio, the following information: the date the property was added to the portfolio; the address of the property, including the ZIP Code; if the property is being added to the portfolio solely on the basis that it lies within a distressed county but not any Undermarketed ZIP Code, the county in which the property is situated; the inception date of the policy; the termination date of the policy, if the policy has terminated; and if the property is being added to the portfolio on the basis of subdivision (g)(1)(B), below, an identification of the insurer's documentation of the property's prior FAIR Plan coverage.

(B) To document that the FAIR Plan was insuring the property in question immediately prior to the inception, on or after the effective date of this section, of a policy insuring that property that is issued by the insurer seeking to add the property to its portfolio after such effective date, the insurer shall have on file:

1. A carrier discovery report or

2. Other documentation demonstrating that the property had been insured under the FAIR plan immediately preceding the date the insurer issues its policy. Such documentation may include (1) copies of declaration pages from the FAIR Plan, (2) a subscribing loss underwriting exchange report and/or (3) an electronic copy of the entire application completed by the insured and submitted to the insurer, on which application the insured has identified the prior insurer as the FAIR Plan.

(2) For commercial insurer commitment. In addition to the material called for in subdivisions (g)(3) below that is applicable to any property in its wildfire risk portfolio, the insurer shall maintain and keep current a document entitled "Wildfire Risk Portfolio Register," which shall list, for each property added to the portfolio, the following information: the date the property was added to the portfolio; the address of the property, including the ZIP Code; the total number of exposures insured under each policy; the inception date of the policy; the property's total insurable value, and the termination date of the policy, if the policy has terminated.

(3) For both qualified residential insurer commitment and commercial insurer commitment.

(A) The Wildfire Risk Portfolio Register shall be maintained as a digital file that is sortable by all fields.

(B) The insurer shall maintain a digital file for each insured property added to its wildfire risk portfolio, in which file shall be stored an electronic copy of each record necessary for purposes of supporting the property's status of lying within a distressed area of the state for purposes of satisfying the insurer's insurer commitment.

(C) The insurer shall maintain its Wildfire Risk Portfolio Register, as well as the digital file described in subdivision (g)(3)(B) of this section for each property added to its wildfire risk portfolio, until such time as at least five years (1,825 days) have passed since:

1. The date that is two years (730 days) following the approval of the insurer's rate application pursuant to subdivision (c) of this section, in the event that subdivision (d)(1)(A), (d)(2) or (f)(2) of this section is applicable;

2. The date that is three years (1,095 days) following the approval of the insurer's rate application pursuant to subdivision (d) of this section, in the event that subdivision (d)(1)(B) of this section is applicable;

3. The date by which the insurer has committed to fulfill or complete the fulfilment of its alternative commitment, in the event that subdivision (j) of this section is applicable; or

4. The date of the approval of the insurer's rate application renouncing the insurer's insurer commitment, in the event that subdivision (h)(2) of this section is applicable.

(h) Modification of, or failure to fulfill, insurer commitment.

(1) Modification when insurer loses significant market share.

(A) Residential insurers whose insurer commitment stated in the original rate application filing included an undertaking to write additional policies in distressed areas.

In the event that, subsequent to approval of its rate application described in subdivision (c) of this section (hereinafter, the "original application"), an insurer files a new rate application in which the insurer recalculates its insurer commitment as specified in subdivision (d) of this section on the basis that the insurer's statewide market share as calculated pursuant to subdivision (b)(1) of this section is at least five percent (5%) lower than was used for purposes of calculating the insurer commitment contained in the insurer's original rate application, then the new rate application may contain a modified insurer commitment pursuant to subdivision (d) of this section that reflects the recalculated insurer commitment, which insurer commitment shall become effective if and when the new rate application is approved.

(B) Residential insurers whose performance met or exceeded the applicable standard or requirement at the time of initial rate application filing.

An insurer may modify its insurer commitment that was made pursuant to subdivision (d)(1)(B) of this section as follows: The insurer may reduce its earned exposures in distressed areas of the state by up to five percent (5%) below the level reported in the original application, to the extent that is indicated by the amount of the diminution of the insurer's statewide market share, but in no event below the eighty-five percent standard set forth in subdivision (d)(1)(B) of this section

(C) Modification of commercial insurer commitments.

An insurer may modify its insurer commitment as follows: In the event the insurer is unable to timely meet the requirement in (f)(2), the insurer shall file a new application in which it modifies its insurer commitment accordingly. The insurer may reduce its insurer commitment in eligible ZIP Codes of the state by no more than the decline in its total insurable value reported in the original rate application filing.

(2) Failure to fulfill an insurer commitment.

If at any time an insurer fails to fulfill its insurer commitment, or within a period of two years after the approval of its original application, or at any point

thereafter, fails to make reasonable progress toward timely fulfilling its insurer commitment, then the insurer shall immediately submit a new rate application renouncing its insurer commitment as described in subdivision (d) or (f) of this section. In this case the new rate application shall not make use of catastrophe modeling as permitted by Section 2644.4.5.

(i) Insurer Attestation.

An insurer that obtained approval to use catastrophe modeling in its original application shall file one of the following attestations in every subsequent rate application until such time as that insurer has attested that it has fulfilled its commitment:

(1) An attestation that the insurer has fulfilled, or is taking reasonable steps to fulfill, its insurer commitment.

(2) An attestation that the insurer's rate application modifying its insurer commitment pursuant to subdivision (h)(1) of this section has been approved and the insurer has fulfilled, or is taking reasonable steps to fulfill, its modified insurer commitment.

(j) Alternative Insurer Commitments.

Any contrary provision of this section notwithstanding, if for any of the reasons stated in subdivision (j)(1) of this section, an insurer is unable, in good faith, to make a commitment as set forth in subdivisions (d) or (f) of this section, then an insurer may propose an alternative commitment in a complete rate application filing pursuant to subdivision (c), as described in subdivision (j)(2) of this section:

(1) An insurer may propose an alternative commitment pursuant to this subdivision (j) on one or more of the following bases:

(A) its size,

(B) its scope of coverages, or

(C) the frequency or severity of recent events impacting the insurer.

(2) Such rate application filing shall include a statement:

(A) setting forth the reason why this subdivision (j) is applicable, and

(B) describing the proposed alternative commitment in sufficient detail to allow the Commissioner to evaluate whether the alternative increases availability of qualifying residential property insurance and/or commercial property insurance.

(k) Nothing in this section shall be construed as limiting, in any way, an insurer's ability to offer qualifying residential property insurance or commercial property insurance in this state.

(*l*) If any provision or clause of this section or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this section which can be given effect without the invalid provision or application. To this end, the provisions of this section are hereby declared to be severable.NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi*, 8 Cal.4th 216 (1994). Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company* v. *Deukmejian* (1989) 48 Cal.3d 805.

Amend Section 2644.5. Catastrophe Adjustment.

In those insurance lines and coverages where catastrophes occur, the actual catastrophic losses of any one ~~accident~~ year in the recorded period are replaced by an adjustment based on the average annual loss generated from one or more catastrophe models as described in Section 2644.4.5, or an adjustment based on a multi-year, long-term average of catastrophe losses net of actual and anticipated salvage and subrogation recoveries, as described in subdivision (b) of this section, or except as prohibited in subdivision (e) of this section a combination of the methods specified in subdivisions (a) and (b).~~:~~

(a) For fire following earthquake, wildfire, and terrorism exposures in any line of insurance, an insurer may include an adjustment based on the average annual loss generated from one or more catastrophe models. The use of such models shall comply with the requirements set forth in subdivision (e) of Section 2644.4.5. Further, the average annual loss may be adjusted to include a provision for defense and cost containment expenses (DCCE), either by applying a historical ratio of noncatastrophe DCCE to noncatastrophe loss or by applying a historical ratio of catastrophe DCCE to catastrophe loss.

(b) In any event, an insurer may project its catastrophe adjustment~~loading~~ based on a multi-year, long-term average of catastrophe ~~claims~~losses and DCCE, net of actual and anticipated salvage and subrogation recoveries. Catastrophe adjustment for perils other than those that are permitted to be modeled under subdivision (a) of this section or pursuant to subdivision (c) of Section 2644.4.5 must be based on such multiyear long-term average.

(1) For residential and commercial property lines, the adjustment shall be based on the average of the ratio of ultimate catastrophe losses and DCCE to amount of insurance years (AIY). For purposes of this section, the term AIY shall reflect the total combined limits (dwelling, additional structures, personal contents and loss of use) pertaining to the property coverages underlying each policy. For private passenger and commercial automobile physical damage, the adjustment shall be

based on the average of the ratio of ultimate catastrophe losses and DCCE to ultimate noncatastrophe losses and DCCE.

(2) The number of years over which the average shall be calculated shall be at least 20 years for ~~homeowners multiple peril fire,~~residential and commercial property lines and at least 10 years for private passenger, and commercial, auto physical damage. Where the insurer does not have enough years of data, or has a limited amount of data for years for which it does have data, the insurer's data shall be supplemented by appropriate data for those years. The number of years over which the average shall be calculated for any other line with catastrophe exposure that is permitted under this subdivision (b) to have a catastrophe adjustment shall be based on the most actuarially sound assumptions. There shall be no catastrophe adjustment for private passenger, or commercial, auto liability.

(c) Regardless of which method is used for catastrophe adjustment, insurers shall submit all of the following, based on the data aggregation method used for the recorded period, whether the recorded period is expressed in terms of accident years, policy years or report years, through the most recent year of the recorded period:

(1) The insurer's history, by year, of California catastrophe losses, displayed separately for paid losses, case-incurred losses and Incurred But Not Reported (IBNR) reserves.

(2) The insurer's history, by year, of California noncatastrophe losses, displayed separately for paid losses, case-incurred losses and IBNR reserves.

(3) The insurer's history, by year, of California catastrophe Defense and Cost Containment Expenses (DCCE), displayed separately for paid DCCE, case-incurred DCCE and IBNR reserves.

(4) The insurer's history, by year, of California noncatastrophe DCCE, displayed separately for paid DCCE, case-incurred DCCE and IBNR reserves.

(5) The insurer's history, by year, of California received salvage and subrogation recoveries. Subrogation recoveries shall include the proceeds of any actual sale or divestiture of subrogation rights.

(6) The insurer's history, by year, of California anticipated salvage and subrogation recoverables. Subrogation recoverables shall include the reasonably foreseeable proceeds of any anticipated sale or divestiture of subrogation rights.

(7) The insurer's history, by year, of California AIY for residential and commercial property lines.

(8) For residential and commercial property lines, the insurer's projected AIY for the policy effective period. The trend factor that is used to project AIY shall be based

on the exponential curve of best fit. Insurers shall file the most recent 27 quarters of company-specific AIY and earned exposure data. The insurer shall file its rate change application using the single data period for AIY and, as specified in section 2644.7, premium and loss trend, which data period the insurer determines to be the most actuarially sound. The Commissioner may require the use of an alternative data period if the Commissioner determines that use of such alternative data period is the most actuarially sound approach.

(9) For private passenger and commercial auto physical damage, the insurer's projected ultimate noncatastrophe losses for the most recent year in the recorded period, as determined by the application of Sections 2644.6 and 2644.7.

(10) The insurer's current definition of catastrophe and the period of time it has used such definition.

(11) The insurer's definition of wildfire and the period of time it has used such definition.

(12) The name of any major event or events contributing to the year's catastrophic losses, for instance, the "Cedar Fire," and the peril or perils associated with those losses.

(d) The catastrophe adjustment shall reflect any changes between the insurer's historical and prospective exposure to catastrophe due to a change in ~~the~~:

(1) The insurer's coverage or other policy terms; or

(2) The insurer's mix of business. ~~There shall be no catastrophe adjustment for private passenger auto liability.~~

(e) For any individual peril, projected aggregate catastrophe losses cannot be based upon a combination of modeled and historical losses associated with that peril.

(f) Catastrophe adjustment, whether based on modeled or nonmodeled losses as prescribed by 2644.5(a) or (b) above, shall apply as a single annual projection once all other adjustments to loss have been made. The catastrophe adjustment shall be expressed as a dollar amount of catastrophe losses per earned exposure, where earned exposure is taken from the most recent year of the recorded period.

(g) For residential and commercial property lines, no trend shall be applied to the catastrophe adjustment except for the trend factor that is used to project AIY as described in subdivision (c)(8) of this section.

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi*~~,~~ (1994) 8 Cal.4th 216 ~~(1994)~~. Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805.

Amend Section 2644.8. Projected Defense and Cost Containment Expenses.

(a) The meaning of the term "~~P~~projected defense and cost containment expenses (DCCE)" ~~means~~includes both the company's noncatastrophe historic costs ~~per exposure~~ associated with the defense and cost containment of noncatastrophe claims, ~~adjusted for catastrophes,~~ developed and trended in the manner described in ~~s~~Sections ~~2644.5,~~ 2644.6 and 2644.7, and the company's costs associated with the defense and cost containment of catastrophe claims, as prescribed in Section 2644.5.

(1) DCCE associated with noncatastrophe losses shall be developed:

(A) separately from losses;

(B) with losses; or

(C) as a ratio to losses.

(2) DCCE associated with noncatastrophe losses shall be trended:

(A) separately from losses; or

(B) with losses.

(3) Any provision for DCCE associated with catastrophe losses shall be determined in accordance with subdivisions (a) and (b) of Section 2644.5.

(b) ~~Defense and cost containment expenses may be added to losses for loss development and trend or may be developed using ratios of defense and cost containment expenses to losses.~~ The insurer shall provide its data separately for loss and DCCE, and demonstrate that its selections of development and trend for DCCE ~~is~~are the most actuarially sound selections.

(c) The projected DCCE shall be reflected per exposure for purposes of subdivision (a)(1)(A) of Section 2644.2 and subdivision (a)(1)(A) of Section 2644.3.

(~~d~~e) For professional liability and errors and omissions coverage, the insurer shall tender an alternative computation of projected ~~defense and cost containment expenses~~DCCE, which the Commissioner shall approve if the Commissioner finds the projection to have been made in the most actuarially sound ~~actuarial~~ manner. The insurer shall also provide projected DCCE in a manner specified in subdivisions (a) through (c) of this Section 2644.8 and in any other manner as may be required by the Commissioner. ~~Nothing in this section precludes the Commissioner from requiring the additional filing of projected defense and cost containment expenses computed in the manner specified in sections (a) and (b).~~

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi*~~,~~ (1994) 8 Cal.4th 216 ~~(1994)~~. Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805.

Amend Section 2644.27. Variance Request.

(a) A request that the maximum permitted earned premium or minimum permitted earned premium should be adjusted is referred to as a "variance request."

(b) Requests for variances shall be filed with the Rate Regulation Branch, together with the insurer's complete rate application. All such variance requests shall specifically:

(i) identify each and every variance request;

(ii) identify the extent or amount of the variance requested and the applicable component of the ratemaking formula;

(iii) set forth the expected result or impact on the maximum and minimum permitted earned premium that the granting of the variance will have as compared to the expected result if the variance is denied; and

(iv) identify the facts and their source justifying the variance request and provide the documentation supporting the amount of the change to the component of the ratemaking formula.

(c) Requests for variances shall be filed at the same time as the insurer's complete rate application to which it applies or after the filing of the complete rate application and before any final determination regarding that application. Public notice of all variance requests shall be provided as set forth in Insurance Code sections 1861.05, subdivision (c), and 1861.06.

(d) A variance request shall be deemed approved sixty days after public notice unless:

(i) a consumer or a consumer's representative requests a hearing within forty-five days of public notice and the Commissioner grants the hearing, or determines not to grant the hearing and issues written findings in support of that decision, or

(ii) the Commissioner on the Commissioner's own motion determines to hold a hearing.

(e) Variance requests shall be determined in conjunction with the related complete rate application or rate hearing thereon.

(f) The following are the valid bases for requesting a variance:

(1) That the insurer should be allowed relief from the efficiency standard for bona fide loss prevention and loss-reduction activities as set forth below.

(A) The insurer meeting the qualifications set forth below may obtain an increase in the applicable efficiency standard by the amount of its "Allocated Costs" for its Special Investigations Unit ("SIU") expense for the most recent year. The term SIU as used in this section has the same meaning as that term has in Section 2698.30, subdivision (p). The term "Allocated Costs" means those costs set forth in subsection (iii) and attributable to investigations of claims made on the line of insurance subject to Insurance Code section 1861.05, subdivision (b) for which the variance is sought.

(i) An insurer may recover its "Allocated Costs" for its SIU expenses only in its approved rate filing for the line of insurance affected by the SIU investigation costs.

(ii) Affiliated insurers who utilize the same SIU unit may recover the portion of their "Allocated Costs" for their SIU expenses attributable to investigations of claims made on the line of insurance in the rate application only in one approved rate application for the line affected by the Allocated SIU costs. The term "Affiliated Insurers" has the same meaning as that term has in Insurance Code section 1215.

(iii) The only recoverable SIU expenses are those expended for investigators whose sole duties are investigation of insurance fraud, software dedicated solely to analysis of data for indications of insurance fraud, training of employees whose sole duty is the investigation of fraud and equipment to be used solely by the insurer's SIU. The recoverable expenses do not include the costs of employing or other costs for adjustors or underwriters.

(iv) The only recoverable SIU expenses are for SIU's dedicated to investigation of insurance fraud within the State of California or for the portion of an SIU's operations within California. The burden of demonstrating the amount of SIU expenses, and that those expenses are for the investigation of insurance fraud within the State of California, is the insurer's.

(v) An insurer may recover the "Allocated Costs" of retaining an independent contractor to perform SIU services as described in sub-paragraph (iii). The variance shall be calculated by multiplying the fees paid for the independent agency with whom the insurer contracts by the percentage of referrals of claims made on the line of insurance for which the rate application and variance application

are made and that the contracted agency investigates in California on behalf of the insurer seeking the variance.

(vi) No expense that is included within the Defense and Cost Containment Expense portion of an insurer's complete rate application can be included in whole or in part as the basis for a variance based on SIU expenses. The terms "Defense and Cost Containment Expense" or "DCCE" when used with regard to any variance have the same meaning as those terms have in Section 2644.23, subdivision (c).

(vii) An insurer that asserts that payments to: (1) an independent contractor; or (2) an SIU owned by an Affiliated Insurer; or (3) an SIU independent of an insurer, but which is owned directly or indirectly, in whole or part by the insurer applying for a variance or by an Affiliated Insurer, shall in its variance request, provide the Department of Insurance with documentation showing the costs of investigation for the purported "Allocated Costs" claimed in the variance request. The payments constituting the basis for the variance must be *bona fide* payments for investigation of individual cases of suspected insurance fraud. It shall be the burden of the insurer to demonstrate that the costs are *bona fide* costs for investigation of insurance fraud in the State of California.

(B) An insurer meeting the qualifications set forth below will be allowed to recover its expenses for the most recent year for dedicated loss prevention programs such as brush clearance, driver education, risk management, hazard mitigation or accident prevention. Loss prevention expenses do not include SIU expenses under subsection (A).

(i) An insurer may recover its "Allocated Costs" for its loss prevention expenses only in its approved rate for the line of insurance affected by the loss prevention expenses.

(ii) The insurer must provide documentation detailing the loss prevention program, what additional costs are being incurred and what losses are being prevented.

(iii) Recoverable loss prevention expenses are those expended for employees whose duties are loss prevention, software dedicated to loss prevention, and equipment to be used for loss prevention. Recoverable loss prevention expenses do not include the routine and customary costs of marketing or employing underwriters or adjusters.

(iv) The only loss prevention expenses recoverable are for loss prevention programs dedicated to loss prevention in the State of California or for the portion of the program within California. The burden of demonstrating the amount of loss prevention costs, and that those costs are expended for loss prevention in the State of California, is on the insurer.

(2) That the insurer should be allowed relief from the efficiency standard due to any or all of the following:

(A) Higher quality of service, as demonstrated by objective measures of consumer satisfaction; or

(B) Demonstrated superior service to underserved communities, as defined in Section 2646.6; or

(C) Significantly smaller or larger than average California policy premium, including any applicable fees. These fees include but are not limited to: policy fees, installment fees, endorsement fees, inspection fees, cancellation fees, reinstatement fees, late fees, SR-22, and other similar charges.

(3) That the insurer should be authorized leverage factor different from the leverage factor determined pursuant to Section 2644.17 on the basis that the insurer either writes at least 90% of its direct earned premium in one line or writes at least 90% of its direct earned premium in California and its mix of business presents investment risks different from the risks that are typical of the line as a whole. The leverage factor shall be adjusted by multiplying it by 0.85. The surplus ratio in Section 2644.22 shall likewise be divided by 0.85. If an insurer writes at least 90% of its direct earned premium in one line and writes at least 90% of its direct earned premium in California, the insurer will only be authorized one leverage factor adjustment of 0.85.

(4) That the insurer should be granted relief from operation of the efficiency standard for a line of insurance in which the insurer has never previously written over $1 million in earned premiums annually and in which the insurer has made or is making a substantial investment in order to enter the market. Any such request shall be accompanied by a proposed amortization schedule to distribute the start-up investment.

(5) That the minimum permitted earned premium should be lowered on the basis of the insurer's certification, and the Commissioner's finding, that the rate will not cause the insurer's financial condition to present an undue risk to its solvency and will not otherwise be in violation of the law.

(6) That the insurer's financial condition is such that its maximum permitted earned premium should be increased in order to protect the insurer's solvency. Any application for authorization under this subsection shall include:

(A) A showing of the insurer's condition, based on generally accepted standards such as the National Association of Insurance Commissioners' Insurance Regulatory Information System;

(B) A plan to restore the financial condition;

(C) A showing that, consistent with the claimed condition, the insurer has reduced or foregone dividends to stockholders or policyholders; and

(D) A plan to reduce rates once the insurer's condition is restored, in order to compensate consumers for excessive charges.

(7) That the insurer should be granted relief from using its in-force business as specified in subdivision (e) of Section 2644.4.5 because the insurer's in-force exposures do not reflect the insurer's prospective exposure to risk, such that the modeled catastrophe adjustment in subdivision (a) of Section 2644.5 does not produce the most actuarially sound result.

(8~~7~~) That the loss development formula in Section 2644.6 does not produce an actuarially sound result because

(A) There is not enough data to be credible;

(B) There are not enough years of data to fully calculate the development to ultimate;

(C) There are changes in the insurer's reserving or claims closing practices that significantly affect the data; ~~or~~

(D) There are changes in coverage or other policy terms that significantly affect the data; ~~or~~

(E) There are changes in the law that significantly affect the data; or

(F) There is a significant increase or decrease in the amount of business written or significant changes in the mix of business.

(9~~8~~) That the trend formula in Section 2644.7 does not produce the most actuarially sound result because

(A) There is a significant increase or decrease in the amount of business written or significant changes in the mix of business;

(B) There are not enough years of data to calculate the trend factor;

(C) There is a significant change in the law affecting the frequency or severity of claims;

(D) It can be shown that a trend calculated over a period of at least 4 quarters other than a period permitted pursuant to Section 2644.7, subdivision (b) is more reliable prospectively;

(E) There are changes in the insurer's claims closing practices that significantly affect the data; or

(F) There are changes in coverage or other policy terms that significantly affect the data.

(10~~9~~) That the maximum permitted earned premium would be confiscatory as applied. This is the constitutionally mandated variance articulated in *20th Century v. Garamendi* (1994) 8 Cal.4th 216 which is an end result test applied to the enterprise as a whole. Use of this variance requires a hearing pursuant to Section 2646.4.

(g) If there is more than one actuarial analysis of a variance, each of which is based on reliable data and utilizes methods which are shown by qualified expert evidence to be generally accepted as sound by the actuarial community and the appropriate methods for the particular variance, then the variance shall be granted, denied or calculated utilizing the actuarial proposition that results in the soundest actuarial result.

(h) Notwithstanding any other section of these regulations, the aggregate total adjustment to the efficiency standard for all variances combined shall not exceed the difference between the insurer's most recent year total expense ratio excluding defense and cost containment expenses and the efficiency standard.

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805.

Title 10. Investment
Chapter 5. Insurance Commissioner
Subchapter 4.8. Review of Rates
Article 8. Timelines for Scheduling and Commencing Hearings

Adopt: Section 2648.5. Pre-Application Required Information Determination ("PRID") Procedure

(a) Definitions.

As used in this section, each of the following terms has the meaning set forth below:

(1) "Pre-application required information determination" or "PRID" means a nonadjudicative determination the California Department of Insurance issues before an insurer submits a complete rate application and that specifies all information and data regarding a model that are required to be provided to the Commissioner as part of a complete rate application that relies upon the model for purposes of requesting a proposed rate change pursuant to Insurance Code section 1861.05.

(2) "Pre-application required information determination procedure" or "PRID procedure" means a nonadjudicative procedure before the California Department of Insurance that takes place before an insurer submits a complete rate application and the purpose of which is to determine all information and data regarding a model that are required to be provided to the Commissioner as part of a complete rate application that relies upon the model for purposes of requesting a proposed rate change pursuant to Insurance Code section 1861.05.

(3) The term "model" means any simplified representation of relationships among real world variables, entities, responses, actions, or events using appropriate statistical, financial, economic, mathematical, non-quantitative, or scientific concepts and equations, or any combination thereof, and that consists of three components: one or more information input components, which deliver data and assumptions to the model; one or more processing components, which transform input into output; and one or more results components, which translate the output into useful business information. Types of models include, without limitation, "catastrophe risk models," "complex catastrophe models," "probabilistic catastrophe models," "third-party models," "wildfire models," "wildfire risk models," "risk models," and models referencing other perils; the meaning of the term "model" also includes without limitation a "Wildfire Risk Model" as described in Section 2644.9, subdivision (b)(6)(A).

(4) "Required model information" means all required information and data regarding a model, that the Commissioner requires to be submitted as part of a complete rate application that relies upon the model, because such information and data will aid

the Commissioner in determining whether the model is reliable to perform the functions for which an insurer proposes to use the model, for purposes of the Commissioner's evaluation of a complete rate application.

(5) "Complete rate application" means an application submitted by an insurer desiring to change any property and casualty rate pursuant to Insurance Code section 1861.05 and shall include without limitation all required model information and all information and data specified in Section 2648.4, regardless of whether any such information and data is included in its initial complete rate application submission or is subsequently submitted as part of the rate proceeding, including without limitation in response to requests for further information and data by the Department.

(6) "Public information" means all information provided to the Commissioner as part of a complete rate application submitted pursuant to article 10 of division 1, part 2, chapter 9 of the Insurance Code.

(7) "Confidential PRID information" means information, data, testimony, evidence, hearings, briefs, pleadings, correspondence, discovery, working papers, and other material created or exchanged for purposes of a PRID procedure, and that are not included in any complete rate application subsequently submitted or otherwise provided to the Commissioner.

(8) "Model Advisor" means the person within the Department of Insurance who oversees a PRID procedure.

(a) For purposes of determining appropriate rates for a property and casualty line of business, the Commissioner requires insurers seeking to rely upon modeled information, including without limitation modeled financial projections such as aggregate catastrophe loss projections and other types of projected losses, to submit all required model information as part of a complete rate application. Required model information shall include, in addition to any information specified in the complete rate application requirements set forth in Section 2648.4, information that demonstrates the model uses established concepts, data, equations, and principles, as well as best available scientific information and data, insurance claims expertise, and other assumptions appropriate for the risk or peril being modeled.

(b) The purpose of a pre-application required information determination procedure or PRID procedure shall be for the Department of Insurance to issue a PRID that specifies all required model information to be included in a complete rate application that relies upon the model. The purpose of the PRID procedure shall not be to determine how a specific model shall apply in any particular complete rate application, nor shall the parties examine any nonaggregated insurer-specific information as part of the PRID procedure.

(c) Required model information specified in a PRID shall not be provided to the Commissioner and shall not be public information until or unless an insurer subsequently submits a complete rate application to the Commissioner that relies upon the model.

(d) Confidential PRID information shall not be public information and shall be considered to be information received in official confidence by the Department of Insurance. Accordingly, confidential PRID information shall not be subject to disclosure in response to requests pursuant to the California Public Records Act (commencing with Government Code section 7920.000).

(e) The Commissioner shall delegate authority to oversee a PRID procedure and issue a pre-application required information determination to the Model Advisor. The Model Advisor is authorized to hire outside consultant(s) with relevant knowledge and subject matter expertise to assist in determining required model information.

(f) The Department of Insurance may initiate a PRID procedure by submitting a Notice of PRID procedure to the Model Advisor.

(g) Any person other than the Department may petition to initiate a PRID procedure, or petition to participate in a PRID procedure, by following the procedure set forth in Section 2661.4 and may be eligible for compensation pursuant to Insurance Code section 1861.10 and Sections 2661.1 through 2662.8 and this Section. A petition to initiate a PRID procedure may be combined with a petition to participate in a PRID procedure.

(1) The Model Advisor shall grant the petition to initiate a PRID procedure only if the Model Advisor determines that the petitioner has demonstrated it is more likely than not that the Commissioner would benefit from a PRID and either of the following conditions exist: (i) there is no currently valid PRID under this Section; or (ii) the model has not been previously been subject to public review in any other forum in California, including without limitation as part of a complete rate application, within the prior four years.

(2) The Model Advisor shall rule on a petition to initiate the PRID procedure, a petition to participate in a PRID procedure, or a combined petition, within 10 business days after receipt of the petition by the Model Advisor.

(3) The owner or vendor of a model may decline to participate as a party in a PRID procedure as to that model, but shall provide witness testimony, documents, and other information in response to subpoena.

(4) The Commissioner shall decide any requests for compensation by participants to a PRID procedure in accordance with Section 2662.6 and this Section. For purposes of a request for compensation based upon participation in a PRID procedure, the following additional standards shall apply:

(A) The Model Advisor shall determine a participant has made a "substantial contribution" to a PRID procedure only where the participant demonstrates that as a result of its participation, the Model Advisor has included in the PRID additional information or data regarding the model that would not otherwise have been identified without the requestor's participation in the PRID procedure, Section 2661.1(k) notwithstanding.

(B) A party may not request compensation for fees and expenses based upon work that unnecessarily duplicates the work of another party. Work that materially supplements, complements, or contributes to the substantial contribution of another party shall not be considered unnecessarily duplicative.

(C) To the extent the substantial contribution claimed by a participant duplicates the substantial contribution of another party to the PRID procedure, the Commissioner may find that neither party has made a substantial contribution.

(5) The insurer shall pay any award of compensation arising out of a PRID procedure initiated to examine a model created by that insurer or its affiliates.

(h) The Model Advisor shall publicly notice a PRID procedure within three (3) business days after receiving a petition to initiate a PRID procedure or a Notice of PRID Procedure from the Department. Petitions to participate shall be considered timely if submitted within five (5) business days after the Model Advisor issues public notice of the PRID procedure. The PRID procedure shall be initiated five (5) business days after the Model Advisor has issued a ruling granting any petition to participate in the PRID procedure.

(i) Within 15 business days after a PRID procedure has been initiated, all parties to a PRID procedure under this section shall:

(1) File a statement with the Model Advisor describing how the parties will avoid duplication. The statement shall disclose without limitation working agreements among the parties, lead counsel arrangements on certain issues, sharing of expert witnesses among the parties, and intent to file joint documents; and

(2) Enter into a stipulated nondisclosure agreement that shall only govern the treatment of all confidential PRID information. The agreement shall specify, at a minimum, that (i) the representatives of the parties that participate in the PRID procedure shall not share any confidential PRID information with any other person, including without limitation persons employed by the same party but not involved in the PRID procedure; and (ii) the parties that participate in the PRID procedure shall return or destroy all confidential PRID information within an agreed-upon length of time after a PRID has been issued. After all parties have entered into the agreement, the parties shall submit a stipulation and proposed protective order based upon the parties' nondisclosure agreement to the Model Advisor for review. Alternatively, if

the parties are unable to agree upon a stipulated nondisclosure agreement, any party may, no later than the fifteenth business day after the initiation of the PRID procedure as determined pursuant to Subdivision (h), submit a proposed protective order to the Model Advisor. No later than 10 business days after a proposed protective order has been received by the Model Advisor, the Model Advisor shall determine whether there is a significant public interest in the non-disclosure of confidential PRID information, and, upon a finding there is, enter an order thereon. Following the conclusion of the PRID procedure, the Model Advisor shall retain jurisdiction to enforce the terms of the protective order.

(3) Unless a party is the Department of Insurance or demonstrates that it represents the interests of consumers, the Model Advisor may, upon a finding that the disclosure of certain confidential PRID information to such non-Department or nonconsumer-party would cause irreparable harm to the owner or vendor of the model, enter an order specifying the confidential PRID information that party shall not receive.

(j) To the extent not otherwise specified herein, the Model Advisor may, without limitation: control the course of the PRID procedure; grant or deny a petition to initiate or participate in the PRID procedure; administer oaths; issue subpoenas; rule on motions to compel discovery; receive evidence and testimony; upon notice, hold appropriate conferences before and during the procedure; rule upon procedural objections or motions; receive offers of proof; hear argument; and fix the time and place for the filing of any briefs.

(k) During a PRID procedure, all parties may propound discovery on the owner or vendor of the model to provide information and data regarding the model, including the production of documents and testimony. The parties shall not otherwise engage in discovery.

(l) During a PRID procedure, any party may proffer expert testimony and cross-examine other parties' experts regarding the reliability of the model and what constitutes required model information.

(m) The terms of the confidentiality order notwithstanding, the inclusion of any required model information in a subsequent complete rate application proceeding shall make such information public information.

(n) In a complete rate application that is submitted by an insurer subsequent to a PRID procedure, any person may rely upon the PRID to determine what is required model information. A PRID is not specific to any one complete rate application but may be relied upon in multiple complete rate applications by unaffiliated insurers. A PRID shall be valid in any complete rate application proceeding relying upon that model through the four-year anniversary date of its issuance, provided that the model has not been substantively updated, amended, altered, or changed subsequent to the issuance of the PRID. The validity of a PRID shall be determined as of the date of the submission of the complete rate application relying upon the PRID.

(o) In the event a model is substantively updated, amended, altered, or changed subsequent to the issuance of a PRID but prior to the submission of a complete rate application using or relying upon the model as substantively updated, amended, altered, or changed, then (i) the original PRID is no longer valid for purposes of determining required model information, and (ii) any party may initiate or participate in, pursuant to this Section, a subsequent PRID procedure limited to the issue of whether and how the prior PRID should be substantively updated, amended, altered, or changed.

(p) The PRID procedure shall stand submitted when the Model Advisor closes the record. The Model Advisor shall close the record no later than 90 business days after issuing the confidentiality order specified in this Section unless all parties agree or the Model Advisor determines there is good cause to keep the record open. The Model Advisor shall issue a final pre-application required information determination that specifies all required model information within 15 business days after the PRID procedure is submitted.

(q) As an alternative to issuing a PRID, the Model Advisor may issue a declination to specify a set of required model information after a PRID procedure, if the Model Advisor determines that there is no set of required model information that could reasonably be relied upon to support the use and inclusion of any of the modeled financial projections, modeled catastrophe adjustments, modeled projected losses, or any other type of modeled loss outputs and projections for purposes of reviewing an insurer's complete rate application. In the event the Model Advisor declines to specify a set of required model information, any insurer may still seek to rely upon the model in a subsequent complete rate application but shall publicly produce any information and data the Commissioner requires regarding that model as part of the complete rate application.

(r) At any time prior to the Model Advisor issuing a PRID, the parties to a PRID procedure may stipulate to a set of required model information. The parties shall submit any such stipulation and a proposed set of required model information to the Model Advisor for review. No later than 15 business days after submission of the stipulation and proposed set of required model information, the Model Advisor shall determine whether the proposed required model information satisfies the standards set forth herein and issue an order either adopting or declining to adopt the proposed set of required model information as the PRID for that model.

(s) A PRID shall be subject to judicial review in accordance with Insurance Code sections 1858.6 and 1861.09. For purposes of judicial review, a declination by the Model Advisor shall not be considered a final decision.

(t) Any Department costs associated with a PRID procedure shall be construed to be administrative and operational costs arising from the provisions of article 10 of division 1, part 2, chapter 9 of the Insurance Code.

(u) Nothing in this section shall be construed as prohibiting the creation of a publicly available model for use in projecting annual aggregate catastrophe losses.

NOTE: Authority cited: Sections 1850.4, 1858.6, 1861.01, 1861.05, 1861.07, 1861.09, 1861.10, and 12924, Insurance Code; Sections 7922.630, 7927.705, 11415.50 and 11415.60, Government Code; and *20th Century v. Garamendi*, 8 Cal.4th 216 (1994). Reference: Sections 7, 1077.3, 1850.4, 1858.6, 1861.01, 1861.05, 1861.07, 1861.08, 1861.09, 1861.10, 12919, and 12921, Insurance Code; Sections 7922.630, 7929.000, 11415.50, 11415.60, 11507.6, 11507.7, and 11513, Government Code; Sections 350, 351, 352, and 1040, Evidence Code; *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805; and *State Farm Mutual Automobile Ins. Co. v. Garamendi*, 32 Cal.4th 1029 (2004).

EXHIBIT 15

Comments of Consumer Watchdog

California Department of Insurance Rulemaking Hearing Regarding
Catastrophe Modeling and Ratemaking
August 16, 2024 Proposed Regulation Text

REG-2023-00010

September 17, 2024

INTRODUCTION

Commissioner Lara proposes to allow insurance companies to use unverifiable black box models to set rates, charge consumers for unregulated reinsurance, and roll back regulatory oversight that has protected consumers for nearly four decades.

These measures, proposed by the insurance industry in response to an availability crisis the insurance industry created, will make insurance premiums even more unaffordable for consumers across the state.

They will also fail to stabilize access to coverage in California. Despite similar concessions in Florida, home insurance rates are at least two-and-a-half times higher than in California,[1] Florida's insurer of last resort has four times as many policyholders as the FAIR Plan,[2] and insurance companies have still abandoned the state.

The proposed regulation—based on a legislative proposal negotiated between Commissioner Lara and insurance companies behind closed doors last year—was supposed to make insurance companies give something back by requiring them to sell home insurance again to Californians they have abandoned. It was also supposed to provide robust public review of models so consumers, communities, and policymakers can be confident that insurance companies are treating consumers fairly.

It is deeply disappointing that the long-awaited text of the regulation fails on both counts. The proposed regulation will not require expanded access to insurance for Californians. It also does not create any meaningful review of the private black box catastrophe models insurance companies want to use to raise rates. Instead, the proposal is riddled with loopholes and

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[1] Nat. Assn. of Ins. Comrs., *Dwelling Fire, Homeowners Owner-Occupied, and Homeowners Tenant and Condominium/Cooperative Unit Owner's Insurance Report: Data for 2021* (Dec. 2023), https://content.naic.org/sites/default/files/publication-hmr-zu-homeowners-report.pdf.
[2] Fla. Off. of Ins. Reg., Personal and Commercial Residential Policy Data, https://floir.com/tools-and-data/residential-market-share-reports.

limitations that will result in massive unjustified rate hikes on homeowners, renters, and small businessowners without improving access to coverage.

Proposed Section 2644.4.8 does not require a single insurance company to sell more wildfire coverage.

- Insurance companies won't have to expand sales to 85% of consumers in distressed areas. They may opt instead to increase their market share in distressed areas by just 5%, *or* take the third option of an "alternative commitment" of their own choosing.
- Insurance companies won't have to sell comprehensive coverage. They may offer a bare-bones policy equivalent to what consumers can already get today on the FAIR Plan.
- Rate hikes start on Day 1, but insurers won't report progress toward commitments for two years—until at least 2027.
- After two years, an insurer may defer meeting a commitment indefinitely, as long as it claims to be making a "reasonable effort."
- There are no penalties if a company fails and no timelines for completion.

Catastrophe models are notoriously inaccurate, inconsistent, and contain biases that can reinforce discriminatory insurance practices. **Yet Proposed Section 2648.5 fails to enact substantive review or approval of models so consumers can have confidence their rates are fair.** Instead, the regulation:

- Creates a process designed to keep model information private, violating Prop 103's unconditional public disclosure and independent scrutiny requirements.
- Does not set uniform standards, or require wildfire models be proven reliable, predictable, and unbiased before they can be used.
- Does not require review or approval of models; the purpose of a Pre-Application Required Information Determination ("PRID") is solely to determine what information will be disclosed.
- Contains no guidelines for minimum information to be made public; required disclosures will be different for every model.
- Actively discourages public participation and independent review of models by experts.
- The whole process is voluntary, and any model currently in use is exempted entirely for up to four years.

Models will simply be tools for insurance companies to charge policyholders more unless California mandates transparency into how they impact prices, imposes rules of the road requiring review and approval of their design and use, and requires that insurance companies use them to provide consumers and communities with actionable information about their own climate risk.

A public model—with no mandate for data secrecy—is the best way to meet these goals.

Consumer Watchdog is one of many public interest organizations that have urged the Commissioner to embrace creation of a public model in prior workshops. While the Initial Statement of Reasons responded to concerns raised in those workshops by many insurance companies and modeling firms with changes to the regulation, the only response to consumer groups was a note that the regulation will not prohibit a public model. Commissioner Lara made no effort to investigate this option.

The misuse of big data, algorithms and artificial intelligence is the focus of intense scrutiny by policymakers in California and across the country. This regulation takes California in the wrong direction.

By bending over backwards to keep models secret, the proposed regulation will lead to unreliable and discriminatory rates, deny consumers and communities the credit they deserve for wildfire mitigation efforts, and authorize models that do not accurately reflect the changing climate risk.

We urge the Commissioner to rethink this failed approach. To ensure that rates and premiums are fair the Department of Insurance must: require public access to any model that impacts rates; mandate standards, testing requirements, and approval of all models; and, thoroughly investigate and actively support the creation of a public model that will better serve all Californians.

Below we provide greater detail about each of these concerns.

PART I: Section 2644.4.8. Distressed Areas; Insurer Commitments

The proposed regulation will drive up rates for every Californian, not just those in wildfire areas.

While the coverage "commitments" do not begin for two years, insurance companies would be able to raise rates using black box models and reinsurance immediately.

The proposed regulation allows insurance companies to use black box catastrophe models to set rates for every Californian. The next regulation on deck will allow insurance companies to charge all policyholders for the unregulated (and skyrocketing) cost of global reinsurance—which no other California commissioner has ever allowed. These two changes will raise rates not just in riskier areas, but for home, condo, and apartment insurance across the state. For example, in North Carolina, one homeowners insurance company's charge on consumers for reinsurance

raised the rate by 46%.[3] In another North Carolina case, the Insurance Commissioner found modeled hurricane losses to be questionable and ordered them reduced by 13.9%.[4]

Companies will begin seeking double-digit rate hikes on these terms soon as the regulations are final; the Commissioner has asserted this will be by the end of this year. However **Proposed Section 2644.4.8(d)** does not require insurance companies to show their progress on their commitments until two years have passed—meaning 2027 at the earliest. As noted in more detail below, this is not a hard deadline.

That means every Californian will pay more for the proposed regulation's empty promise to get homeowners in wildfire areas insured.

The majority of the public does not support that tradeoff, even if it were successful in getting people insured again. A poll conducted by FM3 Research for Consumer Watchdog found that Insurance Commissioner Lara's plan to allow insurance companies to increase premiums for all Californians in exchange for a promise to insure homeowners in higher wildfire risk areas is opposed by a 2 to 1 margin, 62% opposed to 30% in support. Only 9% of voters register in strong support.[5]

Insurance companies do not have to sell comprehensive coverage to meet their commitments.

Ever since Commissioner Lara announced his deal with the insurance industry last September, Consumer Watchdog has asked him to confirm exactly what kind of policy insurance companies would have to sell. This question was urgent because the deal the Commissioner made with the insurance industry during the last legislative session would have allowed the sale of bare bones, FAIR Plan–equivalent policies, not the standard, full-benefit home insurance that Californians need.[6] The Commissioner never answered.

The proposed regulation contains the same loophole. Nothing in the text of the regulation specifies that the policies insurance companies are committing to sell must be standard, full-

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[3] Consumer Watchdog's Preliminary Comments/Questions on NCOR in California Ratemaking Proposal as Presented During CDI Informational Meeting on August 21, 2024, https://consumerwatchdog.org/wp-content/uploads/2024/09/2024-08-30-CWD-Comments_Questions-on-CDI-NCOR-Proposal34.pdf.

[4] Comments by Allan I. Schwartz on behalf of Consumer Watchdog Regarding California Department of Insurance August 23, 2024 Proposed Regulation Text, Catastrophe Modeling and Ratemaking, REG-2023-00010, Sept. 17, 2024, submitted concurrently herewith.

[5] Consumer Watchdog, "New Poll Shows Voters Oppose Commissioner's Home Insurance Plan by 2 to 1," Nov. 16, 2023, https://consumerwatchdog.org/insurance/new-poll-shows-voters-oppose-insurance-commissioners-home-insurance-plan-by-2-to-1-overwhelming-support-requiring-insurers-to-cover-all-who-fire-proof-their-homes/.

[6] Consumer Watchdog letter to Gov. Gavin Newsom et al., Nov. 1, 2023, https://consumerwatchdog.org/wp-content/uploads/2023/11/LtrGovLeg11-1-23.pdf.

benefit insurance coverage that will make sure people can fully rebuild their property and replace their possessions if they experience a loss.

This directly contradicts public expectations and assertions by the Commissioner and Department staff that the policies will be comprehensive.

Proposed Section 2644.4.8(d). The regulation directs companies to commit to sell "policies" with no description of the scope of that coverage.

Proposed Section 2644.4.8. The only other term used in the regulation is "qualifying residential property insurance," as defined in Ins. Code Section 10087, excluding condo owner and tenant policies. That term broadly means a "policy insuring individually owned residential structures of not more than four dwelling units, individually owned condominium units, or individually owned mobilehomes, and their contents, located in this state and used exclusively for residential purposes or a tenant's policy insuring personal contents of a residential unit located in this state."[7]

"Qualifying residential property insurance" could mean an HO-3 comprehensive homeowners policy. It could also mean the "basic property coverage" sold by the FAIR Plan.

A standard HO-3 policy for homeowners covers far more than the limited-benefit FAIR Plan coverage. Among the perils that HO-3 policies cover but are excluded by the FAIR Plan, even with optional add-on coverage, are:

- Theft
- Liability
- Falling objects, such as a tree on the roof
- Non-flood water damage, such as pipes bursting
- The weight of ice or snow
- Glass breakage
- Damage to others' property

When Commissioner Lara recognized the importance of comprehensive policies to homeowners on the FAIR Plan and ordered the Plan to offer broader coverage, the order specified that the Plan must offer "the option of an HO-3 policy or a policy with coverages equivalent to those included in an HO-3 policy."[8]

If the Commissioner's intent were to require insurance companies to sell full-benefit coverage under their commitment, this regulation must also specify the type of policies insurance companies must issue. The proposed regulation does not do so.

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[7] Cal. Ins. Code Section 10087, https://california.public.law/codes/ca_ins_code_section_10087.
[8] *In the Matter of the California FAIR Plan Assn.*, Order No. 2019-2, Nov. 14, 2019, https://www.insurance.ca.gov/0250-insurers/0500-legal-info/0700-commissioners-orders/upload/FAIR-Plan-Order-2019-2.pdf.

Consumers can already buy limited-benefit coverage from the FAIR Plan. This is the jam consumers are trying to get free of. If insurance companies' only commitment under this regulation is to sell bare-bones coverage in return for unjustified rate increases, consumers will be no better off than they are today.

There is no requirement that insurance companies expand sales to 85% of wildfire areas.

Consumer Watchdog has also sought answers on this question since the Commissioner's deal with the industry was announced in September 2023, because the 2023 legislative language would have allowed the Commissioner to exempt any insurance company from its commitments. We asked if insurance companies would be held to an enforceable commitment to increase sales under this new plan, given the clear exceptions in the 2023 deal it was based on. Again, the text of the proposed regulation is clear.

Proposed Section 2644.4.8(d). Rather than meet the standard in (d)(1), a commitment to increase sales in distressed areas to 85 percent of an insurer's market share elsewhere, an insurer "may instead commit" to increasing its policies in distressed areas by as little as 5% of its current business in those areas, on a one-time basis under (d)(2).

This "five percent increment" could amount to very little change for an insurance company that has already dropped most of its customers in fire zones. It perversely rewards those companies that have already abandoned Californians, because if a company's baseline number of policies is small, a 5% increase will be marginal too.

The Initial Statement of Reasons ("ISOR") (p. 37) confirms that insurance companies don't have to meet the 85 percent standard: "This subdivision establishes ***one of two*** standards an insurer may choose as its commitment . . . ." [emphasis added]

Proposed Section 2644.4.8(f). A 5% increase is also the only commitment that commercial insurers must make.

The 5% increase is not limited to small or regional companies.

The Commissioner and Department staff have stated that the 5% increment is limited to small and regional companies that could not meet the 85% standard.[9] However, the text of the regulation does not contain any such limitation.

Even the 5% commitment is an illusion, because insurers have the option of making an "alternative commitment" to choose their own standards.

[9] Cal. Dept. of Ins., "California's Sustainable Insurance Strategy: Insurance Commitments for Wildfire Distressed Areas," June 2024, https://www.insurance.ca.gov/01-consumers/180-climate-change/upload/California-Department-of-Insurance-Presentation-on-Insurance-Commitments-in-Wildfire-Distressed-Areas.pdf.

Proposed Section 2644.4.8(j). At any time, insurance companies may tell the Department of Insurance they cannot meet an 85% or 5% commitment and propose a different commitment.

The justifications for an insurer seeking an "alternative commitment" are undefined. For example, (j)(1)(C) cites "the frequency or severity of recent events impacting the insurer" as a basis for proposing an alternative commitment. The text does not even specify that the recent events must have caused the insurance company financial harm. Such vague terms open the door for any insurance company to demand the right to opt for a lesser "alternative" to either the 85% or 5% increment.

The regulation contains no standards that an acceptable "alternative commitment" must meet.

The regulation states, in (j)(2)(B) in one sentence with no further qualification, that the Commissioner will evaluate an insurance company's proposed alternative commitment based on whether "the alternative increases availability of qualifying residential property insurance and/or commercial property insurance."

Could an insurance company offer to sell a few more policies in a single ZIP code? Increase sales only in non-distressed areas? Start selling Difference In Conditions wraparound coverage, but drop more homeowners' full-benefit policies? Neither the regulation nor the ISOR addresses such questions.

An insurance company could apply for an alternative commitment from Day One. Or it could invoke this alternative commitment option at the two-year mark when it fails to meet the 85% market share or 5% increase commitments. This option creates one avenue to never-ending revisions of an insurance company's commitments.

And **Proposed Section 2644.4.8(g)(3)(C)3.** makes clear that insurance companies, not the Commissioner, will choose the timeline for fulfilment of an alternative commitment.

This "alternative commitment" loophole eliminates even the minimum commitments the regulation otherwise purports to impose.

Multiple additional loopholes and off-ramps let insurance companies off the hook if they fail to meet their commitments.

Proposed Section 2644.4.8(i). An insurance company that has not met the 85% or 5% commitment after two years has only to file an "insurer attestation" that it "is taking reasonable steps to fulfill its insurer commitment." As the regulation does not define what an "insurer attestation" contains, it could be as little as a sentence informing the insurance commissioner whether a company met its commitment or not. "Reasonable steps" is also not defined.

After the attestation, the insurance company is granted an indefinite extension with no requirement or deadline for future reporting or compliance.

Commitments have an expiration date.

Proposed Section 2644.4.8(i). Once an insurance company attests it has met a commitment it is relieved of the obligation of future reporting.

The ISOR (p. 61) states that attestations are only required "until such time as that insurer has attested that it has fulfilled that insurer commitment." In the unlikely event that, despite this regulation's failings, an insurance company does meet a commitment, this language makes clear it is a one-time deal.

This means a company could reverse course and restrict sales right after its attestation was filed.

In addition, **Proposed Section 2644.4.8(d)** states that insurance companies who already meet the 85% standard, and are therefore allowed to make a commitment to maintain that market share "for at least three years," have no obligation beyond the third year. As the ISOR (p. 39) confirms, "the identified time frame is reasonably necessary to address the problem of insurers not knowing how long they have to meet their commitments . . . ."

There is no expectation that an insurance company's commitment to maintain current market share in distressed areas extends beyond the three-year timeframe.

Proposed Section 2644.4.8(h)(1). Another section directs insurance companies to submit a lower "modified insurer commitment" if their market share has decreased.

This encourages insurance companies to continue on the path they're on today. An insurance company that intentionally reduces market share by dropping policyholders would then trigger a re-evaluation (lowering) of the insurance company's commitment. There is no limit on the number of times these commitments can be reduced. Yet the regulation would allow a company that is actively choosing to non-renew policyholders to retain the financial boon of using private models to increase rates.

Proposed Section 2644.4.8(j). A third section allows insurance companies that can't meet their goals to propose the "alternative commitments" outlined above.

There are no timelines for meeting an insurer's commitments, or even reporting on an insurer's progress beyond the first two-year mark, if it says it is "acting in good faith" to comply.

One reason insurance companies are unlikely to meet these commitments is that policies in fire areas will be too expensive for most homeowners to afford.

A very likely outcome of this regulation is that insurance companies will technically offer policies in distressed areas, but that they will price them so prohibitively high that no one will be able to afford them. Insurance companies will then be able to claim they are "taking reasonable steps to fulfill" their goals—because they are offering the policies—but are unable to comply ***because no one can afford to buy them.***

There are no penalties for failure.

Insurance Commissioner Lara has mentioned multiple enforcement mechanisms that are at his disposal: market conduct exams, rate reviews, even refunds.[10] The text of the regulation, however, does not name mandatory or even potential consequences if an insurance company does not meet its commitment at the two-year mark, or at any point in the future, as long as it says it is taking "reasonable steps" to fulfill it.

The regulation does not require the commissioner to investigate failures, order refunds, or take any other enforcement action against an insurer that fails to meet its commitments.

Proposed Section 2644.4.8(h)(2). The regulation does say that an insurance company that renounces its commitment shall no longer use catastrophe models. But since there is no timeline for an insurance company to meet its commitments, plenty of leeway to reduce its commitment when it fails to meet the mark, and no penalty for failure, there is no reason to expect an insurer will ever choose to renounce its commitment.

Companies will not have to prove they met their commitments publicly.

Proposed Section 2644.4.8(c). The only information under the proposed regulation insurance companies must file publicly as part of a complete rate application is notification of what commitment—85%, 5%, or some alternative—they have chosen.

Proposed Section 2644.4.8(g). The proposed regulation requires insurance companies to maintain a "wildfire risk portfolio register" that is meant to track an insurance company's progress on its commitment. But the regulation does not require the portfolio register to be made public in rate filings or at any other time. The public, policymakers, and the press will have no way of verifying if an insurance company is meeting its commitments.

One potential benefit of such reporting—if it were public, and if insurance companies were in fact meeting their commitments—would be new data to fill the massive existing information gap regarding Californians' access to coverage. That information could be used to better illuminate for policymakers and the public whether access is improving or getting worse in areas across the state. But no such disclosure is required.

The Commissioner has not disclosed details about how "distressed areas" were identified.

Proposed Section 2644.4.8(a). The regulation defines "distressed areas" to include undermarketed ZIP codes with high fire risk where at least 15% of policies are with the FAIR Plan, or where policies in lower-income ZIP codes cost at least $4 per $1000 in coverage. "Distressed areas" also includes counties where the percentage of high- or very high–risk structures is in at least the 50th percentile of all counties. However, no data or substantive

[10] Levi Sumagaysay, "California pushes insurers to cover more homes in these areas. Is your ZIP included?" Cal Matters, June 12, 2024, https://calmatters.org/economy/2024/06/california-pushes-insurers-to-cover-more-homes-in-these-areas-is-your-zip-included/.

explanation has been released to show why the Department chose the metrics it did for the ZIP codes and counties considered distressed.

The ISOR does not explain. ISOR (p. 29) states the reason for denoting counties as "distressed" if they have more structures "at high or very high wildfire risk" than half the state (or are "no lower than the 50th percentile") is that "the 60th percentile would be too narrow" while the 40th would be "too broad."

The June draft of the regulation contained a different standard. In that version a county was distressed if at least 20% of dwellings are at high or very high risk. Why did the metric change? The ISOR does not disclose if this change increased or decreased which counties qualify as distressed, and the Commissioner did not issue an updated map of distressed areas with the August draft regulation.

A reasonable metric would be comparing decreases in access to insurance and increases in cost of insurance over time. To what extent—other than FAIR Plan growth—did the Commissioner consider such changes?

The regulation also includes "properties that *the insurer* classifies as moderate to very high wildfire risk" [emphasis added] among those policies insurance companies can take on to meet any stated commitment to expand coverage. However, that metric relies on an individual insurance company's measure of wildfire risk. That could vary widely company to company given the variety of internal and external models insurance companies use to assign risk. By including policies classified at moderate risk by an insurance company's own, undisclosed metrics, it is easy to imagine an insurance company meeting its commitment by selling a small number of bare-bones policies to current FAIR Plan policyholders who are not even in high fire risk areas.

If distressed areas are not defined precisely, an insurance company's commitment could be met by sales to consumers not facing cost or access problems in the current crisis, or by too few policies to have any impact. The public should have more evidence of how those areas were identified. The data used by the Department to make these determinations should be made public.

The Commissioner has not disclosed why the "85%" or "5% standard" were chosen as benchmarks.

The ISOR (p. 38) notes that "about 16% of statewide residential exposures were in distressed areas and about half of admitted insurers were already writing at least 85% of their statewide market share in distressed areas." It goes on to note that "a significant number of insurers are currently at approximately 80%."

If so many insurance companies are already at or near the 85% standard, will this regulation simply preserve the status quo when it comes to access to insurance, only with radically higher rates?

Part II: Section 2648.5. Pre-Application Required Information Determination ("PRID") Procedure

I. PUBLIC TRANSPARENCY: The proposed regulation conflicts with Proposition 103's public disclosure requirement.

Transparency is key to confirming that insurance companies have justified their requests for rate increases, which they are required to do under Proposition 103 as part of the prior approval process. Insurance Code section 1861.07 states: "All information provided to the commissioner pursuant to this article [Proposition 103] shall be available for public inspection, and the provisions of Section 6254(d) of the Government Code and Section 1857.9 of the Insurance Code [statutes barring disclosure of information the industry considers trade secrets or proprietary] shall not apply thereto."

Section 1861.07 therefore requires public disclosure of any information provided to the Commissioner in connection with review of an insurer's rate application or otherwise in connection to the Commissioner's powers and duties under Proposition 103. The regulation's attempt to create a procedure designed to segregate information about a model used for determining rates and premiums subject to prior approval under Insurance Code section 1861.05(a) in order to prevent public disclosure is a clear violation of the law, because PRID information is itself "information provided to the commissioner pursuant to [Proposition 103]."

The California Supreme Court has confirmed that there are no exceptions to the disclosure requirement, which applies to "any information necessary for determining whether [underlying] factors are impermissibly affecting the fairness, availability, and affordability of insurance."[11]

Mandatory protective orders and sealing the record prioritize secrecy.

The proposed regulation intentionally moves model consideration out of the public eye in order to exempt models from Proposition 103's transparency requirements. Members of the public, journalists, and lawmakers would be required to enter into an NDA or propose protective orders unilaterally adopted by the Commissioner-appointed Model Advisor as a prerequisite to participating in model oversight and gaining access to all information essential to assessing a model.

The broad NDAs and protective orders mandated in **Proposed Section 2648.5(j)(2)**[12] directly contravene the transparency mandate at the heart of successful rate oversight in California. They instead center the regulation around preserving secrecy in a key aspect of policyholders' rates, a direct violation of Section 1861.07's disclosure mandate. **Proposed Section 2648.5(j)(3)** purporting to give the Model Advisor authority to "balance" the public's

[11] *State Farm Mut. Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1042–1044.
[12] All citations to the proposed regulation text use the lettering of the subdivisions of proposed Section 2648.5 as contained in the August 16, 2024 ISOR. The August 16, 2004 "Proposed Text of Regulation" document issued by the Department contained two subdivisions (a) in error.

interest in disclosure against Wall Street model owners' and insurers' demands for secrecy likewise conflicts with Section 1861.07.

Proposed Sections 2648.5(a)(7) and 2648.5(e) also purport to shield the entire administrative record created in the new PRID procedure from public view (including all evidence, testimony, briefs, pleadings, discovery, and other materials), except whatever information the Model Advisor decides must be submitted to the Commissioner as part of a complete rate application. Even that information determined by a PRID to be "required model information" does not have to be made public "**until or unless** an insurer subsequently submits a complete rate application to the Commissioner that relies upon the model." (**Proposed Section 2648.5(d)**, emphasis added.) Such a blanket sealing of the administrative record violates Section 1861.07's requirement that all information submitted to the Commissioner pursuant to Prop 103 shall be made publicly available.

As a result, any members of the public, including consumers, lawmakers, and journalists, who were not a party to the PRID proceeding will be barred from accessing any documents, data, legal filings, or other information presented.

The updated draft regulations are now even more unfavorable to public participation than before, reflecting insurance industry demands. The March 14, 2024 draft regulation text required parties in a PRID procedure to agree on a stipulated NDA. Setting aside that requiring an NDA conflicts with the law, that version required CDI/insurers/modelers to work with consumer participants on an NDA agreeable to all parties. The updated regulation now allows insurance companies and private modeling firms to refuse to agree on an NDA and instead individually propose the terms of protective orders to the Model Advisor. Given the information gap between consumer participants and modelers/insurers about the model itself, this incentivizes industry participants to refuse to work with consumer participants on an agreeable NDA, with confidence that the Model Advisor will ultimately defer to the modeler/insurer/CDI itself.

The confidential PRID procedure will prevent the public from understanding how technology determines what they pay for insurance.

Polling by the Pew Research Center finds the public has enormous concerns about the fairness and acceptability of using algorithms to make decisions with important real-world consequences.[13] Across the economy, decisions by algorithms and artificial intelligence are creating disadvantage and inequities in Americans' financial lives. The public has a right to understand what's impacting decisions about their futures, but the protective orders mandated by this draft will make certain those decisions will be opaque and the insurance industry unaccountable.

Some of the many issues raised by the proposed regulation's reliance on secrecy include:

[13] Aaron Smith, "Public Attitudes Toward Computer Algorithms," *Pew Research Center: Internet, Science & Tech*, Nov. 16, 2018, www.pewresearch.org/internet/2018/11/16/public-attitudes-toward-computer-algorithms.

- If a public interest organization learns of a key flaw in a model during a PRID procedure, but that information is held secret as part of the PRID, the organization would be unable to use that knowledge during the rate review process when an insurance company seeks to use the model. Because the protective orders prevent public interest organizations from using the information they obtain to challenge an excessive rate, or from sharing their analysis of a model with the public, public participation in a PRID is meaningless and rate review will be severely restricted.
- The proposed regulation specifically bars sharing of information *within* an organization. It would prohibit an attorney for an organization that is a participant in a PRID from reporting back to their organization's president about the proceedings; prevent a participating reporter from reporting back to their editor; and prevent a legislative staffer from reporting back to their boss.
- An organization will be barred from publicly discussing its views based on information kept secret by the protective order. A restriction common to protective orders in legal matters is prohibiting any person to discuss its terms, and corporate defendants are permitted to sue anyone they say has violated an NDA or protective order, which would be punishable by fines. Can a list of the data deemed confidential be shared? A description of that data? A critique of the confidentiality decision?
- This hypothetical scenario illustrates how an NDA or protective order will keep critical information about a model inaccessible during public rate review:

  > A key question about a model's impact on rates concerns the relative weight for each input variable (risk factor) in the model. These weights result from analyses performed within the model based on a dataset used to calibrate the model's initial parameters ("training data"). Depending on a model's construction, small changes to the weights can become highly leveraged, resulting in substantial variability in the model's output. Consumers and their advocates have a legal right to know which risk factors are being used to calculate insurance premiums. They also need to be able to understand the sensitivity of a model's results to changes in risk factor values and their relative weights. Yet detail about how a model weights different factors is exactly the kind of information companies protecting a proprietary model are likely to claim is proprietary and the Model Advisor will likely deem confidential and not required to be publicly disclosed, because it is the kind of information competitors could use to try copying their model.

The proposed regulation also does not set out any baseline requirements about what must be disclosed about every model. This means that the concealed and public data will be different for every model based on how restrictive of a protective order the model's Wall Street owner is able to engineer.

II. ACCOUNTABILITY AND EFFICIENCY: The proposed regulation does not require review or approval of catastrophe models. It does not even require a PRID procedure.

The Department has suggested this proposal is intended to allow review of models, with full public participation in that process. The current text of the proposed regulation fails to achieve that goal.

The regulation splits the Department's model oversight function into three separate potential phases: first, a superficial, closed-door inquiry into the model—the "PRID"; second, a mini-proceeding—also with no public scrutiny—during which the Commissioner will determine that an insurance company's application is "complete" (the subject of a separate complete rate application regulation the Commissioner has proposed); and third, the public rate review process required by Proposition 103, in which an insurance company would seek to rely on the secret model to justify requests to change its rates.

The first possible consideration of a proposed model would be during the newly-created "PRID" procedure. **However, a PRID may never occur.**

The ISOR repeatedly emphasizes that the "PRID procedure is voluntary," and the newly **Proposed Section 2648.5(h)(3)** specifically provides that the "owner or vendor of a model may decline to participate as a party in a PRID procedure as to that model."

Given this, why would any insurer or modeler ever volunteer to submit its model for the PRID procedure? The presumed benefit would be to prevent any model information they deem confidential from being produced during the rate application review process. However, this is not a serious threat given that the Department has consistently failed to require such disclosure in any prior rate review, even under the regulation adopted by the Department in 2022 which explicitly requires that fire risk models be made publicly available (10 CCR § 2644.9).

If a PRID does occur, its stated purpose is solely to determine what insurance companies and their modelers must disclose about a model publicly. The text of **Proposed Section 2648.5(a)(2)** states the purpose of a "Pre-application required information determination procedure," or "PRID" procedure, is to "determine all information and data regarding a model that are required to be provided to the Commissioner as part of a complete rate application that relies upon the model for purposes of requesting a proposed rate change pursuant to Insurance Code section 1861.05."

This definition is repeated in **Proposed Section 2548.5(c)**.

The new Model Advisor is charged with two main jobs: entering and enforcing the protective order, and completing the PRID. <u>The only product of a PRID procedure is a determination about what information a modeler may keep confidential and what information an insurance company must disclose in a complete rate application</u>.

The rest of the information produced in the PRID procedure—all the evidence collected that the Model Advisor determines is not necessary to disclose, and the arguments the parties made about disclosure—will be kept secret, preventing non-participants from ever knowing what occurred behind closed doors.

Allowing participants in the PRID to ask questions about a model is contemplated in **Proposed Section 2648.5(l)**, which refers to discovery requests, testimony, and evidence. **Proposed Section 2648.5(m)** goes as far as suggesting that parties participating in a PRID may offer expert testimony "regarding the reliability of a model." However, the ISOR makes clear that the Model Advisor would not be allowed to use such testimony to say the model is reliable. The ISOR, p. 77, states: "a PRID is not an order or decision that the model is actually reliable for ratemaking purposes." What is the point of testimony "regarding the reliability of a model" if the PRID does not determine reliability, and that testimony is not made public?

The proposed regulation gives the Model Advisor a long list of other responsibilities, but neither **Proposed Section 2648.5(l)**, **(m)**, nor any other provision charges the Model Advisor with considering that testimony, let alone making a determination about a model's reliability and safety. Nor does the regulation state that the Model Advisor has the responsibility to review a model itself, whether for accuracy, bias, or the validity of the science. The Model Advisor is not granted any authority to reject or approve a model. With no regulatory mandate for the PRID to reach a conclusion beyond what information to share, participants who represent consumers would be denied the opportunity to argue that a model should be rejected.

Indeed, specific standards by which the reliability of a model would be evaluated by the Model Advisor are absent. Basic scrutiny of a model's functionality—such as bias testing, or comparison of the model's projections to past events—is not mentioned. Nor is any comparison of models to other models contemplated—as noted below, issues with a model may not be immediately apparent unless the model is compared to similar models demonstrating drastically different outputs.

Catastrophe model inconsistency and the importance of testing.

The regulation does not define any specific rubric for evaluating or testing models. There are no guidelines for determining whether a model is reliable, accurate, unbiased, or based on the best available science and data. This omission means that even if the Department amended the proposed regulation to require model review and approval, the standards for that review could vary widely from model to model.

As former Risk Management Solutions ("RMS") Vice President of Model Development Dag Lohmann, now CEO of KatRisk, LLC, put it:

> "Multiple modelers could develop a wildfire model from all the components in current literature, tune the models to reasonably validate with historical data, and ultimately have

average annual losses ***2 or 3 times different than each other*** when projecting future losses."[14]

According to Milliman:

> ***Model validation, as well as rigorous review of model operations and assumptions, are critical steps in assessing whether this value can be extracted from a cat model, given its intended use.***[15] [Emphasis added.]

California must rigorously evaluate models if regulators, policymakers, and the public are to have confidence they are reliable.

Recent Bloomberg reporting makes clear that extreme variability in model output is a serious and persistent problem. The investigation examines evidence "that risk models often disagree with each other on fundamental assessments of vulnerability."

Bloomberg Green compared two black box models' analysis of flood risk in Los Angeles County. They found that "they clash with each other more than they agree."

> "When compared only on a single, relatively simple metric, the models match just 21% of the time."
>
> "Among the places where the Irvine model finds the highest level of flood risk are the cities of Compton and Long Beach, south of downtown Los Angeles."
>
> "First Street, on the other hand, finds very high risk in the San Gabriel Valley and significant risk in Westside areas, including the cities of Beverly Hills and Santa Monica."[16]

Similarly, the nonprofit CarbonPlan compared the California wildfire risk predictions of two private models. While the models agreed that fire risk at 128 locations across the state would increase by approximately one-third, the two models agreed on how much that risk would increase just 12% of the time. Seven other modeling firms the organization contacted refused to provide even basic data for comparison.[17]

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[14] "Wildfire Catastrophe Models Could Spark the Changes California Needs," *Milliman*, Oct. 2019, https://www.milliman.com/en/insight/wildfire-catastrophe-models-could-spark-the-changes-california-needs.
[15] *Ibid*.
[16] Eric Roston et al., "The Risky Business of Predicting Where Climate Disaster Will Hit. Climate tech companies can tell you the odds that a flood or wildfire will ravage your home. But what if their odds are all different?" Bloomberg Green, August 9, 2024, https://www.bloomberg.com/graphics/2024-flood-fire-climate-risk-analytics/.
[17] Oriana Chegwidden et al., "Climate risk companies don't always agree," CarbonPlan, Aug. 9, 2024, https://carbonplan.org/research/climate-risk-comparison.

By setting no standards for testing, review, and approval of models, the proposed regulation leaves Californians at the mercy of widely inconsistent outcomes.

Even Florida, better known for passing industry-friendly legislation than consumer protection, requires review and approval of public and private catastrophe models.

A 2022 article examining the design and implementation of the Florida Public Hurricane Loss Model ("FPHLM") details how system evaluation is critical to ensuring the effectiveness and reliability of the model. The authors identify "multiple quantitative and qualitative evaluation methods" that are "presented to ensure the correctness, usability and robustness of FPHLM."

Comparing modeled insured losses from specific storm events with actual insured losses from claims data is the primary method of FPHLM evaluation identified. Such a test enables confirmation that actual results and model results have no statistically significant differences. It is also one way to test bias. In the tests presented in the paper, 51% of actual losses were higher than modeled losses, and 49% were lower, suggesting the model is unbiased.[18]

In addition, the authors perform a sensitivity analysis that shows how FPHLM modeled losses due to the hurricane peril vary with changes to parameters such as deductible amount, year built, number of stories, and construction type. Analyses like this of the sensitivity of loss estimates to various characteristics are critical in ensuring the equitable application of a catastrophe model's output values, as required by law. Californians must also be able to perform sensitivity analyses to evaluate any model being considered for use in rating the wildfire peril. In order to do that, unfettered access to the model itself is necessary to ascertain exactly how modeled loss amounts are impacted by user-controlled changes to input parameters.

Although the state of Florida allows the use of private catastrophe models in addition to the public model, it requires private models to be approved by an independent commission that tests the models' reliability before they are approved for use.

In 1995, the Florida Legislature created the Florida Commission on Hurricane Loss Projection Methodology. The Commission conducts on-site testing of private catastrophe models (the public FPHLM model is also tested) and is charged "with adopting findings relating to the accuracy or reliability of particular methods, principles, standards, models, or output ranges used to project hurricane losses, flood losses, and probable maximum loss calculations."

The Commission's November 2023 report on activities contains **174 pages of specific standards the Commission uses to determine whether a model is acceptable for use** by

[18] Yudong Tao et al., "Florida public hurricane loss model: Software system for insurance loss projection," 52 *Journal of Software: Practice & Experience* (2022), 1736–1755, https://doi.org/10.1002/spe.3086.

insurance companies in Florida.[19] These are the types of standards that must be developed in California so consumers can be confident the models are fair.

There is no evidence that the Commissioner has made any effort to investigate how other states evaluate models. Under this proposal, once model information is sanitized through a secret PRID procedure, regulators and the public will be incapable of verifying the models' science or math, and regulators and consumer representatives will be left with inconsistent outputs and uncertainties that cannot be explained. By limiting both access to the model and information about the model, the draft regulation forecloses such testing.

Other than bowing to demands for secrecy from the insurance companies and the Wall Street firms that sell them models, how will this process enable consumer representatives and the Department staff to effectively assess a model? It won't.

See also testimony submitted by consulting actuary Allan I. Schwartz on behalf of Consumer Watchdog regarding **Proposed Section 2648.5** and the Florida Commission on Hurricane Loss Projection Methodology ("FCHLPM").[20]

No standards and variable disclosures will result in ad hoc review.

The lack of specific, uniform standards for model approval, or review of a model's impact on a rate, in the proposed regulation sets up bespoke oversight in which every company's rate application will be treated differently.

One of the reasons why California consumers, homeowners, renters, and small businesses have benefitted from fair and reasonable rates under Proposition 103 is that a highly detailed set of regulations govern the ratemaking process and apply to every insurance company. The staff of the Department are obligated by law to apply those rules uniformly.

10 CCR § 2643.1 requires the Insurance Commissioner to use "a single, consistent methodology" to evaluate insurers' rates.

The California Supreme Court has confirmed that Proposition 103 requires uniform regulation of insurance companies. (*20th Century Insurance Co. v. Garamendi* (1994) 8 Cal.4th 216, 312; see also Order Adopting Proposed Decision, *In re American Healthcare Indemnity Company*, File No. PA02025379, July 24, 2003, p. 8.) Uniform rules of the road are not only a protection for consumers against unfair and arbitrary rates, they are a guarantee of efficient, fair, and equal treatment for all insurance companies, large or small.

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[19] Florida Commission on Hurricane Loss Projection Methodology, "Hurricane Standards Report of Activities as of November 1, 2023," Nov. 1, 2023, https://fchlpm.sbafla.com/media/532jql0c/2023-hurricane-roa.pdf.

[20] Comments by Allan I. Schwartz on behalf of Consumer Watchdog Regarding California Department of Insurance August 23, 2024 Proposed Regulation Text, Catastrophe Modeling and Ratemaking, REG-2023-00010, Sept. 17, 2024, submitted concurrently herewith.

The draft text does not meet these baseline legal requirements.

Proposed Section 2644.4.5, subdivisions (f)(1) and (4), for example, require an insurer to prove that the model is based on "what in the Commissioner's assessment is the best available scientific information for assessing frequency, severity, damage and loss" and "best available scientific information on risk mitigation at the property." However, the regulation is silent on exactly how the Commissioner makes that "assessment."

The Model Advisor has even less instruction, being charged simply with "determining required model information." (**Proposed Section 2648.5(f)**.) "Required model information" is defined in a vague way, to mean "all required information and data regarding a model . . . because such information and data will aid the Commissioner in determining whether the model is reliable . . . ." (**Proposed Section 2648.5(a)(4)**.) **Proposed Section 2648.5(b)** in turn states that "required model information" shall include "information that demonstrates the model uses established concepts, data, equations, and principles, as well as best available scientific information and data, insurance claims expertise, and other assumptions appropriate for the risk or peril being modeled," but there is no specific minimum set of information that every modeler would have to disclose.

The lack of comprehensive and precise definitions and standards will lead to arbitrary, discriminatory, and excessive rates.

Giving the Commissioner and the Model Advisor unbounded discretion with no published guidelines for their decisions opens the door to the "standardless, ad hoc decision-making" decried by the California Supreme Court in *20th Century*, *supra*, 8 Cal.4th at pp. 280, 312.

Even whether a PRID is valid, or must be redone, is unclear.

Proposed Section 2648.5(o) states a PRID is good for four years, but does not say whether a PRID is valid for all uses of a model—i.e., underwriting, risk segmentation, and rating—even if a PRID procedure only reviewed a model for purposes of projecting rates.

Furthermore, while **Proposed Sections 2648.5(o) and (p)** purport to invalidate a PRID when a model is "substantively updated, amended, altered, or changed . . . ," it is unclear how anyone would know a PRID should be invalidated.

There is no requirement for a modeler or other knowledgeable company to notify the Department when a previously approved model has been "substantively" changed. Without access to the model itself or any "confidential PRID information," no one—the Commissioner included—will be able to assess whether a model has been substantively changed simply by reviewing a rate application. Nor is there any apparent penalty for knowingly relying on a PRID determination for a substantively changed model.

The previous version of this regulation did not include the "substantively" limitation, which only makes it more difficult to determine when a PRID should be deemed invalid, as the regulations do not explain what a "substantive" change would be.

III. INDEPENDENT EXPERTISE: The proposed regulation does not leverage California's vast resources in academia and industry, instead giving vast authority to the Model Advisor—who is appointed by the Commissioner—with no required qualifications or experience.

Contrary to representations by the Commissioner and Department staff, including the March 14, 2024 press release promising a "new process for review of models by a panel of experts" to "evaluate the appropriateness and soundness of each model," the regulation does not require the appointment of an independent panel of scientific and other experts.

Expert panels with advisory, audit, and oversight authority operate across California government. The enacting legislation and regulations for such bodies will typically lay out the responsibilities of the body and parameters for choosing appointees, including: frequency of meetings, size of the panel, duties, qualifications of members, and specific stakeholders that must be represented—often requiring a diversity of viewpoints and expertise. The Department of Insurance's own website lists ten such panels and boards[21]—each of which has specific parameters for appointees.

The American Academy of Actuaries' discussion of the difficulties of model testing demonstrates the appropriateness of such an expert panel here:

> "While the technical documentation of the models is available to users for their general knowledge, some core assumptions are considered proprietary and are not readily accessible to users. A catastrophe model is developed by a group of scientists (meteorologist, seismologist, hydrologist, statisticians, engineers, actuaries, computer scientist, etc.) with specialized knowledge in different fields. It is not an easy task for model users to develop even a basic understanding of the model, as required by U.S. actuaries' standards of practice."[22]

Yet **Proposed Section 2648.5(f)** does not mandate such a panel. This section states only that the Model Advisor "is authorized to hire outside consultant(s) with relevant knowledge and subject matter expertise to assist in determining required model information." Consultants hired by the agency report to the Department and the Commissioner; they are not independent. Moreover, the draft regulation places no conditions on hiring of the consultants, such as a requirement that they be free of conflicts of interest. This employer/consultant relationship does

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[21] Cal. Dept. of Ins., "Commissioner Appointments," https://www.insurance.ca.gov/0500-about-us/03-appointments/index.cfm.

[22] Kay Cleary et al., "Uses of Catastrophe Model Output," American Academy of Actuaries, July 2018, p. 34, https://www.actuary.org/sites/default/files/files/publications/Catastrophe_Modeling_Monograph_07.25.2018.pdf.

not resemble the kind of diverse, interdisciplinary panel of independent experts with a wide array of engineering, computing, climate, and other scientific expertise that is necessary to assist the Department in correctly and independently understanding and evaluating a model's operation.

The proposed regulation requires that any work consultants submit to the Department and the Commissioner remain confidential unless it is included in a final PRID and is subsequently submitted in a rate application (**Proposed Section 2648.5(d)**).

In the past, when the Department has hired outside consulting firms to evaluate underwriting models used to determine eligibility for a homeowners policy based on wildfire risk, it has refused to disclose any of the information or analysis provided by those firms.

In one instance, a Consumer Watchdog petition for hearing in a proceeding on a Farmers rate application was denied by the Commissioner, based in part on an outside actuarial consulting firm's evaluation of Farmers' use of the Zesty.ai Z-FIRE underwriting model. The denial stated only that based on that outside actuarial firm's review of the model, the Department was "satisfied that the model is sufficient for the purpose in which it is intended to be used, as a secondary new business eligibility tool" and that "the Department has no concerns about its accuracy or reliability."[23] In violation of Proposition 103's transparency requirement, the Department refused access to the consulting firm's analysis of the model. [24]

Because the Model Advisor can conduct the PRID procedure by meeting behind closed doors with—or even relying entirely upon—"outside consultants" and exclude their work from disclosure, public access is negated.

Finally, nothing requires the Model Advisor to actually seek expert input, raising the concern that the Model Advisor could rely solely on the representations of an insurance or modeling company in a PRID procedure.

The Model Advisor is given unchecked power.

The proposed regulation envisions that the Model Advisor will make many technical and legal determinations. The regulations describe the Model Advisor's power as "without limitation," including to: "administer oaths; issue subpoenas; rule on motions to compel discovery; receive evidence and testimony" **(Proposed Section 2648.5(k))**. It is extremely problematic that the draft regulation sets forth no qualifications for the Model Advisor, who is effectively acting as a pseudo–administrative law judge. The Model Advisor is not required to have legal or technical training, or indeed, to have any relevant experience at all while making these determinations.

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[23] Decision Denying Petitioner's Petition for Hearing, *In the Matter of the Rate Applications of Farmers Ins. Exchange et al.*, File No. PA-2020-00006, May 11, 2021, p. 3.
[24] Cal. Dept. of Ins. letter denying Consumer Watchdog Public Records Act Request PRA-2021-00414, Sept. 10, 2021, https://consumerwatchdog.org/wp-content/uploads/2024/04/2021-09-10CDIZFire.pdf.

The Model Advisor will determine what information will be made public and will determine "whether there is a significant public interest in the non-disclosure of confidential PRID information." (**Proposed Section 2648.5(j)(2)**.)

Yet there are no specific guidelines to govern these determinations by the Model Advisor. Allowing such open-ended discretion without specific regulatory guidelines epitomizes the "standardless, ad hoc decision-making" advocated by the insurance industry and rejected by the California Supreme Court in *20th Century*, *supra*, 8 Cal.4th at p. 312.

IV. HIGHER RATES: Limited model disclosure will make determining a model's impact on rates impossible.

According to the draft regulation, the PRID will decide what information can be accessed by the public in the third phase of oversight: Prop 103 review of an insurance company's rate application.

Proposed Section 2644.4.5(f) states that in the context of a specific insurance company's rate application, "the applicant shall have the burden of demonstrating" to the Commissioner that the models used rely on the best science and meet actuarial standards. This is the only place in the regulation that explicitly states the reliability of models will be subject to evaluation during the rate review process. Even so, the ability to review a model's impact on rates at this stage will be extremely limited because the PRID procedure will restrict the information about the model that will be available to make that evaluation.

Access to the model itself, the model's weighting of different factors, any data used to build a model, and model output reports—including but not limited to size of loss distributions along with the probability associated with each event—are among the types of information certain to be foreclosed from public disclosure by the PRID. In recent years, insurance companies and modelers have refused to provide the Department or public participants access to such information regarding underwriting models in the rate review process, even though they are required by law to do so. The same will be true for catastrophe models.

This is the only place the proposed regulation contains any guidelines for what the commissioner would consider in reviewing a model's impact on rates. Unfortunately, as noted above, the guidelines are far too broad to provide any practical standards for regulators to follow.

Further, it is unclear how the Department would be able to determine if an applicant has met its burden, particularly as to **Proposed Section 2644.4.5(f)(2)**, which requires an applicant to show that its "use of its selected model(s) produces the most actuarially sound estimate of projected catastrophe losses." How does the Department plan to evaluate, based on limited "required model information," whether the use of any particular model will "produce the most actuarially sound estimate"? Surely the answer requires some sort of comparison between models or some other baseline to measure against, but the regulation provides for neither.

Unbelievably, the ISOR, p. 92, takes the position that the "use of catastrophe models is not expected to significantly change the total amount of aggregated premiums collected by the

insurance industry." The Department proffers no specific support for this absurd conclusion. The impetus behind this and other Department regulatory efforts has been pressure from insurance companies who say they must use catastrophe modeling to reflect higher future risks due to climate change than are reflected in historic data. The companies are not pushing for these changes so that they can lower their rates—they are seeking to price higher levels of catastrophe risk into their rates.

V. CONFLICTS WITH OTHER RECENT REGULATIONS: The draft regulation prioritizes the protection of trade secrets over longstanding principles of government accountability and transparency, in violation of existing law and regulations.

Wall Street modeling companies have made clear in their public statements, comments to the Department of Insurance, and testimony before the Legislature that they are unwilling to disclose their algorithms or datasets or to provide access to the actual catastrophe models.

Zesty.ai submitted testimony regarding the wildfire mitigation discount regulation stating:

> . . . the current draft regulations would jeopardize the industry's ability to protect intellectual property and thus limit new innovation from being introduced in the California insurance market. As such, we would recommend that "data, algorithms, [and] computer program" as currently detailed in subsection (f) should be excluded from the public inspection process.[25]

At the July catastrophe modeling workshop, Moody's RMS submitted a list of what it insisted it would not disclose:

> Any elements that are considered Intellectual Property
> Proprietary data sets (in-house / third party)
> Software programs
> Source Code
> Notional sensitivity analyses showing all possible combinations of output of model
> Client Specific Results[26]

The proposed catastrophe model regulation capitulates to those demands. In fact, Consumer Watchdog has repeatedly objected to the Commissioner's failure to enforce the public disclosure requirements for wildfire risk models set forth in the wildfire mitigation regulation (10 CCR § 2644.9) he adopted, and CDI has reversed course on positions it took in adopting those regulations and in amendments to the "complete rate application" regulation Commissioner Lara

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[25] "ZESTY.AI STATEMENT," *California Department of Insurance Prenotice Public Discussion on Mitigation in Rating Plans and Wildfire Risk Models*, REG-2020-00015, November 10, 2021, p. 2.

[26] "Moody's RMS Presentation," *California Department of Insurance Workshop Examining Catastrophe Modeling and Insurance*, REG-2023-00010, July 13, 2023, p. 5.

proposed earlier this year (REG-2019-00025). However, the confidentiality provisions in **Proposed Section 2648.5(a)(7)**—"confidential PRID information shall not be public information and shall be considered to be information received in official confidence by the Department of Insurance"—and the protective order provisions in **Proposed Section 2648.5(j)(2)** conflict with the public disclosure requirements of Proposition 103's Section 1861.07.

The Department made a robust case for the submission and full disclosure of models, their algorithms, and all data associated with a model in the rulemaking documents supporting the necessity of both regulations.

Proposed Sections 2648.5(a)(4) and (5), and Proposed Sections 2648.5(b) and (r), incorporating the "complete rate application" regulation (section 2648.8), directly conflict with the Department's proposed amendments to that regulation. Together, these provisions define the limited scope of the "model information" that must be provided as part of a complete rate application. Such information is not a substitute, however, for providing the "model" itself and any model "algorithm" as part of a complete rate application, as required by CDI in proposed amendments to section 2648.4 and section 2644.9 as adopted.

Proposed section 2648.4 of the "complete rate application" regulation requires that models and algorithms used to accept, reject, or rate a risk must be provided as part of a complete rate application and made publicly available. Wildfire risk models used to determine individual premiums are similarly required to be submitted to the Commissioner and publicly disclosed pursuant to section 2644.9(c) and (f) as adopted in 2022.

In proposing the "complete rate application" regulation in February, the Department explained the necessity of providing models and algorithms as part of a complete rate application as follows:

> In order to fully evaluate an insurer's request to change its rates and determine whether the requested rate change is appropriate and not excessive, inadequate, or unfairly discriminatory, the Commissioner must be able to review all information that may have a potential impact on the requested rate during the projected rating period. Relevant here, the general criteria, guidelines, systems, manuals, models and/or algorithms that an insurer uses to determine whether to accept or reject new and renewal business and to determine an applicant's or insured's coverage or coverage options may loosely be referred to as "underwriting guidelines."[27]

The Department similarly argued the necessity of disclosing models and algorithms in adopted regulation and the Final Statement of Reasons in the Mitigation in Rating Plans and Wildfire Risk Models rulemaking, REG-2020-00015. Subdivision 2644.9(f) of that adopted regulation states that any "Wildfire Risk Model," and "any records, data, algorithms, computer programs, or any other information used in connection with the rating plan or Wildfire Risk Model used by the insurer" shall be available for public inspection. In responding to public comments in that rulemaking proceeding, the Department explained, in no uncertain terms, that

[27] Cal. Dept. of Ins. Initial Statement of Reasons, REG 2019-00025, Feb. 9, 2024, p. 15.

section 2644.9(f) requires all Wildfire Risk Models used in support of a rate application to be publicly filed:

> The commenter wants to modify text of proposed section 2644.9(c) . . . ***instead of requiring the insurer to file publicly the model*.**
>
> The Department responds that in order for the Commissioner to determine whether an insurer's rates are excessive, inadequate, or unfairly discriminatory, insurers ***must provide as part of a complete rate application any rating plan or Wildfire Risk Model that segments rates, creates a risk differential, or surcharges premium***. Any such information regarding the Actuarial Standards of Practice (ASOPs) or the scientific basis underlying a Wildfire Risk Model provided to the Commissioner would be ***in support of the requirement that the Wildfire Risk Model itself be provided as part of the insurer's complete rate application***. Without this information, the Department is not able to review an insurer's rates for compliance with Proposition 103, in particular the requirement in Insurance Code section 1861.05(a) that an insurer's rates not be excessive, inadequate, or unfairly discriminatory. ***The Department has determined that it is necessary for a Wildfire Risk Model, if used to segment rates, create a risk differential, or surcharge the premium, to be submitted to the Commissioner as part of an insurer's complete rate application***."[28]

The proposed regulation appears to empower the Model Advisor to override these requirements through the PRID procedure, which would conflict with both regulations and Insurance Code section 1861.07.

VI: LIMITING GOVERNMENT ACCOUNTABILITY: The proposed draft seeks to exclude model review from the protections of the California Administrative Procedures Act and Proposition 103 that are required in rate hearing.

Proposed Section 2648.5(a)(1) and (2) refer to the "Pre-application required information determination" and "procedure" (the PRID) as "nonadjudicative." To the extent the Department is seeking to exempt review of models used in determining rates, premiums, and underwriting from the longstanding protections against government overreach set forth in the California Administrative Procedures Act (APA), which applies to all "adjudicative proceedings," it should reverse course.

The Administrative Procedures Act provides baseline procedural protections through its "Bill of Rights," found in Articles Six through Eight of the APA (Gov. Code §§ 11425.10–11435.65). Among the most important of those rights are that (1) hearings must be open for public observation; (2) the adjudicative function must be separated from investigative and advocacy functions; (3) presiding officers are subject to disqualification for bias; (4) decisions must be based on the record; and (5) ex parte communications are restricted. (Gov. Code § 11425.10.)

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[28] *Comments Received and Department Responses,* REG-2020-00015, pp. 274–75, emphasis added.

Moreover, the proposed PRID procedure would permit the Model Advisor to conduct the entire procedure behind closed doors without any public participation. **Proposed Section 2651.10(e)** gives the Model Advisor "discretion to grant or deny a request to initiate or intervene in a PRID procedure." (Emphasis added.) This conflicts directly with Proposition 103, which provides California consumers with an *unqualified* right to initiate or intervene in any proceeding permitted or established pursuant to chapter 9 of Part 2 of Division 1 of the Insurance Code.[29]

Section 1861.10(a) states:

> Any person may initiate or intervene in any proceeding permitted or established pursuant to this chapter, challenge any action of the commissioner under this article, and enforce any provision of this article.

Even if the Model Advisor chooses to permit such participation, as discussed above, the regulation purports to make the entire PRID procedure confidential, including any hearings. (**Proposed Section 2648.5(a)(7)**.) No provisions prevent the Model Advisor from engaging in ex parte communications, or require the separation of decision-making and advocacy functions. Additionally, nothing in the regulations specifies that the Model Advisor must state the factual basis of their decision based exclusively on evidence in the record when determining what model information must be provided. The APA should explicitly apply to any model review. The APA will ensure minimum protections are in place to help rectify these issues by requiring public observation, limiting ex parte communications, requiring separation of functions, and requiring the ultimate decision be based on facts in the record.

VII. ERECTING ADDITIONAL BARRIERS TO PUBLIC PARTICIPATION—OR A PRID HAPPENING AT ALL.

Responding to insurance industry comments, **Proposed Section 2648.5(h)** of the August 16, 2024 proposed text erects additional barriers to deter and diminish the public's ability to participate meaningfully, or indeed, to initiate a PRID procedure in the first place.

The updated regulation erects three new hurdles in order for a petition to initiate a PRID procedure to be granted.

First, the Model Advisor must determine that "the petitioner has demonstrated it is more likely than not that the Commissioner would benefit from a PRID." This is a vague and subjective standard with no further elaboration. The ISOR states the purpose of this subdivision is "to allow for broad public participation" in the PRID process and "to encourage public review of models at the outset" (ISOR, pp. 79–80). As drafted, this provision instead gives the Model Advisor nearly unbounded discretion to deny petitions to initiate a PRID procedure and block public participation before it begins.

[29] The ISOR at p. 29 cites the following sections of the Insurance Code as authority for adopting the proposed regulations: Sections 1850.4, 1858.6, 1861.01, 1861.05, 1861.07, 1861.09, 1861.10. All of these sections are contained within Chapter 9 of Part 2 of Division 1 of the Insurance Code.

Second, the Model Advisor must find that "the model has not been previously been [sic] subject to public review in any other forum in California, including without limitation as part of a complete rate application, within the prior four years." The regulation does not explain when a model would be considered to have "been subject to public review in any other forum." However, taking the regulation and the ISOR commentary together, it appears the Department's position is that models that have been previously used in a rate application that has been approved in the last four years will not be subject to a PRID procedure, which is highly problematic.

It is unclear what "public review" in proposed subdivision (h)(1) means. The ISOR, p. 80, states this provision was added to address concerns following prior public workshops "about models that have already been subject to extensive public review having to be re-reviewed through the PRID procedure if any person can petition to initiate at any time." Consumer Watchdog knows from experience, however, that the Department has not been subjecting models to "extensive public review" in the rate review process, and nothing in the proposed regulation requires any such "extensive public review." Indeed, the Department has not been requiring insurers to publicly provide models or extensive information about their inner workings, in deference to the complaints of modelers and insurers over disclosing allegedly confidential information, and the proposed regulation enshrines this practice. Moreover, nothing in the proposed regulation specifies how the public would be informed of which models have been previously subject to "extensive public review" and would thus be exempted from a PRID procedure.

The ISOR, p. 80, further states: "The PRID procedure is not intended to invalidate previously approved models." However, the Department has previously taken the position that it doesn't "approve" models, so it is unclear how this new provision (h)(1) would be interpreted and applied to models used in past approved rate filings. Moreover, it is unclear whether "any other forum" includes forums outside the Department of Insurance. If so, this would be highly problematic as other jurisdictions are not subject to Proposition 103's prior approval and public disclosure requirements.

Finally, once a PRID petition is granted, newly **Proposed Section 2648.5(j)(1)** purports to require parties in a PRID procedure to state how they will "avoid duplication" with no further direction. It is entirely unclear how this provision will work in practice, particularly given that parties will know nothing about the model under consideration before the proceeding begins.

The proposed regulation makes it more difficult for participants to demonstrate a substantial contribution.

Proposition 103 enables consumer participation in insurance oversight by requiring compensation for consumers and organizations that represent consumers, creating a level playing field with the insurance—and in this case modeling—industries. Under the prior version of the proposed regulation, whether a participant in a PRID procedure made a "substantial contribution" for purposes of being entitled to compensation was assessed under the definition contained in section 2661.1(k) that has been applicable to every other request for compensation in proceedings before the Department for nearly 20 years.

Newly **Proposed Section 2648.5(h)(4)(A)** conflicts with Insurance Code section 1861.10(b) and purports to significantly restrict the definition of "substantial contribution." This appears to be a clear effort to disincentivize rather than encourage public participation, which courts have held is the key purpose underlying the Insurance Code section 1861.10(b). (See, e.g., *Econ. Empowerment Found. v. Quackenbush* (1997) 57 Cal.App.4th 677, 686 [the purpose of intervenor fees is to encourage consumer participation].)

Under the "substantial contribution" standard in Insurance Code section 1861.10(a), a party's entitlement to fees "requires a significant, distinct contribution, but not more" (*State Farm General Insurance Company v. Lara* (2021) 71 Cal.App.5th 197, 214). **Proposed Section 2648.5(h)(4)(A)** creates an additional requirement that a participant demonstrate that "as a result of its participation, the Model Advisor ***has included in the PRID*** additional information or data regarding the model that would not otherwise have been identified." (Emphasis added.)

This narrowed definition is particularly problematic in the context of a procedure that is effectively entirely confidential. By definition, a PRID will not include any information or data that is not found to be "required model information." This means that if a participant's involvement led to a wealth of information being provided that would not otherwise have been available for the Model Advisor to make their ultimate determination, but that information is not deemed "required model information," the participant could not show a substantial contribution, even if the additional information was highly relevant.

Additionally, **Proposed Section 2648.5(h)(4)(C)** directly conflicts with Section 1861.10(b)'s requirement that: "The commissioner or a court *shall* award reasonable advocacy and witness fees and expenses to any person who demonstrates that he or she has made a substantial contribution . . . ." However, **Proposed Section 2648.5(h)(4)(C)** states the commissioner may deny fees to two parties if: "the substantial contribution claimed by a participant duplicates the substantial contribution of another party . . . ." This provision purports to allow the Commissioner to deny fees to a party that the provision itself acknowledges made a "substantial contribution." The Commissioner lacks discretion under Section 1861.10(b) to deny fees to parties that he acknowledges made a substantial contribution.

VIII. ALLOWS MODELS FOR AUTO AND OTHER FORMS OF INSURANCE. The regulation goes beyond wildfires to grant the commissioner broad, unrestrained authority to approve models for other purposes.

Proposed Section 2644.4.5(c)(1)–(3) allows the commissioner to expand the use of catastrophe models to "additional lines or exposures" and determine not only the catastrophe load, but project average annual losses in any line "at the Commissioner's discretion."

This rulemaking was convened in response to the shortages in the home insurance marketplace and insurance companies' insistence that they can't do business in California unless they are allowed to use catastrophe models to predict wildfire risk. It is easy to imagine the potential for abuse if the Commissioner starts receiving requests from insurance companies to expand their use of catastrophe models to predict losses in any line, as will surely occur. This

expansion would be a dramatic and unnecessary change when models can be inaccurate and inconsistent and contain biases.

As noted above, 10 CCR § 2643.1 requires the Insurance Commissioner to use "a single, consistent methodology" to evaluate insurers' rates and the California Supreme Court said open-ended discretion without guidelines opens the door to "standardless, ad hoc decision-making."

To allow insurers to use models in any line to project average aggregate non-cat losses in place of insurer-specific data and specified trend periods and making that determination a discretionary one will lead to the very inconsistency in application of the regulatory formula across insurers that 10 CCR § 2643.1 prohibits.

Also see testimony of consulting actuary Allan I. Schwartz submitted on behalf of Consumer Watchdog regarding **Proposed Sections 2644.4.5** and **2644.5**.

IX. PAST TESTIMONY

We incorporate and submit here our previous comments of July and September 2023 and April and June 2024 that contain further resources and examples of why thorough, transparent review of models and their impact on rates is so necessary.[30]

See these comments for additional information on:

- Models' inconsistency. For example:

> At the Virtual Meeting Regarding Home Hardening and Wildfire Catastrophe Modeling held by the California Department of Insurance on December 10, 2020, Allan I. Schwartz, Fellow of the Casualty Actuarial Society and a Member of the American Academy of Actuaries, presented testimony to illustrate how this variability manifests in the private earthquake models already in use in California.

[30] Consumer Watchdog testimony, "California Department of Insurance Workshop Examining Catastrophe Modeling and Insurance," REG-2023-00010, July 12, 2023, https://consumerwatchdog.org/wp-content/uploads/2023/07/Consumer-Watchdog-Testimony-Catastrophe-Modeling-Workshop-7-13-23.pdf; Consumer Watchdog testimony, "California Department of Insurance Workshop Examining Catastrophe Modeling and Insurance," REG-2023-00010, Sept. 28, 2023, https://consumerwatchdog.org/wp-content/uploads/2023/09/Consumer-Watchdog-Testimony-9-28-2023-2nd-CDI-Catastrophe-Modeling-Workshop.pdf; Consumer Watchdog testimony, "California Department of Insurance Workshop Examining Catastrophe Modeling and Insurance," REG-2023-00010, April 23, 2024, https://consumerwatchdog.org/wp-content/uploads/2024/04/Consumer-Watchdog-Testimony-Catastrophe-Modeling-Workshop-04-23-24.pdf; Consumer Watchdog testimony, "Fourth Workshop Regarding Catastrophe Modeling and Ratemaking: Insurer Commitments to Increase Writing of Policies in High-Risk Wildfire Areas," REG-2023-00010, June 26, 2024, https://consumerwatchdog.org/wp-content/uploads/2024/06/2024-06-27-Consumer-Watchdog-Comments-6-26-24-Workshop.pdf.

He identified examples of dramatic differences in the results of the models consulted by insurance companies.

- The academic scrutiny of flaws in financial industry climate prediction software. For example:

  Boston School of Law Professor Madison Condon presented a public interest critique including: the modeling firms' conflicts of interest; the disproportionate impact of data bias on communities of color; and how the secrecy of private models hides errors.

- Detailed questions about a model's function and impact that reviewers require access to a model to answer. For example:

  How is risk scoring determined for quantitative variables that have multiple components (e.g., Fire station proximity: Physical distance, staffing, average drive duration, complications in an active wildfire scenario, etc.)?

  How are elements that fluctuate quickly but have a significant impact on model output—such as demand surge, inflation, and construction and labor costs—treated in the model?

- The lack of a California investigatory record concerning models' accuracy and reliability in other states, and the lack of analysis projecting models' impact on rates in California.

- Algorithmic bias and discrimination in other aspects of consumers' financial lives, such as higher mortgage interest rates charged to Black and Latino borrowers than white borrowers.

- The Wall Street and insurance industry ties creating financial conflicts of interest at some of the largest modeling firms.

CONCLUSION

Responsible use of catastrophe models in compliance with California's rate oversight and transparency requirements requires that models be publicly reviewed for accuracy, reliability, and bias, and be approved for use. Full access to a model and the ability to test its results are a prerequisite for the public and regulators to be able to determine if its predictions and impact on consumers' rates are fair and justified. We urge the Department to redraft the proposal with these standards in mind.

A public California Wildfire Catastrophe Model would best meet these fairness and accountability goals, and empower consumers, communities, and the state to incentivize risk reduction and more transparently predict climate risk.

EXHIBIT 16

COMMENTS BY ALLAN I. SCHWARTZ ON BEHALF OF CONSUMER WATCHDOG REGARDING CALIFORNIA DEPARTMENT OF INSURANCE AUGUST 23, 2024 PROPOSED REGULATION TEXT

CATASTROPHE MODELING AND RATEMAKING
REG-2023-00010

September 17, 2024

Section 2644.4.5 Use of Catastrophe Models

Sub-section (c)(1) states in part "… at the Commissioner's discretion, models may be used in cases where limited historic insurance data is available".

This is vague in that it does not specify when and how the Commissioner could exercise that discretion. Would it occur on an ad hoc basis for individual filings? If yes, then when? Before the filing is made? While the filing is being reviewed? After a settlement or hearing on the filing?

If the Commissioner is to exercise such discretion, it should follow the same procedure required for adding additional rating factors beyond the three mandatory ones for private passenger automobile insurance.[1] That is, any additional use of models for ratemaking should be done through regulation.

Setting forth in the regulation any additional cases where models can be used will limit the possibility of different entities being treated unfairly.

With regard to the "limited historic insurance data", the criteria for that should be clearly set forth. Does that involve years of data? The volume of data? Data for that filer or wider industry data? What type of data – premiums, losses, exposures?

By setting out criteria ahead of time, entities involved in the rate filing process will have a better understanding of what procedures should be followed, which should expedite the rate filing review process.

Section 2644.5. Catastrophe Adjustment

Sub-section (a)

This states in part "For fire following earthquake, wildfire, and terrorism exposures in any line of insurance, an insurer may include an adjustment based on the average annual loss generated from one or more catastrophe models."

The filer should be required to submit the data and output of every catastrophe model for which it has results. Otherwise, an insurance company could run several models and show only the results for the model output it finds most favorable to itself, which could be disadvantageous to California policyholders. Furthermore, if the filer only submitted the results of one model, it

[1] CIC 1861.02(a)(4) states in part "Those other factors that the commissioner may adopt by regulation and that have a substantial relationship to the risk of loss."

will likely be asked for the results of other models during the rate filing review process, which could lead to delay.

Furthermore, it would be useful to have the results of more than one model to mitigate the results that may come from an abnormal model. North Carolina requires the use of more than one computer model for property insurance. "If the Rate Bureau presents any modeled hurricane losses based upon a commercial hurricane simulation computer model with a property insurance rate filing, the Bureau shall present data from more than one such model." N.C.G.S. 58-36-10(3).

The filer should also be required to show that the catastrophe model, or combination of catastrophe models used in the filing is the most actuarially sound. This would be consistent with 2644.7 and 2644.8, both of which require the insurer to use the most actuarially sound procedure.

By requiring all model results to be included in the filing and requiring a showing of most actuarially sound, entities involved in the rate filing process will have a better understanding of what is needed, which should expedite the rate filing process.

This sub-section also states in part "Further, the average annual loss may be adjusted to include a provision for defense and cost containment expenses (DCCE), either by applying a historical ratio of noncatastrophe DCCE to noncatastrophe loss or by applying a historical ratio of catastrophe DCCE to catastrophe loss."

The filer should be required to submit both sets of DCCE and loss data – both noncatastrophe and catastrophe. Otherwise, an insurance company could select the results it finds most favorable to itself, which could be disadvantageous to California policyholders. Furthermore, if the filer only submitted one set of data, it will likely be asked for the other data during the rate filing review process, which could lead to delay.

The filer should also be required to show that the DCCE and loss data used in the filing are the most actuarially sound. This would be consistent with 2644.7 and 2644.8, both of which require the insurer to use the most actuarially sound procedure.

By requiring all data to be included in the filing and requiring a showing of most actuarially sound, entities involved in the rate filing process will have a better understanding of what is needed, which should expedite the rate filing review process.

Sub-Section (b)2

This states in part, "The number of years over which the average shall be calculated shall be at least 20 years for residential and commercial property lines and at least 10 years for private passenger, and commercial, auto physical damage."

The filer should be required to submit data for as many years as available. Otherwise, an insurance company could select the number of years results it finds most favorable to itself, which could be disadvantageous to California policyholders. Furthermore, if the filer only submitted a limited number of years of data, it will likely be asked for more data during the rate filing review process, which could lead to delay.

The filer should also be required to show that the number of years of data used in the filing is the most actuarially sound. This would be consistent with 2644.7 and 2644.8, both of which require the insurer to use the most actuarially sound procedure.

By requiring all available data to be included in the filing and requiring a showing of most actuarially sound, entities involved in the rate filing process will have a better understanding of what is needed, which should expedite the rate filing review process.

Sub-Section (c)10

This states, "The insurer's current definition of catastrophe and the period of time it has used such definition."

The insurer should provide the catastrophe definition used over the entire catastrophe data period and the time frame of each, not just the current. This complete information is needed to make any adjustments that may be necessary to derive an actuarially sound catastrophe provision. If this is not included in the rate filing, it will likely be asked for more information during the rate filing review process, which could lead to delay.

Requiring the complete information in the filing should expedite the rate filing review process.

Sub-Section (c)12

This states, "The name of any major event or events contributing to the year's catastrophic losses, for instance, the 'Cedar Fire,' and the peril or perils associated with those losses."

The amount of losses and DCCE associated with each event for each peril should be provided. This is needed to evaluate the impact of each event on the catastrophe provision, and the numerical value of adjustments that may be needed to be made to reflect Sub-Section (d).

Sub-Section (d)

This states in part, "The catastrophe adjustment shall reflect any changes between the insurer's historical and prospective exposure to catastrophe due to a change in", and then lists two items.

Additional items that should be included in the list are changes to:

(3) The definition of catastrophe,

(4) The impact of mitigation measures, both on the individual policyholder level, community level, and state level,[2]

(5) The insurer's business practices including, but not limited to, operations, claims, underwriting and marketing,

(6) Building and land use practices, and

(7) Other items that impact the prospective exposure to catastrophe events.

Sub-Section (e)

This states "For any individual peril, projected aggregate catastrophe losses cannot be based upon a combination of modeled and historical losses associated with that peril."

A list of perils by line of insurance should be provided in the regulation. This will allow all entities to know what procedures are allowed and also to be treated fairly. In addition, it would eliminate possible disputes regarding what constitutes a peril, which should expedite the rate filing review process.

Section 2648.5. Pre-Application Required Information Determination ("PRID") Procedure

The procedures set forth in this section seem vague and complicated.

A much better procedure would be to follow the practices used by the Florida Commission on Hurricane Loss Projection Methodology ("FCHLPM"). The FCHLPM website states "The Florida Commission on Hurricane Loss Projection Methodology (FCHLPM) was

[2] This is consistent with proposed Senate Bill No. 1060.

created during the 1995 Legislative Session as an independent panel of experts to evaluate computer simulation models and other recently developed or improved actuarial methodologies for projecting hurricane and flood losses."[3] The FCHLPM publishes a "Hurricane Standards Report of Activities" which set forth in detail the standards and procedures used to evaluate hurricane computer models.[4] The standards used by the FCHLPM cover six broad categories. Those are: (i) General, (ii) Meteorological, (iii) Statistical, (iv) Vulnerability, (v) Actuarial and (vi) Computer/Information.[5] Within each of these broad categories there are numerous detailed requirements. By setting forth the requirements in a document, the FCHLPM informs modelers of the information that is required for model examination. That expedites the process of examining and approving the use of models for rate filings. Using that type of procedure would be much better from an actuarial and regulatory perspective than the procedure set forth in the proposed regulation.

The title of this Section appears to indicate that this section deals with Information Determination. The regulation is not clear whether the end result of the PRID will simply be the information required in a rate filing, or if the PRID will be used to determine that the model can be relied upon in the rate filing. That needs to be clarified.

As discussed above, the preferred procedure would be similar to that used by the FCHLPM. Reviewing computer models in the context of individual rate filings would be a duplicative inefficient process. However, the review of computer models in the PRID proceeding should be thorough, complete, detailed and transparent. This is needed so all the participants, as well as the public, are assured that the result is a reasonable impartial assessment of the model that is fair to both insurance companies and policyholders.

However, even if the intent of a PRID is that the model can be relied upon by insurers, it should be made clear that during the rate review process the application of the model by the particular insurance company making the rate filing can be reviewed and evaluated.

An example of the types of issues that can arise regarding the use and application of a computer model to project losses can be found in an Order by the North Carolina Commissioner of Insurance I/M/O a January 3, 2014 filing by the North Carolina Rate Bureau for Revised

[3] https://fchlpm.sbafla.com/about-the-fchlpm/

[4] https://fchlpm.sbafla.com/media/532jql0c/2023-hurricane-roa.pdf

[5] *Ibid*.

Homeowners Insurance Rates.[6] The Order took into account the issues raised by lowering the otherwise calculated losses from the computer model by 13.9%.[7] The North Carolina Court of Appeals upheld the Commissioner's Order stating, "Upon full review of the Commissioner's analysis of the modeled hurricane losses, the Order shows the Commissioner performed a careful review of the evidence and did not arbitrarily reduce the modeled hurricane losses to be used in ratemaking. The Commissioner removed those sources of the modeled hurricane losses that he determined were questionable and not fully supported by the Bureau."[8]

Sub-section (r) states in part that even "if the Model Advisor determines that there is no set of required model information that could reasonably be relied upon to support the use and inclusion of any of the modeled financial projections, modeled catastrophe adjustments, modeled projected losses, or any other type of modeled loss outputs and projections for purposes of reviewing an insurer's complete rate application" the "insurer may still seek to rely upon the model in a subsequent complete rate application." That seems completely unreasonable. If there if no set of information that could show the model "could reasonably be relied upon," there would seem to be no rational basis for allowing that model to be used to charge premiums to California policyholders.

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[6] https://www.ncrb.org/Portals/0/ncrb/personal%20lines%20services/Rate%20Filings/2014%20Commissioners%20Order.pdf?ver=2019-10-02-142509-227

[7] *Ibid*., Page 94, FOF 225

[8] State ex rel. Comm'r of Ins. v. N.C. Rate Bureau (In re Filing Dated Jan. 3, 2014) 248 N.C. App. 602 (N.C. Ct. App. 2016), 791 S.E.2d 211

EXHIBIT 17

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

NOTICE OF AVAILABILITY OF AMENDED TEXT

CATASTROPHE MODELING AND RATEMAKING

October 2, 2024 **REG-2023-00010**

Exempt Rulemaking

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

On August 16, 2024, the Insurance Commissioner issued a Notice of Proposed Rulemaking, proposing to amend California Code of Regulations, Title 10, Chapter 5, Subchapter 4.8, Article 4, sections 2644.4, 2644.5, 2644.8, and 2644.27, and to adopt section 2644.4.5 and 2644.4.8, as well as to adopt Article 8, section 2648.5.

PUBLIC COMMENT INVITED ON AMENDED TEXT

The Commissioner proposes to make changes to the proposed regulation, and now solicits written comments only on those changes. The Commissioner believes the changes made are sufficiently related to the original text such that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. Accordingly, the Commissioner is soliciting written public comments on these changes.

A copy of the amended text of regulation, with the proposed changes clearly indicated, is being mailed together with this Notice and will be available for public inspection and comment for at least 15 days before the proposed regulation is adopted. Deletions are shown in ~~double strikethrough~~; additions are shown in double underline. A copy of the amended text of regulation can be obtained upon request from the contact person listed below. In addition, a copy of the proposed revisions can be accessed through the Department's website, at www.insurance.ca.gov. Further, a copy of the amended text of regulation may be inspected in person or provided electronically. Please direct such requests to the contact person below.

WRITTEN COMMENT PERIOD

Presentation of Written Comments; Contact Persons

All persons are invited to submit written comments on the proposed regulations during the public comment period. The last day of the public comment period shall be Thursday, October 17, 2024. Please direct all written comments to the following contact person:

Sara Ahn, Staff Counsel
California Department of Insurance
c/o Office of the Special Counsel
300 Capitol Mall, 16th Floor
Sacramento, CA 95814
Phone: (213) 346-6635
Email: CDIRegulations@insurance.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Margaret Hosel, Staff Counsel
c/o Office of the Special Counsel
300 Capitol Mall, 16th Floor
Sacramento, CA 95814
Phone: (415) 538-4383
Email: CDIRegulations@insurance.ca.gov

Please note that under the California Public Records Act (Government Code section 6250, et seq.), your written and oral comments, and associated contact information (e.g., your address, phone number, e-mail, etc.) become part of the public record and can be released to the public upon request.

Deadline for Written Comments

All written materials must be received by the Department, addressed to the contact person at the address listed above. The last day of the public comment period shall be October 17, 2024. Any written materials received after that time may not be considered.

Please identify the action in any written comments by using the Department's rulemaking title and file number, CATASTROPHE MODELING AND RATEMAKING, REG-2023-00010.

Comments Transmitted by E-Mail

The Department will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: CDIRegulations@insurance.ca.gov.

Comments sent to other e-mail addresses may not be considered. Comments sent by e-mail are subject to the deadline set forth above for written comments.

MAILING OF NOTICE

A copy of this notice, together with the text of the proposed regulations showing the changes, will be sent to any person who provided oral comments or submitted written comments at the public hearing, to any person whose comments were received during the public comment period, and to any person who requested notification of the availability of such changes.

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

AMENDED TEXT OF REGULATION

CATASTROPHE MODELING AND RATEMAKING

October 2, 2024 **REG-2023-00010**

In this Amended Text of Regulation, proposed additions to the originally noticed Text of Regulation are double underlined and proposed deletions from the originally noticed Text of Regulation are shown in ~~double strikethrough~~.

Title 10. Investment
Chapter 5. Insurance Commissioner
Subchapter 4.8 Review of Rates
Article 4. Determination of Reasonable Rates

Amend Section 2644.4. Projected Losses.

(a) Unless projected losses are based on catastrophe models as permitted pursuant to subdivision (d) of this Section 2644.4, ~~P~~projected losses means the insurer's historic noncatastrophe losses per exposure, adjusted by catastrophe adjustment, as prescribed in ~~s~~Section 2644.5, by loss development, as prescribed in ~~s~~Section 2644.6, and by loss trend, as prescribed in Section 2644.7.

(b) Projected losses shall be calculated by applying the loss development and loss trend factor separately to data from each accident ~~-~~year, report year or policy year, as applicable, in the recorded period.

(1) For occurrence policies, projected losses shall be calculated on an accident-year basis. ~~However,~~

(2) ~~f~~For claims-made policies, projected losses shall be calculated on a report-year basis.

(3~~e~~) For mechanical breakdown and similar insurance as defined in subdivision (b) of Section 2642.7~~policies providing multi-year coverage, such as mechanical breakdown~~, projected losses may be calculated on a policy-year basis.

(c~~d~~) For professional liability and errors and omissions coverage, the insurer shall, in lieu of the computation of projected losses specified in ~~s~~Sections 2644.5 through 2644.7, tender an alternative computation of projected losses, which the Commissioner shall approve if the Commissioner finds the projection to have been made in the most actuarially sound

~~actuarial~~ manner. ~~Nothing in this section precludes the Commissioner from requiring the additional filing of~~The insurer shall also provide projected losses computed in the manner specified in ~~s~~Sections 2644.5 through 2644.7 and in any other manner as may be required by the Commissioner.

(d) For the earthquake, flood, or any other line of insurance for which projected losses are permitted to be modeled pursuant to subdivision (c) of Section 2644.4.5, projected losses may be based on catastrophe models.

~~(e) For the earthquake line of business and for the fire following earthquake exposure in other lines, projected losses and defense and cost containment expenses may be based on complex catastrophe models using geological and structural engineering science and insurance claim expertise. The use of such models shall conform to the standards of practice as set forth by the Actuarial Standards Board and the applicant shall have the burden of proving, by a preponderance of the evidence, that the model is based upon the best available scientific information for assessing earthquake frequency, severity, damage and loss, and that the projected losses derived from the model meet all applicable statutory standards.~~

Note: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi,* 8 Cal.4th 216 (1994). Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805.

Adopt Section 2644.4.5. Use of Catastrophe Models.

(a) Permitted uses.

(1) For the earthquake and flood lines, projected annual aggregate losses may be based on catastrophe models.

(2) The catastrophe adjustment for the fire following earthquake exposure, and for terrorism exposure, in lines other than earthquake and flood may be based on projected annual aggregate losses derived from catastrophe models.

(b) Wildfire exposure.

The catastrophe adjustment for wildfire exposure for commercial property insurance ~~in lines of insurance other than earthquake and flood~~ may be based on catastrophe models, provided that the insurer complies with the provisions of Section 2644.4.8 that are applicable to commercial property insurance. The catastrophe adjustment for wildfire exposure for "qualifying residential property insurance," as that term is defined in Section 2644.4.8, may be based on catastrophe models, provided that the insurer complies with the provisions of Section 2644.4.8 that are applicable to such qualifying residential property insurance. For an insurer that thus complies with Section 2644.4.8 with respect to such qualifying residential property insurance, the catastrophe adjustment

for wildfire exposure covered under a renter's insurance policy, an HO-6 policy, or the equivalent of an HO-6 policy, may also be based on catastrophe models.

(c) Additional lines or exposures.

(1) In addition to the permissible uses of catastrophe models specified in subdivisions (a) and (b) of this Section 2644.4.5, at the Commissioner's discretion, models may be used in cases where limited historic insurance data is available:

(A) To project annual aggregate losses in lines of insurance other than those specified in subdivision (a)(1) of this section, or

(B) To determine the catastrophe adjustment for exposures to perils other than those specified in subdivision (a)(2) or (b) of this section.

(2) The Commissioner may allow modeling for such additional lines or exposures only if, taking into account the circumstances under which, and the conditions pursuant to which, modeling for the additional line or coverage in question is to be permitted, it is in the Commissioner's judgment reasonably foreseeable that permitting modeling would serve two or more of the following purposes of Proposition 103:

(A) Protecting consumers from arbitrary insurance rates and practices.

(B) Encouraging a competitive insurance marketplace.

(C) Ensuring that insurance is fair, available and affordable to all Californians.

(3) In the event the requirement of subdivision (c)(2) of this section is satisfied, the Commissioner's decision as to whether to allow modeling for additional lines or exposures shall be based upon the following factors:

(A) The degree to which the peril is an emerging or a newly recognized peril for ratemaking purposes.

(B) The degree to which a model is likely to be reliable for ratemaking purposes.

(C) The extent to which any historical insurance data is unavailable.

(D) The degree to which available historical insurance data is not predictive of future costs.

(d) Under no circumstances, however, will modeling be permitted for the reason that an individual company lacks data that is otherwise available.

(e) Catastrophe models shall be run on the insurer's in-force business as of the end of the most recent year in the recorded period.

(f) The use of catastrophe models shall conform to the standards of practice as set forth by the Actuarial Standards Board, and the applicant shall have the burden of demonstrating that:

(1) the model is based upon what in the Commissioner's assessment is the best available scientific information for assessing frequency, severity, damage and loss,

(2) the applicant's use of its selected model(s) produces the most actuarially sound estimate of projected catastrophe losses,

(3) the projected losses derived from the model meet all applicable statutory, regulatory and other legal standards, and

(4) the model incorporates what in the Commissioner's assessment is the best available scientific information on risk mitigation at the property, community, and landscape scales including, but not limited to forest management, prescribed fire, nature-based flood risk reduction, and risk mitigation initiated by local and regional utility companies.

(g) This section is hereby expressly included within the range of regulations sections specified in subdivision (a) of Section 2648.4, notwithstanding that this section's adoption is subsequent in time to the adoption of, or the effectiveness of any amendments to, Section 2648.4.

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805.

Adopt Section 2644.4.8. Distressed Areas; Insurer Commitments.

An insurer that opts to make, fulfill and document the fulfillment of its insurer commitments in the manner specified in this Section 2644.4.8 may use catastrophe modeling as permitted by Subdivision (b) of Section 2644.4.5 ~~for purposes of modeling the catastrophe adjustment for wildfire exposure for commercial property insurance and qualifying residential property insurance~~.

As used in this section, the term "qualifying residential property insurance" shall mean a policy of residential property insurance as defined in Insurance Code section 10087, except that renter's insurance policies do not fall within the meaning of qualifying residential property insurance. Additionally, an HO-6 policy, or its equivalent, is not included within the meaning of qualifying residential property insurance.

(a) Distressed areas, and properties insured by FAIR Plan policies, that are to be used in insurer commitments.

(1) Distressed areas.

For purposes of this section distressed areas shall include the following:

(A) Undermarketed ZIP Codes.

The Commissioner shall publish an initial bulletin containing a list of the Undermarketed ZIP Codes determined pursuant to this subdivision (a)(1)(A). The Commissioner shall by subsequent bulletins update the list of Undermarketed ZIP Codes from time to time as conditions warrant, but in any event no less frequently than once per year. For purposes of this section, an Undermarketed ZIP Code shall mean a ZIP Code, as determined by the Commissioner, which at least partially overlaps a high or very high fire hazard severity zone as shown on current maps published by the Department of Forestry and Fire Protection (Cal Fire) and in which ZIP Code either:

1. At least fifteen percent (15%) of the sum of the following are insured by the FAIR Plan:

a. The number of residential properties in the ZIP Code that are insured by the FAIR Plan, and

b. The number of residential properties in the ZIP Code that are insured in the voluntary market by admitted insurers under a policy of qualifying residential property insurance; or

2. The average premium per $1,000.00 of Coverage A in the ZIP Code is at least four dollars ($4.00) while the median income of the ZIP Code is no higher than the fiftieth (50th) percentile for California.

(B) Distressed counties.

The Commissioner shall publish an initial bulletin containing a list of the distressed counties determined pursuant to this subdivision (a)(1)(B). The Commissioner shall by subsequent bulletins update the list of distressed counties from time to time as conditions warrant, but in any event no less frequently than once per year. For purposes of this section, a county shall be a distressed county if the percentage of structures situated in that

county that are at high or very high wildfire risk is no lower than the 50th percentile of counties in the state, as determined by the Commissioner.

(2) Properties insured by the FAIR Plan exposed to wildfire risk.
Policies insuring properties that the insurer has classified as moderate to very high wildfire risk and that immediately prior to the insurer's insuring them, on a date subsequent to the approval of its rate application described in subdivision (c) of this section, had been covered under the FAIR Plan.

(b) Statewide market calculations.

(1) Calculation of statewide market share.

For purposes of this section the Department will calculate an estimate of the number of earned exposures of qualifying residential property insurance statewide based on the most recent experience year reported to the Department, such initial evaluation period ending on December 31, 2023, which figure shall be used as the denominator in the calculation of statewide market share for each insurer. The Commissioner shall publish a bulletin with the estimate of statewide earned exposures, no less frequently than once per year.

The numerator to be used in the calculation of each insurer's statewide market share shall be the number of earned exposures of qualifying residential property insurance policies in the most recent 12-month period used in its recorded period as submitted in the insurer's rate application pursuant to subdivision (c) of this section.

In order to calculate its statewide market share, the insurer shall divide its numerator by the denominator, each as described in this subdivision (b)(1), and the insurer's statewide market share shall be the resulting quotient, rounded to the thousandths place.

(2) Statewide distressed areas earned exposures.

For purposes of this section the Department will calculate an estimate of the total number of earned exposures of qualifying residential property insurance in both the voluntary market and the FAIR Plan inside the distressed areas of the state based on the most recent experience year/dataset reporting such relevant information to the Department, such initial evaluation period ending on December 31, 2023, which figure shall be used in the calculation of each insurer's residential commitment inside the distressed areas pursuant to subdivision (d) below. The Commissioner shall publish a bulletin that includes the estimate of statewide distressed areas earned exposures, no less frequently than once per year.

(c) The insurer shall, as part of a complete rate application filing pursuant to Section 2648.4, submit an insurer commitment as set forth in subdivision (d), (f) and/or (j) of this section.

(d) Insurer commitments with respect to qualifying residential property insurance.

The insurer shall commit in writing to achieving no later than two years (730 days) after the approval of its rate filing (the insurer's "performance date" hereinafter), or maintaining, the insurer's earned exposure commitment in the distressed areas of the state as follows:

(1) Eighty-five percent standard.

(A) The insurer shall commit to write in distressed areas a number of policies that is no less than the product of (1) the insurer's statewide market share, as calculated pursuant to subdivision (b)(1), (2) 0.85, and (3) the total number of statewide distressed areas earned exposures pursuant to subdivision (b)(2) of this section; or

(B) In the event the insurer already meets or exceed the eighty-five percent standard set forth above in subdivision (d)(1)(A) of this section at the time of its rate application, the insurer shall commit to maintaining at least the same number of earned exposures in the distressed areas as it reported in the rate application filing pursuant to subdivision (c), for at least three years (1,095 days) after the approval of the rate application.

(2) Five percent increment.

The insurer may instead commit to writing additional policies as specified in subdivision (d)(3) in the voluntary market inside the distressed areas of the state such that, on the performance date, the insurer has increased its number of earned exposures inside the distressed areas by at least the number of policies equal to five percent (5%) of its earned exposures in the distressed areas of the state within the most recent 12 month period used in its recorded period as submitted in the insurer's rate application pursuant to subdivision (c) of the section.

(3) In the event that one or more of the bulletins described in subdivision (a) of this section that is or are referred to in an insurer's approved rate application pursuant to subdivision (c) of this section (the insurer's "starting bulletin or bulletins" hereinafter) have been updated since the time the application was filed, then the insurer may satisfy its insurer commitment by:

(A) Writing policies in distressed areas as defined in the insurer's starting bulletin or bulletins and/or in any subsequently updated bulletin as the commissioner may publish from time to time; or

(B) If subdivision (d)(1)(B) of this section is applicable to the rate application, maintaining earned exposures in distressed areas as defined in the insurer's starting bulletin or bulletins and/or in any subsequently updated bulletin as the commissioner may publish from time to time.

(4) The additional policies written in order to satisfy the requirement of this subdivision (d) shall include only the following:

(A) Policies of qualifying residential property insurance insuring properties in distressed areas of the state; and/or

(B) Policies of qualifying residential property insurance insuring properties that the insurer has classified as moderate to very high wildfire risk and that immediately prior to the insurer's insuring them, on a date subsequent to the approval of its rate application described in subdivision (c) of this section, had been covered under the FAIR Plan.

An insurer may count a policy described in this subdivision (d)(4~~3~~)(B) as insuring a property within the distressed areas of the state for purposes of fulfilling its insurer commitment, any contrary provision of this section notwithstanding.

(e) Low-premium-volume insurers.

(1) An insurer whose direct California annual premium from qualifying residential property insurance policies is less than $10 million may comply with this section without making an insurer commitment pursuant to subdivision (d) of this section, until such time as subdivision (e)(2) is applicable to the insurer.

(2) No later than March 31 of the calendar year immediately following the calendar year during which an insurer described in subdivision (e)(1) of this section determines that it has met or exceeded $10 million of direct California annual premium from qualifying residential property insurance policies, the insurer shall submit a rate application as described in subdivision (c) of this section, which application contains an insurer commitment that conforms to subdivision (d) of this section.

(3) An insurer described in subdivision (e)(1) of this section shall calculate its direct California annual premium from qualifying residential property insurance policies annually.

(f) Insurer commitments with respect to commercial property insurance.

(1) For purposes of this subdivision (f), eligible ZIP Codes shall include all ZIP Codes in the state that at least partially overlap a high or very high fire hazard severity zone, as shown on the most current map published by Cal Fire. The Commissioner shall publish an initial bulletin containing a list of the eligible ZIP Codes determined pursuant to this subdivision (f)(1). The Commissioner shall by subsequent bulletins update the list of eligible ~~-~~ZIP Codes from time to time as conditions warrant.

(2) Insured exposure requirement. At the time of an insurer's first rate application filing subsequent to the effective date of this section, the insurer must commit in writing to increase, no later than two years (730 days) after the approval of that rate application, its writing of policies such that it insures additional properties in ~~the~~ eligible ZIP codes whose total insurable value is, in the aggregate, at least equal ~~equivalent~~ to five percent (5%) of the sum of the~~its~~ total insurable value of its insured properties in all the eligible ZIP codes, taken as a whole, as of the end of the most recent 12-month period used in its recorded period~~, no later than two years (730 days) after the approval of the rate filing in which the insurer includes its insurer commitment~~.

(3) In the event that the bulletin described in subdivision (f)(1) of this section that is referred to in an insurer's approved rate application pursuant to subdivision (f)(2) of this section (the insurer's "initial bulletin" hereinafter) has been updated since the time the application was filed, then the insurer may satisfy its insurer commitment by writing policies in eligible ZIP Codes as defined in the insurer's initial bulletin and/or in any subsequently updated bulletin as the commissioner may publish from time to time pursuant to subdivision (f)(1).

(4) In the event the insurer is unable to timely meet the requirement in (f)(2), the insurer shall file a new application pursuant to subdivision (h)(1)(C), if applicable, or subdivision (h)(2), of this section.

(g) Documenting the insurer's fulfilment of its insurer commitment.

The insurer shall create and maintain a wildfire risk portfolio. An insured property shall be added to the insurer's wildfire risk portfolio at the time the location and, if applicable, prior FAIR Plan coverage status of the insured property are fully documented pursuant to the provisions of this subdivision (g).

(1) For qualified residential insurer commitment.

(A) In addition to the material called for in subdivision (g)(3) below that is applicable to any property in its wildfire risk portfolio, the insurer shall maintain and keep current a document entitled "Wildfire Risk Portfolio Register," which shall list, for each property added to the portfolio, the following information: the date the property was added to the portfolio; the address of the property, including the ZIP Code; if the property is being added to the portfolio solely on the basis that it lies within a distressed county but not any Undermarketed ZIP Code, the county in which the property is situated; the inception date of the policy; the termination date of the policy, if the policy has terminated; and if the property is being added to the portfolio on the basis of subdivision

(g)(1)(B), below, an identification of the insurer's documentation of the property's prior FAIR Plan coverage.

(B) To document that the FAIR Plan was insuring the property in question immediately prior to the inception, on or after the effective date of this section, of a policy insuring that property that is issued by the insurer seeking to add the property to its portfolio after such effective date, the insurer shall have on file:

1. A carrier discovery report or

2. Other documentation demonstrating that the property had been insured under the FAIR plan immediately preceding the date the insurer issues its policy. Such documentation may include (1) copies of declaration pages from the FAIR Plan, (2) a subscribing loss underwriting exchange report and/or (3) an electronic copy of the entire application completed by the insured and submitted to the insurer, on which application the insured has identified the prior insurer as the FAIR Plan.

(2) For commercial insurer commitment. In addition to the material called for in subdivisions (g)(3) below that is applicable to any property in its wildfire risk portfolio, the insurer shall maintain and keep current a document entitled "Wildfire Risk Portfolio Register," which shall list, for each property added to the portfolio, the following information: the date the property was added to the portfolio; the address of the property, including the ZIP Code; the total number of exposures insured under each policy; the inception date of the policy; the property's total insurable value, and the termination date of the policy, if the policy has terminated.

(3) For both qualified residential insurer commitment and commercial insurer commitment.

(A) The Wildfire Risk Portfolio Register shall be maintained as a digital file that is sortable by all fields.

(B) The insurer shall maintain a digital file for each insured property added to its wildfire risk portfolio, in which file shall be stored an electronic copy of each record necessary for purposes of supporting the property's status of lying within a distressed area of the state for purposes of satisfying the insurer's insurer commitment.

(C) The insurer shall maintain its Wildfire Risk Portfolio Register, as well as the digital file described in subdivision (g)(3)(B) of this section for each property added to its wildfire risk portfolio, until such time as at least five years (1,825 days) have passed since:

1. The date that is two years (730 days) following the approval of the insurer's rate application pursuant to subdivision (c) of this section, in the event that subdivision (d)(1)(A), (d)(2) or (f)(2) of this section is applicable;

2. The date that is three years (1,095 days) following the approval of the insurer's rate application pursuant to subdivision (d) of this section, in the event that subdivision (d)(1)(B) of this section is applicable;

3. The date by which the insurer has committed to fulfill or complete the fulfilment of its alternative commitment, in the event that subdivision (j) of this section is applicable; or

4. The date of the approval of the insurer's rate application renouncing the insurer's insurer commitment, in the event that subdivision (h)(2) of this section is applicable.

(h) Modification of, or failure to fulfill, insurer commitment.

(1) Modification when insurer loses significant market share.

(A) Residential insurers whose insurer commitment stated in the original rate application filing included an undertaking to write additional policies in distressed areas.

In the event that, subsequent to approval of its rate application described in subdivision (c) of this section (hereinafter, the "original application"), an insurer files a new rate application in which the insurer recalculates its insurer commitment as specified in subdivision (d) of this section on the basis that the insurer's statewide market share as calculated pursuant to subdivision (b)(1) of this section is at least five percent (5%) lower than was used for purposes of calculating the insurer commitment contained in the insurer's original rate application, then the new rate application may contain a modified insurer commitment pursuant to subdivision (d) of this section that reflects the recalculated insurer commitment, which insurer commitment shall become effective if and when the new rate application is approved.

(B) Residential insurers whose performance met or exceeded the applicable standard or requirement at the time of initial rate application filing.

An insurer may modify its insurer commitment that was made pursuant to subdivision (d)(1)(B) of this section as follows: The insurer may reduce its earned exposures in distressed areas of the state by up to five percent (5%) below the level reported in the original application, to the extent that is indicated by the amount of the diminution of the insurer's statewide market share, but in no event below the eighty-five percent standard set forth in subdivision (d)(1)(B) of this section.

(C) Modification of commercial insurer commitments.

An insurer may modify its insurer commitment as follows: In the event the insurer is unable to timely meet the requirement in (f)(2), the insurer shall file a new application in which it modifies its insurer commitment accordingly. The insurer may reduce its insurer commitment in eligible ZIP Codes of the state by no more than the decline in its total insurable value reported in the original rate application filing.

(2) Failure to fulfill an insurer commitment.

If at any time an insurer fails to fulfill its insurer commitment, or within a period of two years after the approval of its original application, or at any point thereafter, fails to make reasonable progress toward timely fulfilling its insurer commitment, then the insurer shall immediately submit a new rate application renouncing its insurer commitment as described in subdivision (d) or (f) of this section. In this case the new rate application shall not make use of catastrophe modeling as permitted by Section 2644.4.5.

(i) Insurer Attestation.

An insurer that obtained approval to use catastrophe modeling in its original application shall file one of the following attestations in every subsequent rate application until such time as that insurer has attested that it has fulfilled its commitment:

(1) An attestation that the insurer has fulfilled, or is taking reasonable steps to fulfill, its insurer commitment.

(2) An attestation that the insurer's rate application modifying its insurer commitment pursuant to subdivision (h)(1) of this section has been approved and the insurer has fulfilled, or is taking reasonable steps to fulfill, its modified insurer commitment.

(j) Alternative Insurer Commitments.

Any contrary provision of this section notwithstanding, if for any of the reasons stated in subdivision (j)(1) of this section, an insurer is unable, in good faith, to make a commitment as set forth in subdivisions (d) or (f) of this section, then an insurer may propose an alternative commitment in a complete rate application filing pursuant to subdivision (c), as described in subdivision (j)(2) of this section:

(1) An insurer may propose an alternative commitment pursuant to this subdivision (j) on one or more of the following bases:

(A) its size,

(B) its scope of coverages, or

(C) the frequency or severity of recent events impacting the insurer.

(2) Such rate application filing shall include a statement:

(A) setting forth the reason why this subdivision (j) is applicable, and

(B) describing the proposed alternative commitment in sufficient detail to allow the Commissioner to evaluate whether the alternative increases availability of qualifying residential property insurance and/or commercial property insurance.

(k) Nothing in this section shall be construed as limiting, in any way, an insurer's ability to offer qualifying residential property insurance or commercial property insurance in this state.

(*l*) If any provision or clause of this section or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this section which can be given effect without the invalid provision or application. To this end, the provisions of this section are hereby declared to be severable.

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi*, 8 Cal.4th 216 (1994). Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company* v. *Deukmejian* (1989) 48 Cal.3d 805.

Amend Section 2644.5. Catastrophe Adjustment.

In those insurance lines and coverages where catastrophes occur, the actual catastrophic losses of any one ~~accident~~ year in the recorded period are replaced by an adjustment based on the average annual loss generated from one or more catastrophe models as described in Section 2644.4.5, or

an adjustment based on a multi-year, long-term average of catastrophe losses net of actual and anticipated salvage and subrogation recoveries, as described in subdivision (b) of this section, or except as prohibited in subdivision (e) of this section a combination of the methods specified in subdivisions (a) and (b).~~:~~

(a) For fire following earthquake, wildfire, and terrorism exposures in any line of insurance, an insurer may include an adjustment based on the average annual loss generated from one or more catastrophe models. The use of such models shall comply with the requirements set forth in subdivision (e) of Section 2644.4.5. Further, the average annual loss may be adjusted to include a provision for defense and cost containment expenses (DCCE), either by applying a historical ratio of noncatastrophe DCCE to noncatastrophe loss or by applying a historical ratio of catastrophe DCCE to catastrophe loss.

(b) In any event, an insurer may project its catastrophe adjustment~~loading~~ based on a multi-year, long-term average of catastrophe ~~claims~~losses and DCCE, net of actual and anticipated salvage and subrogation recoveries. Catastrophe adjustment for perils other than those that are permitted to be modeled under subdivision (a) of this section or pursuant to subdivision (c) of Section 2644.4.5 must be based on such multiyear long-term average.

(1) For residential and commercial property lines, the adjustment shall be based on the average of the ratio of ultimate catastrophe losses and DCCE to amount of insurance years (AIY). For purposes of this section, the term AIY shall reflect the total combined limits (dwelling, additional structures, personal contents and loss of use) pertaining to the property coverages underlying each policy. For private passenger and commercial automobile physical damage, the adjustment shall be based on the average of the ratio of ultimate catastrophe losses and DCCE to ultimate noncatastrophe losses and DCCE.

(2) The number of years over which the average shall be calculated shall be at least 20 years for ~~homeowners multiple peril fire,~~residential and commercial property lines and at least 10 years for private passenger, and commercial, auto physical damage. Where the insurer does not have enough years of data, or has a limited amount of data for years for which it does have data, the insurer's data shall be supplemented by appropriate data for those years. The number of years over which the average shall be calculated for any other line with catastrophe exposure that is permitted under this subdivision (b) to have a catastrophe adjustment shall be based on the most actuarially sound assumptions. There shall be no catastrophe adjustment for private passenger, or commercial, auto liability.

(c) Regardless of which method is used for catastrophe adjustment, insurers shall submit all of the following, based on the data aggregation method used for the recorded period,

whether the recorded period is expressed in terms of accident years, policy years or report years, through the most recent year of the recorded period:

(1) The insurer's history, by year, of California catastrophe losses, displayed separately for paid losses, case-incurred losses and Incurred But Not Reported (IBNR) reserves.

(2) The insurer's history, by year, of California noncatastrophe losses, displayed separately for paid losses, case-incurred losses and IBNR reserves.

(3) The insurer's history, by year, of California catastrophe Defense and Cost Containment Expenses (DCCE), displayed separately for paid DCCE, case-incurred DCCE and IBNR reserves.

(4) The insurer's history, by year, of California noncatastrophe DCCE, displayed separately for paid DCCE, case-incurred DCCE and IBNR reserves.

(5) The insurer's history, by year, of California received salvage and subrogation recoveries. Subrogation recoveries shall include the proceeds of any actual sale or divestiture of subrogation rights.

(6) The insurer's history, by year, of California anticipated salvage and subrogation recoverables. Subrogation recoverables shall include the reasonably foreseeable proceeds of any anticipated sale or divestiture of subrogation rights.

(7) The insurer's history, by year, of California AIY for residential and commercial property lines.

(8) For residential and commercial property lines, the insurer's projected AIY for the policy effective period. The trend factor that is used to project AIY shall be based on the exponential curve of best fit. Insurers shall file the most recent 27 quarters of company-specific AIY and earned exposure data. The insurer shall file its rate change application using the single data period for AIY and, as specified in section 2644.7, premium and loss trend, which data period the insurer determines to be the most actuarially sound. The Commissioner may require the use of an alternative data period if the Commissioner determines that use of such alternative data period is the most actuarially sound approach.

(9) For private passenger and commercial auto physical damage, the insurer's projected ultimate noncatastrophe losses for the most recent year in the recorded period, as determined by the application of Sections 2644.6 and 2644.7.

(10) The insurer's current definition of catastrophe and the period of time it has used such definition.

(11) The insurer's definition of wildfire and the period of time it has used such definition.

(12) The name of any major event or events contributing to the year's catastrophic losses, for instance, the "Cedar Fire," and the peril or perils associated with those losses.

(d) The catastrophe adjustment shall reflect any changes between the insurer's historical and prospective exposure to catastrophe due to a change in ~~the~~:

(1) The insurer's coverage or other policy terms; or

(2) The insurer's mix of business. ~~There shall be no catastrophe adjustment for private passenger auto liability.~~

(e) For any individual peril, projected aggregate catastrophe losses cannot be based upon a combination of modeled and historical losses associated with that peril.

(f) Catastrophe adjustment, whether based on modeled or nonmodeled losses as prescribed by 2644.5(a) or (b) above, shall apply as a single annual projection once all other adjustments to loss have been made. The catastrophe adjustment shall be expressed as a dollar amount of catastrophe losses per earned exposure, where earned exposure is taken from the most recent year of the recorded period.

(g) For residential and commercial property lines, no trend shall be applied to the catastrophe adjustment except for the trend factor that is used to project AIY as described in subdivision (c)(8) of this section.

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi*~~,~~ (1994) 8 Cal.4th 216 ~~(1994)~~. Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805.

Amend Section 2644.8. Projected Defense and Cost Containment Expenses.

(a) The meaning of the term "~~P~~projected defense and cost containment expenses (DCCE)" ~~means~~includes both the company's noncatastrophe historic costs ~~per exposure~~ associated with the defense and cost containment of noncatastrophe claims, ~~adjusted for catastrophes,~~ developed and trended in the manner described in ~~s~~Sections ~~2644.5,~~ 2644.6 and 2644.7, and the company's costs associated with the defense and cost containment of catastrophe claims, as prescribed in Section 2644.5.

(1) DCCE associated with noncatastrophe losses shall be developed:

(A) separately from losses;

(B) with losses; or

(C) as a ratio to losses.

(2) DCCE associated with noncatastrophe losses shall be trended:

(A) separately from losses; or

(B) with losses.

(3) Any provision for DCCE associated with catastrophe losses shall be determined in accordance with subdivisions (a) and (b) of Section 2644.5.

(b) ~~Defense and cost containment expenses may be added to losses for loss development and trend or may be developed using ratios of defense and cost containment expenses to losses.~~ The insurer shall provide its data separately for loss and DCCE, and demonstrate that its selections of development and trend for DCCE ~~is~~are the most actuarially sound selections.

(c) The projected DCCE shall be reflected per exposure for purposes of subdivision (a)(1)(A) of Section 2644.2 and subdivision (a)(1)(A) of Section 2644.3.

(d~~e~~) For professional liability and errors and omissions coverage, the insurer shall tender an alternative computation of projected ~~defense and cost containment expenses~~DCCE, which the Commissioner shall approve if the Commissioner finds the projection to have been made in the most actuarially sound ~~actuarial~~ manner. The insurer shall also provide projected DCCE in a manner specified in subdivisions (a) through (c) of this Section 2644.8 and in any other manner as may be required by the Commissioner. ~~Nothing in this section precludes the Commissioner from requiring the additional filing of projected defense and cost containment expenses computed in the manner specified in sections (a) and (b).~~

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi*~~,~~ (1994) 8 Cal.4th 216 ~~(1994)~~. Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805.

Amend Section 2644.27. Variance Request.

(a) A request that the maximum permitted earned premium or minimum permitted earned premium should be adjusted is referred to as a "variance request."

(b) Requests for variances shall be filed with the Rate Regulation Branch, together with the insurer's complete rate application. All such variance requests shall specifically:

(i) identify each and every variance request;

(ii) identify the extent or amount of the variance requested and the applicable component of the ratemaking formula;

(iii) set forth the expected result or impact on the maximum and minimum permitted earned premium that the granting of the variance will have as compared to the expected result if the variance is denied; and

(iv) identify the facts and their source justifying the variance request and provide the documentation supporting the amount of the change to the component of the ratemaking formula.

(c) Requests for variances shall be filed at the same time as the insurer's complete rate application to which it applies or after the filing of the complete rate application and before any final determination regarding that application. Public notice of all variance requests shall be provided as set forth in Insurance Code sections 1861.05, subdivision (c), and 1861.06.

(d) A variance request shall be deemed approved sixty days after public notice unless:

(i) a consumer or a consumer's representative requests a hearing within forty-five days of public notice and the Commissioner grants the hearing, or determines not to grant the hearing and issues written findings in support of that decision, or

(ii) the Commissioner on the Commissioner's own motion determines to hold a hearing.

(e) Variance requests shall be determined in conjunction with the related complete rate application or rate hearing thereon.

(f) The following are the valid bases for requesting a variance:

(1) That the insurer should be allowed relief from the efficiency standard for bona fide loss prevention and loss-reduction activities as set forth below.

(A) The insurer meeting the qualifications set forth below may obtain an increase in the applicable efficiency standard by the amount of its "Allocated Costs" for its Special Investigations Unit ("SIU") expense for the most recent year. The term SIU as used in this section has the same meaning as that term has in Section 2698.30, subdivision (p). The term "Allocated Costs" means those costs set forth in subsection (iii) and attributable to investigations of claims made on the line of insurance subject to Insurance Code section 1861.05, subdivision (b) for which the variance is sought.

(i) An insurer may recover its "Allocated Costs" for its SIU expenses only in its approved rate filing for the line of insurance affected by the SIU investigation costs.

(ii) Affiliated insurers who utilize the same SIU unit may recover the portion of their "Allocated Costs" for their SIU expenses attributable to investigations of claims made on the line of insurance in the rate application only in one approved rate application for the line affected by the Allocated SIU costs. The term "Affiliated Insurers" has the same meaning as that term has in Insurance Code section 1215.

(iii) The only recoverable SIU expenses are those expended for investigators whose sole duties are investigation of insurance fraud, software dedicated solely to analysis of data for indications of insurance fraud, training of employees whose sole duty is the investigation of fraud and equipment to be used solely by the insurer's SIU. The recoverable expenses do not include the costs of employing or other costs for adjustors or underwriters.

(iv) The only recoverable SIU expenses are for SIU's dedicated to investigation of insurance fraud within the State of California or for the portion of an SIU's operations within California. The burden of demonstrating the amount of SIU expenses, and that those expenses are for the investigation of insurance fraud within the State of California, is the insurer's.

(v) An insurer may recover the "Allocated Costs" of retaining an independent contractor to perform SIU services as described in sub-paragraph (iii). The variance shall be calculated by multiplying the fees paid for the independent agency with whom the insurer contracts by the percentage of referrals of claims made on the line of insurance for which the rate application and variance application are made and that the contracted agency investigates in California on behalf of the insurer seeking the variance.

(vi) No expense that is included within the Defense and Cost Containment Expense portion of an insurer's complete rate application can be included in whole or in part as the basis for a variance based on SIU expenses. The terms "Defense and Cost Containment Expense" or "DCCE" when used with regard to any variance have the same meaning as those terms have in Section 2644.23, subdivision (c).

(vii) An insurer that asserts that payments to: (1) an independent contractor; or (2) an SIU owned by an Affiliated Insurer; or (3) an SIU independent of an insurer, but which is owned directly or indirectly, in whole or part by the insurer applying for a variance or by an Affiliated Insurer, shall in its variance request, provide the Department of Insurance with documentation showing the costs of

investigation for the purported "Allocated Costs" claimed in the variance request. The payments constituting the basis for the variance must be *bona fide* payments for investigation of individual cases of suspected insurance fraud. It shall be the burden of the insurer to demonstrate that the costs are *bona fide* costs for investigation of insurance fraud in the State of California.

(B) An insurer meeting the qualifications set forth below will be allowed to recover its expenses for the most recent year for dedicated loss prevention programs such as brush clearance, driver education, risk management, hazard mitigation or accident prevention. Loss prevention expenses do not include SIU expenses under subsection (A).

(i) An insurer may recover its "Allocated Costs" for its loss prevention expenses only in its approved rate for the line of insurance affected by the loss prevention expenses.

(ii) The insurer must provide documentation detailing the loss prevention program, what additional costs are being incurred and what losses are being prevented.

(iii) Recoverable loss prevention expenses are those expended for employees whose duties are loss prevention, software dedicated to loss prevention, and equipment to be used for loss prevention. Recoverable loss prevention expenses do not include the routine and customary costs of marketing or employing underwriters or adjusters.

(iv) The only loss prevention expenses recoverable are for loss prevention programs dedicated to loss prevention in the State of California or for the portion of the program within California. The burden of demonstrating the amount of loss prevention costs, and that those costs are expended for loss prevention in the State of California, is on the insurer.

(2) That the insurer should be allowed relief from the efficiency standard due to any or all of the following:

(A) Higher quality of service, as demonstrated by objective measures of consumer satisfaction; or

(B) Demonstrated superior service to underserved communities, as defined in Section 2646.6; or

(C) Significantly smaller or larger than average California policy premium, including any applicable fees. These fees include but are not limited to: policy fees, installment fees, endorsement fees, inspection fees, cancellation fees, reinstatement fees, late fees, SR-22, and other similar charges.

(3) That the insurer should be authorized leverage factor different from the leverage factor determined pursuant to Section 2644.17 on the basis that the insurer either writes at least 90% of its direct earned premium in one line or writes at least 90% of its direct earned premium in California and its mix of business presents investment risks different from the risks that are typical of the line as a whole. The leverage factor shall be adjusted by multiplying it by 0.85. The surplus ratio in Section 2644.22 shall likewise be divided by 0.85. If an insurer writes at least 90% of its direct earned premium in one line and writes at least 90% of its direct earned premium in California, the insurer will only be authorized one leverage factor adjustment of 0.85.

(4) That the insurer should be granted relief from operation of the efficiency standard for a line of insurance in which the insurer has never previously written over $1 million in earned premiums annually and in which the insurer has made or is making a substantial investment in order to enter the market. Any such request shall be accompanied by a proposed amortization schedule to distribute the start-up investment.

(5) That the minimum permitted earned premium should be lowered on the basis of the insurer's certification, and the Commissioner's finding, that the rate will not cause the insurer's financial condition to present an undue risk to its solvency and will not otherwise be in violation of the law.

(6) That the insurer's financial condition is such that its maximum permitted earned premium should be increased in order to protect the insurer's solvency. Any application for authorization under this subsection shall include:

(A) A showing of the insurer's condition, based on generally accepted standards such as the National Association of Insurance Commissioners' Insurance Regulatory Information System;

(B) A plan to restore the financial condition;

(C) A showing that, consistent with the claimed condition, the insurer has reduced or foregone dividends to stockholders or policyholders; and

(D) A plan to reduce rates once the insurer's condition is restored, in order to compensate consumers for excessive charges.

(7) That the insurer should be granted relief from using its in-force business as specified in subdivision (e) of Section 2644.4.5 because the insurer's in-force exposures do not reflect the insurer's prospective exposure to risk, such that the modeled catastrophe adjustment in subdivision (a) of Section 2644.5 does not produce the most actuarially sound result.

(8~~7~~) That the loss development formula in Section 2644.6 does not produce an actuarially sound result because

(A) There is not enough data to be credible;

(B) There are not enough years of data to fully calculate the development to ultimate;

(C) There are changes in the insurer's reserving or claims closing practices that significantly affect the data; ~~or~~

(D) There are changes in coverage or other policy terms that significantly affect the data; ~~or~~

(E) There are changes in the law that significantly affect the data; or

(F) There is a significant increase or decrease in the amount of business written or significant changes in the mix of business.

(9~~8~~) That the trend formula in Section 2644.7 does not produce the most actuarially sound result because

(A) There is a significant increase or decrease in the amount of business written or significant changes in the mix of business;

(B) There are not enough years of data to calculate the trend factor;

(C) There is a significant change in the law affecting the frequency or severity of claims;

(D) It can be shown that a trend calculated over a period of at least 4 quarters other than a period permitted pursuant to Section 2644.7, subdivision (b) is more reliable prospectively;

(E) There are changes in the insurer's claims closing practices that significantly affect the data; or

(F) There are changes in coverage or other policy terms that significantly affect the data.

(10~~9~~) That the maximum permitted earned premium would be confiscatory as applied. This is the constitutionally mandated variance articulated in *20th Century v. Garamendi* (1994) 8 Cal.4th 216 which is an end result test applied to the enterprise as a whole. Use of this variance requires a hearing pursuant to Section 2646.4.

(g) If there is more than one actuarial analysis of a variance, each of which is based on reliable data and utilizes methods which are shown by qualified expert evidence to be generally accepted as sound by the actuarial community and the appropriate methods for the particular variance, then the variance shall be granted, denied or calculated utilizing the actuarial proposition that results in the soundest actuarial result.

(h) Notwithstanding any other section of these regulations, the aggregate total adjustment to the efficiency standard for all variances combined shall not exceed the difference between the insurer's most recent year total expense ratio excluding defense and cost containment expenses and the efficiency standard.

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805.

Title 10. Investment
Chapter 5. Insurance Commissioner
Subchapter 4.8. Review of Rates
Article 8. Timelines for Scheduling and Commencing Hearings

Adopt: Section 2648.5. Pre-Application Required Information Determination ("PRID") Procedure

(a) Definitions.

As used in this section, each of the following terms has the meaning set forth below:

(1) "Pre-application required information determination" or "PRID" means a nonadjudicative initial determination the California Department of Insurance issues before an insurer submits a complete rate application and that specifies all information and data regarding a model that are required to be provided to the Commissioner as part of a complete rate application that relies upon the model for purposes of requesting a proposed rate change pursuant to Insurance Code section 1861.05.

(2) "Pre-application required information determination procedure" or "PRID procedure" means a nonadjudicative initial procedure before the California Department of Insurance that takes place before an insurer submits a complete rate application and the purpose of which is to ~~determine~~make an initial determination of all information and data regarding a model that are required to be provided to the Commissioner as part of a complete rate application that relies upon the model for purposes of requesting a proposed rate change pursuant to Insurance Code section 1861.05.

(3) The term "model" means any simplified representation of relationships among real world variables, entities, responses, actions, or events using appropriate statistical, financial, economic, mathematical, non-quantitative, or scientific concepts and equations, or any combination thereof, and that consists of three components: one or more information input components, which deliver data and assumptions to the model; one or more processing components, which transform input into output; and one or more results components, which translate the output into useful business information. Types of models include, without limitation, "catastrophe risk models," "complex catastrophe models," "probabilistic catastrophe models," "third-party models," "wildfire models," "wildfire risk models," "risk models," and models referencing other perils; the meaning of the term "model" also includes without limitation a "Wildfire Risk Model" as described in Section 2644.9, subdivision (b)(6)(A).

(4) "Required model information" means all required information and data regarding a model, that the Commissioner requires to be submitted as part of a complete rate

application that relies upon the model, because such information and data will aid the Commissioner in determining whether the model is reliable to perform the functions for which an insurer proposes to use the model, for purposes of the Commissioner's evaluation of a complete rate application.

(5) "Complete rate application" means an application submitted by an insurer desiring to change any property and casualty rate pursuant to Insurance Code section 1861.05 and shall include without limitation ~~-~~all required model information and all information and data specified in Section 2648.4, regardless of whether any such information and data is included in its initial complete rate application submission or is subsequently submitted as part of the rate proceeding, including without limitation in response to requests for further information and data by the Department.

(6) "Public information" means all information provided to the Commissioner as part of a complete rate application submitted pursuant to article 10 of division 1, part 2, chapter 9 of the Insurance Code.

(7) "Confidential PRID information" means information, data, testimony, evidence, hearings, briefs, pleadings, correspondence, discovery, working papers, and other material created or exchanged for purposes of a PRID procedure, and that are not included in any complete rate application subsequently submitted or otherwise provided to the Commissioner.

(8) "Model Advisor" means the person within the Department of Insurance who oversees a PRID procedure.

(b~~a~~) For purposes of determining appropriate rates for a property and casualty line of business, the Commissioner requires insurers seeking to rely upon modeled information, including without limitation modeled financial projections such as aggregate catastrophe loss projections and other types of projected losses, to submit all required model information as part of a complete rate application. Required model information shall include, in addition to any information specified in the complete rate application requirements set forth in Section 2648.4, information that demonstrates the model uses established concepts, data, equations, and principles, as well as best available scientific information and data, insurance claims expertise, and other assumptions appropriate for the risk or peril being modeled.

(c~~b~~) The purpose of a pre-application required information determination procedure or PRID procedure shall be for the Department of Insurance to issue a PRID that specifies all required model information to be included in a complete rate application that relies upon the model. The purpose of the PRID procedure shall not be to determine how a specific model shall apply in any particular complete rate application, nor shall the parties examine any nonaggregated insurer-specific information as part of the PRID procedure.

(d~~e~~) Required model information specified in a PRID shall not be provided to the Commissioner and shall not be public information until or unless an insurer subsequently submits a complete rate application to the Commissioner that relies upon the model.

(e~~d~~) Confidential PRID information shall not be public information and shall be considered to be information received in official confidence by the Department of Insurance. Accordingly, confidential PRID information shall not be subject to disclosure in response to requests pursuant to the California Public Records Act (commencing with Government Code section 7920.000).

(f~~e~~) The Commissioner shall delegate authority to oversee a PRID procedure and issue a pre-application required information determination to the Model Advisor. The Model Advisor is authorized to hire outside consultant(s) with relevant knowledge and subject matter expertise to assist in determining required model information.

(g~~f~~) The Department of Insurance may initiate a PRID procedure by submitting a ~~N~~notice of PRID procedure to the Model Advisor.

(h~~g~~) Any person other than the Department may petition to initiate a PRID procedure, or petition to participate in a PRID procedure, by following the procedure set forth in Section 2661.4. The procedures for awarding advocacy fees, witness fees and other expenses to participants shall be subject~~and may be eligible for compensation pursuant~~ to Insurance Code section 1861.10, ~~and~~ Sections 2661.1 through 2662.8, and this ~~S~~section. A petition to initiate a PRID procedure may be combined with a petition to participate in a PRID procedure.

(1) The Model Advisor shall provide public notice of the Department's notice of PRID procedure, or a petition to initiate a PRID procedure, within three business days after receiving the notice or petition.

(2) Any person may submit to the Model Advisor a response to the petition, no later than three business days after public notice of the petition to initiate a PRID procedure.

(3) The Model Advisor shall grant the petition to initiate a PRID procedure only if the Model Advisor determines that the petitioner has demonstrated it is more likely than not that the Commissioner would benefit from a PRID and either of the following conditions exist: (i) there is no currently valid PRID under this Section; or (ii) the model has not ~~been~~ previously been subject to public review in any other forum in California, including without limitation as part of a complete rate application, within the prior four years.

(4~~2~~) The Model Advisor shall rule on a petition to initiate the PRID procedure, a petition to participate in a PRID procedure, or a combined petition, within 10 business days after receipt of the petition by the Model Advisor.

(5~~3~~) The owner or vendor of a model may decline to participate as a party in a PRID procedure as to that model, but shall provide witness testimony, documents, and other information in response to subpoena.

(6~~4~~) ~~The Commissioner shall decide any requests for compensation by participants to a PRID procedure in accordance with Section 2662.6 and this Section.~~ For purposes of a request for an award of compensation based upon participation in a PRID procedure, the following additional standards shall apply:

~~(A) The Model Advisor shall determine a participant has made a "substantial contribution" to a PRID procedure only where the participant demonstrates that as a result of its participation, the Model Advisor has included in the PRID additional information or data regarding the model that would not otherwise have been identified without the requestor's participation in the PRID procedure, Section 2661.1(k) notwithstanding.~~

(A~~B~~) A party may not request compensation for fees and expenses based upon work that unnecessarily duplicates the work of another party. Work that materially supplements, complements, or contributes to the substantial contribution of another party shall not be considered unnecessarily duplicative.

(B~~C~~) To the extent the substantial contribution claimed by a participant duplicates the substantial contribution of another party to the PRID procedure, the decision awarding compensation ~~Commissioner~~ may find that neither party has made a substantial contribution.

(C) An insurer that relies upon a PRID when submitting a complete rate application to the Department shall provide notice to all participants in the PRID procedure that led to the PRID upon which the insurer relies, no later than two business days after submission of the complete rate application. Any participant intending to request compensation for reasonable fees and expenses incurred in the PRID procedure preceding the complete rate application shall provide notice of such intent to all parties in the PRID procedure, no later than five business days after the insurer provides notice of submission of the complete rate application.

(D) A participant to a PRID procedure who intends to request an award of compensation shall submit a request only after the resolution of a complete rate application relying upon the PRID. The Model Advisor's issuance of the PRID shall not be deemed an order, decision, or other action of the Commissioner within the meaning of section 2662.3. A participant to a PRID procedure need not intervene or participate in the complete rate application proceeding relying upon the PRID in order to request an award of compensation for reasonable fees and expenses arising out of participation in the PRID procedure, Section 2662.3 notwithstanding. The

request for an award of compensation shall delineate fees and expenses incurred in the PRID procedure separately from any fees and expenses that may have been incurred in the complete rate application proceeding.

(E) Any compensation award shall be payable by the insurer that submitted the complete rate application relying upon the PRID. The insurer may pass on the cost of the award to the owner or vendor of the model for which the PRID was issued. The award shall not be treated as an expense for the purpose of establishing rates of the insurer, Section 2662.6(d) notwithstanding.

(F) Once a party to a PRID procedure has been awarded its reasonable fees and expenses incurred in the procedure following a complete rate application that relied upon the PRID, it shall not be entitled to further compensation awards based upon the same fees and expenses incurred in the PRID procedure in any other complete rate application that relies upon the same PRID.

~~(5) The insurer shall pay any award of compensation arising out of a PRID procedure initiated to examine a model created by that insurer or its affiliates.~~

(i~~h~~) The Model Advisor shall publicly notice a PRID procedure within three (3) business days after granting~~receiving~~ a petition to initiate a PRID procedure or a Notice of PRID Procedure from the Department. Petitions to participate shall be considered timely if submitted within five (5) business days after the Model Advisor issues public notice of the PRID procedure. The PRID procedure shall be initiated five (5) business days after the Model Advisor has issued a ruling granting any petition to participate in the PRID procedure.

(j~~i~~) No later than~~Within~~ 15 business days after a PRID procedure has been initiated, all parties to a PRID procedure under this section shall:

(1) File a statement with the Model Advisor~~ describing how the parties will avoid duplication~~. The statement shall describe how the parties will avoid duplication and shall disclose without limitation working agreements among the parties, lead counsel arrangements on certain issues, sharing of expert witnesses among the parties, and intent to file joint documents. The statement shall also disclose any commercial interests a party has related to the model at issue in the PRID procedure, including without limitation any involvement in the ownership, development, or marketing of competing models; and

(2) Enter into a stipulated nondisclosure agreement that shall only govern the treatment of all confidential PRID information. The agreement shall specify, at a minimum, that (i) the representatives of the parties that participate in the PRID procedure shall not share any confidential PRID information with any other person, including without limitation persons employed by the same party but not involved in the

PRID procedure; and (ii) the parties that participate in the PRID procedure shall return or destroy all confidential PRID information within an agreed-upon length of time after a PRID has been issued. After all parties have entered into the agreement, the parties shall submit a stipulation and proposed protective order based upon the parties' nondisclosure agreement to the Model Advisor for review. Alternatively, if the parties are unable to agree upon a stipulated nondisclosure agreement, any party may, no later than the fifteenth business day after the initiation of the PRID procedure as determined pursuant to Subdivision (h), submit a proposed protective order to the Model Advisor. No later than 10 business days after a proposed protective order has been received by the Model Advisor, the Model Advisor shall determine whether there is a significant public interest in the non-disclosure of confidential PRID information, and, upon a finding there is, enter an order thereon. Following the conclusion of the PRID procedure, the Model Advisor shall retain jurisdiction to enforce the terms of the protective order.

(3) Unless a party is the Department of Insurance or demonstrates that it represents the interests of consumers, the Model Advisor may, upon a finding that the disclosure of certain confidential PRID information to such non-Department or nonconsumer ~~-~~party would cause irreparable harm to the owner or vendor of the model, enter an order specifying the confidential PRID information that party shall not receive.

(k~~j~~) To the extent not otherwise specified herein, the Model Advisor may, without limitation: control the course of the PRID procedure; grant or deny a petition to initiate or participate in the PRID procedure; administer oaths; issue subpoenas; rule on motions to compel discovery; receive evidence and testimony; upon notice, hold appropriate conferences before and during the procedure; rule upon procedural objections or motions; receive offers of proof; hear argument; and fix the time and place for the filing of any briefs.

(*l*~~k~~) During a PRID procedure, all parties may propound discovery on the owner or vendor of the model to provide information and data regarding the model, including the production of documents and testimony. The parties shall not otherwise engage in discovery.

(m~~l~~) During a PRID procedure, any party may proffer expert testimony and cross-examine other parties' experts regarding the reliability of the model and what constitutes required model information.

(n~~m~~) The terms of the confidentiality order notwithstanding, the inclusion of any required model information in a subsequent complete rate application proceeding shall make such information public information.

(o~~n~~) In a complete rate application that is submitted by an insurer subsequent to a PRID procedure, any person may rely upon the PRID to determine what is required model information. A PRID is not specific to any one complete rate application but may be relied upon in multiple complete rate applications by unaffiliated insurers. A PRID shall be valid in any complete rate application proceeding relying upon that model through the

four-year anniversary date of its issuance, provided that the model has not been substantively updated, amended, altered, or changed subsequent to the issuance of the PRID. The validity of a PRID shall be determined as of the date of the submission of the complete rate application relying upon the PRID.

(p~~o~~) In the event a model is substantively updated, amended, altered, or changed subsequent to the issuance of a PRID but prior to the submission of a complete rate application using or relying upon the model as substantively updated, amended, altered, or changed, then (i) the original PRID is no longer valid for purposes of determining required model information, and (ii) any party may initiate or participate in, pursuant to this ~~S~~section, a subsequent PRID procedure limited to the issue of whether and how the prior PRID should be substantively updated, amended, altered, or changed.

(q~~p~~) The PRID procedure shall stand submitted when the Model Advisor closes the record. The Model Advisor shall close the record no later than 90 business days after issuing the confidentiality order specified in this Section unless all parties agree or the Model Advisor determines there is good cause to keep the record open. The Model Advisor shall issue a ~~final~~ pre-application required information determination that specifies all required model information within 15 business days after the PRID procedure is submitted.

(r~~q~~) As an alternative to issuing a PRID, the Model Advisor may issue a declination to specify a set of required model information after a PRID procedure, if the Model Advisor determines that (1) there is no set of required model information that could reasonably be relied upon to support the use and inclusion of any of the modeled financial projections, modeled catastrophe adjustments, modeled projected losses, or any other type of modeled loss outputs and projections for purposes of reviewing an insurer's complete rate application, or (2) there is good cause to conclude the PRID procedure without issuing a PRID. In the event the Model Advisor declines to specify a set of required model information, any insurer may still seek to rely upon the model in a subsequent complete rate application but shall publicly produce any information and data the Commissioner requires regarding that model as part of the complete rate application.

(s~~r~~) At any time prior to the Model Advisor issuing a PRID, the parties to a PRID procedure may stipulate to a set of required model information. The parties shall submit any such stipulation and a proposed set of required model information to the Model Advisor for review. No later than 15 business days after submission of the stipulation and proposed set of required model information, the Model Advisor shall determine whether the proposed required model information satisfies the standards set forth herein and issue an order either adopting or declining to adopt the proposed set of required model information as the PRID for that model.

(t~~s~~) A PRID shall be subject to judicial review as part of the Commissioner's decision on a complete rate application relying upon the PRID, in accordance with Insurance Code sections 1858.6 and 1861.09. For purposes of judicial review, ~~a~~ no determination, declination, or other action by the Model Advisor shall ~~not~~ be considered a final determination, ruling, finding, rule, decision or order of the Commissioner.

(u~~t~~) Any Department costs associated with a PRID procedure shall be construed to be administrative and operational costs arising from the provisions of article 10 of division 1, part 2, chapter 9 of the Insurance Code.

(v~~u~~) Nothing in this section shall be construed as prohibiting the creation of a publicly available model for use in projecting annual aggregate catastrophe losses.

NOTE: Authority cited: Sections 1850.4, 1858.6, 1861.01, 1861.05, 1861.07, 1861.09, 1861.10, and 12924, Insurance Code; Sections 7922.630, 7927.705, 11415.50 and 11415.60, Government Code; and *20th Century v. Garamendi*, 8 Cal.4th 216 (1994). Reference: Sections 7, 1077.3, 1850.4, 1858.6, 1861.01, 1861.05, 1861.07, 1861.08, 1861.09, 1861.10, 12919, and 12921, Insurance Code; Sections 7922.630, 7929.000, 11415.50, 11415.60, 11507.6, 11507.7, and 11513, Government Code; Sections 350, 351, 352, and 1040, Evidence Code; *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805; and *State Farm Mutual Automobile Ins. Co. v. Garamendi*, 32 Cal.4th 1029 (2004).

EXHIBIT 18

Comments of Consumer Watchdog on October 2, 2024 Amended Regulation Text
Catastrophe Modeling and Ratemaking Rulemaking (REG-2023-00010)
October 17, 2024

The amended regulatory text noticed by the Department on October 2, 2024 fails to resolve nearly every issue Consumer Watchdog raised in its previous comments dated September 17, 2024.

Erecting new hurdles to public participation. While the Department's October 2 amendments added a provision to require notice by an insurer of the filing of a complete rate application relying on a PRID, and eliminated the provision (**Proposed Section 2648.5(h)(4)(A)**) requiring a PRID participant to show that "as a result of its participation, the Model Advisor has included in the PRID additional information or data regarding the model that would not otherwise have been identified," which as Consumer Watchdog discussed in prior comments directly contravened Insurance Code section 1861.10(b), the amendments erect new hurdles to consumer participation.

The amended regulation replaces the deleted provision with another onerous provision restricting participants' ability to seek compensation unless and until a complete rate application relying on the PRID is resolved. Previously, a PRID participant could request compensation for work done in the PRID procedure immediately after issuance of the PRID. Now, participants are required to wait until "after the resolution of a complete rate application relying upon the PRID." (**Proposed Section 2648.5(h)(6)(D)**.) There are three major problems with this change. First, if a PRID procedure does not ultimately result in a PRID being issued – for example, because a participant demonstrated problems with the model – a participant can never be compensated for work done in the PRID process. Second, if no complete rate application ever "relies" on the PRID, a participant can never be compensated for work done in the PRID process. Third, requiring participants to wait for a complete rate application relying upon a PRID to be resolved before seeking compensation will substantially delay any award of compensation for many months, if not years, after the work was performed.

The third point is problematic for several reasons. The Department has recently taken the position that it would like to see a more diverse range of consumer intervenors and participants in Departmental matters. Consumer Watchdog would also welcome more voices representing insurance consumers before the Department of Insurance. However, conditioning compensation for a PRID procedure on the PRID's eventual usage in a resolved complete rate application means participants will be required to wait a substantial length of time to obtain compensation, presuming the PRID is ever relied upon at all. This built-in uncertainty as to whether compensation can ultimately be sought for the work performed in the PRID process potentially months or years down the road will significantly discourage many potential

participants from seeking to participate in the first place. (See *Economic Empowerment Foundation v. Quackenbush* (1997) 57 Cal.App.4th 677, 686 [the "purpose of intervenor fees is evidently to encourage consumers to participate … by compensating them for their contribution"].)

The Department has characterized the PRID process as a way "to allow the public a fulsome opportunity to thoroughly investigate the inner workings of models." (Initial Statement of Reasons, p. 7.) However, its proposed regulation text throughout this regulatory process and in the October 2 amendments has been contrary to this stated goal. Having removed one objectionable substantive standard that consumer participants must meet to be entitled to compensation, the Department now implements mandatory procedural delays in compensation, while also removing any guarantee that a participant in a PRID process will be able to ultimately seek compensation regardless of the amount of work done. If fulsome public review is desired, participants should be entitled to seek compensation at the time a PRID process concludes.

No mandate wildfire mitigation be considered in sales decisions or rate segmentation. In public statements, the Commissioner has repeatedly said that this regulation is needed to allow insurance companies to take into account wildfire mitigation. The implication is that the regulation will make companies consider mitigation when deciding who gets insurance, and what they will pay based on their individual fire risk. However, as other public interest organizations have also testified, **Proposed Section 2644.4.5(f)(4)** only requires models that determine an insurance company's catastrophe adjustment – or how much rates should increase based on the overall projected average annual losses for the insurer due to catastrophe - consider "risk mitigation at the property, community and landscape scales". The October 2 amendments added "nature-based flood risk reduction" to this consideration. However, these amendments did not change how insurance companies use models to generate the wildfire scores that price an individual's wildfire risk, or how they use wildfire scores to decide who to deny coverage entirely. The existing "Mitigation in Rating Plans" regulation – Section 2644.9 – governs such rating decisions for individual properties. That regulation does not mandate that wildfire risk models used to classify or rate individual structures consider property, community or landscape-scale mitigation in sales or rating decisions, however. Instead, under that regulation as applied by the Department, insurance companies have only been required to offer marginal discounts for property and community-level mitigation steps as their reflection of mitigation in rates.

Despite the Commissioner's promises of transparency, the process set forth in the proposed regulations does not entitle the public to any more in-depth review of models than occurs today. The Department has been clear, and the October 2 amendments confirm, that the PRID process is not intended to determine whether a model is actually reliable and will result in premiums that are fair and not excessive.

EXHIBIT 19

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

FINAL STATEMENT OF REASONS

CATASTROPHE MODELING AND RATEMAKING

November 13, 2024 **REG-2023-00010**

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

All the information in the Informative Digest of the Notice of Proposed Action and Notice of Public Hearing dated August 16, 2024, remains accurate and requires no updating. There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action and Notice of Public Hearing.

UPDATE OF INFORMATION CONTAINED IN INITIAL STATEMENT OF REASONS

Except as set forth below, all the information provided in the Initial Statement of Reasons (ISOR) dated August 16, 2024 remains accurate, and does not need to be revised. No material has been relied upon that was not available for public review during the initial comment period.

On Wednesday, October 2, 2024, the Department issued a Notice of Availability of Amended Text. The last day of the fifteen-day comment period was Thursday, October 17, 2024. Proposed Sections 2644.4, 2644.4.5, 2644.4.8, 2644.5, 2644.8, 2644.27 and 2648.5 were amended as described in the following paragraphs, for the reasons set forth below.

Nonsubstantive Change to Section 2444.4

At the end of amended Section 2644.4: Projected Losses, the reference and authority note that is present in the current text was added. It had been inadvertently omitted from the originally proposed Text of Regulation. This is a nonsubstantive change.

Substantive Changes to Subdivision (b) of Section 2644.4.5 and the First Sentence of Section 2644.4.8

The phrase “in lines of insurance other than earthquake and flood” was deleted from that first sentence of Subdivision (b) of Section 2644.4.8 in the originally noticed regulation text, in order to eliminate the potential interpretation that as a result of complying with Section 2644.4.8: Distressed Areas; Insurer Commitments an insurer would automatically be permitted to model

1. Written Comment from Pamela Pressley, Consumer Watchdog

From: Pam Pressley <pam@consumerwatchdog.org>
Sent: Wednesday, August 28, 2024 3:32 PM
To: Ahn, Sara; CDI Regulations
Subject: ATASTROPHE MODELING AND RATEMAKING, August 16, 2024 Proposed Text, REG-2023-00010

Hello Sara,

As the designated contact person in the Notice of Proposed Action, I am hoping you can answer a few questions (in **bold** below) about the proposed regulation text in subdivision (h)(1) of Section 2648.5, as we are in the process of preparing our comments. That provision states:

(h)(1) The Model Advisor shall grant the petition to initiate a PRID procedure only if the Model Advisor determines that the petitioner has demonstrated it is more likely than not that the Commissioner would benefit from a PRID and either of the following conditions exist: (i) there is no currently valid PRID under this Section; or (ii) the model has not been previously been subject to public review in any other forum in California, including without limitation as part of a complete rate application, within the prior four years.

The Initial Statement of Reasons states this provision was added to address concerns following prior public workshops "about models that have already been subject to extensive public review having to be re-reviewed through the PRID procedure if any person can petition to initiate at any time."

****What does "public review" in subdivision (h)(1) mean? Does that mean the "model" itself has been made public and reviewed in connection with a prior rate application, or some other set of information about the model? Are there any models currently that have "already been subject to extensive public review" by the CDI and how would the public be informed of which models meet that criteria and would thus be exempt from a PRID request?**

> **Department Response:** The Department has amended the regulation text and Subdivision (h)(1) is now Subdivision (h)(3).
>
> "Public review" in Subdivision (h)(3) means that relevant information and data regarding a model has been publicly submitted and reviewed either in connection with a complete rate application or in another forum in California where the public has an opportunity to participate. The phrase "public review" cannot be reasonably read to mean that every conceivable aspect of a model has been made public or that a model has been made publicly available for public use. The Department anticipates there are likely to be models that have previously been subject to public review by the Department, but it is beyond the scope of the present rulemaking to determine which individual models might meet the proposed regulatory standards.

The ISOR further states: “This subdivision is necessary to clarify that a PRID procedure is not to be initiated if there is already a valid PRID or if a model has already been publicly reviewed within the prior four years. This four-year time period is reasonably necessary and intended to preserve limited public resources. The PRID procedure is not intended to invalidate previously approved models. It is a voluntary procedure and intended as a forum for confidential review of models while also providing for public participation. Re-reviewing previously reviewed or approved models would not further the purpose of the proposed regulation.”

****What is meant by “previously approved models”? Does that mean all models that have been used in connection with a previously approved rate application or something else? CDI has previously taken the position that it doesn’t “approve” models so it is unclear from the ISOR how this new provision (h)(1) would be interpreted and applied.**

> **Department Response:** The ISOR states on page 80 that “[t]he PRID procedure is not intended to invalidate previously approved models.” It should be clarified that the Commissioner does not and will not expressly approve models. The ISOR text should be amended to read, “[t]he PRID procedure is not intended to invalidate any prior rate approvals that relied on any models.” This is to clarify that the Commissioner reviews a model and an insurer’s proposed reliance on the model only in the context of a complete rate application, in order to determine whether the insurer’s requested rate is approvable. It is not the Department’s intent to invalidate any prior approvals of complete rate applications relying upon previously reviewed earthquake models, risk segmentation models, or any other models.

Thank you in advance for any response you can provide to these questions,

Pam

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5. Written Comment from Consumer Watchdog (1)

Comments of Consumer Watchdog

California Department of Insurance Rulemaking Hearing Regarding
Catastrophe Modeling and Ratemaking
August 16, 2024 Proposed Regulation Text

REG-2023-00010

September 17, 2024

INTRODUCTION

Commissioner Lara proposes to allow insurance companies to use unverifiable black box models to set rates, charge consumers for unregulated reinsurance, and roll back regulatory oversight that has protected consumers for nearly four decades.

These measures, proposed by the insurance industry in response to an availability crisis the insurance industry created, will make insurance premiums even more unaffordable for consumers across the state.

They will also fail to stabilize access to coverage in California. Despite similar concessions in Florida, home insurance rates are at least two-and-a-half times higher than in California,[1] Florida's insurer of last resort has four times as many policyholders as the FAIR Plan,[2] and insurance companies have still abandoned the state.

The proposed regulation—based on a legislative proposal negotiated between Commissioner Lara and insurance companies behind closed doors last year—was supposed to make insurance companies give something back by requiring them to sell home insurance again to Californians they have abandoned. It was also supposed to provide robust public review of models so consumers, communities, and policymakers can be confident that insurance companies are treating consumers fairly.

It is deeply disappointing that the long-awaited text of the regulation fails on both counts. The proposed regulation will not require expanded access to insurance for Californians. It also does not create any meaningful review of the private black box catastrophe models insurance companies want to use to raise rates. Instead, the proposal is riddled with loopholes and limitations that will result in massive unjustified rate hikes on homeowners, renters, and small businessowners without improving access to coverage.

> **Department Response:** This introductory comment is not specifically directed at the text of the regulation or rulemaking procedures followed in this regulatory action. Because the comment is neither objecting to any particular text nor suggesting any changes to the text, no further response is warranted.

Proposed Section 2644.4.8 does not require a single insurance company to sell more wildfire coverage.

- Insurance companies won't have to expand sales to 85% of consumers in distressed areas. They may opt instead to increase their market share in distressed areas by just 5%, *or* take the third option of an "alternative commitment" of their own choosing.
- Insurance companies won't have to sell comprehensive coverage. They may offer a bare-bones policy equivalent to what consumers can already get today on the FAIR Plan.
- Rate hikes start on Day 1, but insurers won't report progress toward commitments for two years—until at least 2027.
- After two years, an insurer may defer meeting a commitment indefinitely, as long as it claims to be making a "reasonable effort."
- There are no penalties if a company fails and no timelines for completion.

Department Response: There is no California law that requires insurance companies to write either residential or commercial property policies. Therefore, Section 2644.4.8 does not, and cannot, require insurance companies to sell more wildfire coverage. However, the standard commitments of achieving 85% market share, maintaining 85% market share, or increasing market share by 5% are designed to increase policy availability in wildfire prone areas and it is reasonably necessary to have multiple standards because insurers currently have very different levels of market share in these areas. With respect to the commenter's concern about "comprehensive coverage," many consumers in wildfire-prone areas are unable to find any coverage against wildfire risk in the admitted market – qualified residential property insurance policy or otherwise. A qualified residential property insurance policy at least provides an option for coverage for structure damage or destruction from wildfire. Non-standard policies are presently less common than comprehensive policies and it is pure conjecture that insurers would only offer such policies.

Regarding monitoring of commitments, because a commitment is a promise to do something in the future, and because insurers are in the best position to know if they are on track to achieve their goals, it is reasonable to monitor progress toward commitments by requiring insurers attestations.

Regarding penalties, the Commissioner continues to have the enforcement mechanisms and penalties that are available under existing law. It would be needlessly redundant for the proposed regulation to reiterate them.

Catastrophe models are notoriously inaccurate, inconsistent, and contain biases that can reinforce discriminatory insurance practices. **Yet Proposed Section 2648.5 fails to enact substantive review or approval of models so consumers can have confidence their rates are fair.**

Department Response: Department staff does not and will not "approve" catastrophe models. The PRID procedure is an initial determination by Department staff regarding what model information and data are relevant for ratemaking purposes and therefore

required to be publicly disclosed as part of a complete rate application relying upon that model. If Department staff finds a problem with a model in the course of model review, the model vendor would have the opportunity to correct the problem or face a determination that there is no set of required model information that could reasonably be relied upon in the subsequent complete rate application process. The proposed regulatory text provides safeguards against defects in the models.

Nor will the Commissioner "approve" the models. Rather, each complete rate application relying upon a model and its outputs will be reviewed to consider whether a rate is excessive, inadequate or unfairly discriminatory. In that rate review process, the Commissioner will require that an insurer demonstrate that the model is reliable and appropriate to be used for ratemaking purposes. If the Commissioner believes a model is not reliable or appropriate for use in ratemaking, the Commissioner will address those issues in the context of the complete rate application proceeding. Consumer representatives will continue to have the same right to intervene and participate in complete rate applications relying upon such models. To the extent the comment suggests the Commissioner should prior approve models outside the context of complete rate applications, the comment exceeds the scope of the regulations and therefore no further response is warranted.

Instead, the regulation:

- Creates a process designed to keep model information private, violating Prop 103's unconditional public disclosure and independent scrutiny requirements.

Department Response: There is no conflict between Proposition 103 and the proposed regulations. The Commissioner agrees that all information provided to the Commissioner as part of a complete rate application must be made publicly available. Insurance Code section 1861.07 does not require public disclosure of any and all information the Department of Insurance receives that conceivably relates to Proposition 103. As explained in the ISOR, the Department has found that problems arise when Section 1861.07 is interpreted without emphasis on the words "provided to the commissioner," because during the rate review process, intervenors often ask companies to publicly provide more information and data than what the Commissioner requires as part of a compete rate application. The proposed regulation does not prevent, and in fact requires, public disclosure of information provided to the Commissioner.

- Does not set uniform standards, or require wildfire models be proven reliable, predictable, and unbiased before they can be used.

Department Response: This comment is duplicative of prior written comments, and the Commissioner incorporates his prior responses here.

- Does not require review or approval of models; the purpose of a Pre-Application Required Information Determination ("PRID") is solely to determine what information will be disclosed.

Department Response: This comment is duplicative of prior written comments, and the Commissioner incorporates his prior responses here.

- Contains no guidelines for minimum information to be made public; required disclosures will be different for every model.

Department Response: The PRID procedure is a procedural mechanism to facilitate the initial determination of what required model information shall be included with a complete rate application. The Department is separately evaluating the possibility of detailed substantive standards, but this is beyond the scope of the present rulemaking.

- Actively discourages public participation and independent review of models by experts.

Department Response: It is unclear what specific language the commenter is highlighting here. The proposed regulations expressly provide that "any person" may petition to initiate or participate in a PRID procedure, proffer expert testimony, and cross-examine other parties' experts regarding the reliability of the model and what constitutes required model information.

- The whole process is voluntary, and any model currently in use is exempted entirely for up to four years.

Department Response: The proposed regulations text makes clear that "any person" may petition to initiate a PRID procedure as to any model. The proposed regulations do not exempt for four years "any model currently in use." To the contrary, only a model that has previously been subject to public review meets the criterion set forth in the proposed regulation. To the extent this comment is neither objecting to the proposed text nor suggesting any changes, no further response is warranted.

Models will simply be tools for insurance companies to charge policyholders more unless California mandates transparency into how they impact prices, imposes rules of the road requiring review and approval of their design and use, and requires that insurance companies use them to provide consumers and communities with actionable information about their own climate risk.

Department Response: This comment is duplicative of previous written comments and the Commissioner incorporates his prior responses here.

A public model—with no mandate for data secrecy—is the best way to meet these goals.

Consumer Watchdog is one of many public interest organizations that have urged the Commissioner to embrace creation of a public model in prior workshops. While the Initial Statement of Reasons responded to concerns raised in those workshops by many insurance companies and modeling firms with changes to the regulation, the only response to consumer

groups was a note that the regulation will not prohibit a public model. Commissioner Lara made no effort to investigate this option.

The misuse of big data, algorithms and artificial intelligence is the focus of intense scrutiny by policymakers in California and across the country. This regulation takes California in the wrong direction.

By bending over backwards to keep models secret, the proposed regulation will lead to unreliable and discriminatory rates, deny consumers and communities the credit they deserve for wildfire mitigation efforts, and authorize models that do not accurately reflect the changing climate risk.

We urge the Commissioner to rethink this failed approach. To ensure that rates and premiums are fair the Department of Insurance must: require public access to any model that impacts rates; mandate standards, testing requirements, and approval of all models; and, thoroughly investigate and actively support the creation of a public model that will better serve all Californians.

Department Response: The Department has determined that making private models available in the manner prescribed by the proposed regulations is a reasonably necessary alternative to a public model, which does not exist yet.

This comment is not specifically directed at the text of the present regulation or rulemaking procedures followed in this regulatory action. Because the comment is neither objecting to the proposed text nor suggesting any changes, no further response is warranted.

Below we provide greater detail about each of these concerns.

PART I: Section 2644.4.8. Distressed Areas; Insurer Commitments

The proposed regulation will drive up rates for every Californian, not just those in wildfire areas.

While the coverage "commitments" do not begin for two years, insurance companies would be able to raise rates using black box models and reinsurance immediately.

The proposed regulation allows insurance companies to use black box catastrophe models to set rates for every Californian. The next regulation on deck will allow insurance companies to charge all policyholders for the unregulated (and skyrocketing) cost of global reinsurance— which no other California commissioner has ever allowed. These two changes will raise rates not just in riskier areas, but for home, condo, and apartment insurance across the state. For example, in North Carolina, one homeowners insurance company's charge on consumers for reinsurance raised the rate by 46%.[3] In another North Carolina case, the Insurance Commissioner found modeled hurricane losses to be questionable and ordered them reduced by 13.9%.[4]

Companies will begin seeking double-digit rate hikes on these terms soon as the regulations are final; the Commissioner has asserted this will be by the end of this year. However **Proposed Section 2644.4.8(d)** does not require insurance companies to show their progress on their commitments until two years have passed—meaning 2027 at the earliest. As noted in more detail below, this is not a hard deadline.

That means every Californian will pay more for the proposed regulation's empty promise to get homeowners in wildfire areas insured.

The majority of the public does not support that tradeoff, even if it were successful in getting people insured again. A poll conducted by FM3 Research for Consumer Watchdog found that Insurance Commissioner Lara's plan to allow insurance companies to increase premiums for all Californians in exchange for a promise to insure homeowners in higher wildfire risk areas is opposed by a 2 to 1 margin, 62% opposed to 30% in support. Only 9% of voters register in strong support.[5]

> **Department Response:** This comment is not specifically directed at the text of the regulation or rulemaking procedures followed in this regulatory action. Because the comment is neither objecting to the proposed text nor suggesting any changes, no further response is warranted.

Insurance companies do not have to sell comprehensive coverage to meet their commitments.

Ever since Commissioner Lara announced his deal with the insurance industry last September, Consumer Watchdog has asked him to confirm exactly what kind of policy insurance companies would have to sell. This question was urgent because the deal the Commissioner made with the insurance industry during the last legislative session would have allowed the sale of bare bones, FAIR Plan–equivalent policies, not the standard, full-benefit home insurance that Californians need.[6] The Commissioner never answered.

The proposed regulation contains the same loophole. Nothing in the text of the regulation specifies that the policies insurance companies are committing to sell must be standard, full-benefit insurance coverage that will make sure people can fully rebuild their property and replace their possessions if they experience a loss.

This directly contradicts public expectations and assertions by the Commissioner and Department staff that the policies will be comprehensive.

Proposed Section 2644.4.8(d). The regulation directs companies to commit to sell "policies" with no description of the scope of that coverage.

Proposed Section 2644.4.8. The only other term used in the regulation is "qualifying residential property insurance," as defined in Ins. Code Section 10087, excluding condo owner and tenant policies. That term broadly means a "policy insuring individually owned residential

structures of not more than four dwelling units, individually owned condominium units, or individually owned mobilehomes, and their contents, located in this state and used exclusively for residential purposes or a tenant's policy insuring personal contents of a residential unit located in this state."[7]

"Qualifying residential property insurance" could mean an HO-3 comprehensive homeowners policy. It could also mean the "basic property coverage" sold by the FAIR Plan.

A standard HO-3 policy for homeowners covers far more than the limited-benefit FAIR Plan coverage. Among the perils that HO-3 policies cover but are excluded by the FAIR Plan, even with optional add-on coverage, are:

- Theft
- Liability
- Falling objects, such as a tree on the roof
- Non-flood water damage, such as pipes bursting
- The weight of ice or snow
- Glass breakage
- Damage to others' property

When Commissioner Lara recognized the importance of comprehensive policies to homeowners on the FAIR Plan and ordered the Plan to offer broader coverage, the order specified that the Plan must offer "the option of an HO-3 policy or a policy with coverages equivalent to those included in an HO-3 policy."[8]

If the Commissioner's intent were to require insurance companies to sell full-benefit coverage under their commitment, this regulation must also specify the type of policies insurance companies must issue. The proposed regulation does not do so.

Consumers can already buy limited-benefit coverage from the FAIR Plan. This is the jam consumers are trying to get free of. If insurance companies' only commitment under this regulation is to sell bare-bones coverage in return for unjustified rate increases, consumers will be no better off than they are today.

> **Department Response:** Many consumers in wildfire-prone areas are unable to find any coverage against wildfire risk in the admitted market – qualified residential property insurance policy or otherwise. Non-standard policies are presently less common than comprehensive policies, and it is pure conjecture that insurers would only offer such policies. There is no factual support for suggesting that the regulation must specify the types of policies insurance companies must issue.

There is no requirement that insurance companies expand sales to 85% of wildfire areas.

Consumer Watchdog has also sought answers on this question since the Commissioner's deal with the industry was announced in September 2023, because the 2023 legislative language

would have allowed the Commissioner to exempt any insurance company from its commitments. We asked if insurance companies would be held to an enforceable commitment to increase sales under this new plan, given the clear exceptions in the 2023 deal it was based on. Again, the text of the proposed regulation is clear.

Proposed Section 2644.4.8(d). Rather than meet the standard in (d)(1), a commitment to increase sales in distressed areas to 85 percent of an insurer's market share elsewhere, an insurer "may instead commit" to increasing its policies in distressed areas by as little as 5% of its current business in those areas, on a one-time basis under (d)(2).

This "five percent increment" could amount to very little change for an insurance company that has already dropped most of its customers in fire zones. It perversely rewards those companies that have already abandoned Californians, because if a company's baseline number of policies is small, a 5% increase will be marginal too.

The Initial Statement of Reasons ("ISOR") (p. 37) confirms that insurance companies don't have to meet the 85 percent standard: "This subdivision establishes ***one of two*** standards an insurer may choose as its commitment " [emphasis added]

Proposed Section 2644.4.8(f). A 5% increase is also the only commitment that commercial insurers must make.

> **Department Response:** This comment is duplicative. The commenter is referred to the Department's response to "Proposed Section 2644.4.8 does not require a single insurance company to sell more wildfire coverage." In addition, commenter is correct that there are two standards for residential property insurance and that commercial property insurers may commit to a 5% increase in total insured value.

The 5% increase is not limited to small or regional companies.

The Commissioner and Department staff have stated that the 5% increment is limited to small and regional companies that could not meet the 85% standard.[9] However, the text of the regulation does not contain any such limitation.

> **Department Response:** The option to increase market share in distressed areas by 5% is not limited to small regional companies. Some large companies have very little market share in distressed areas. In order to maximize the increase in policy availability in these areas, it was necessary to offer this option to all insurers.

Even the 5% commitment is an illusion, because insurers have the option of making an "alternative commitment" to choose their own standards.

Proposed Section 2644.4.8(j). At any time, insurance companies may tell the Department of Insurance they cannot meet an 85% or 5% commitment and propose a different commitment.

The justifications for an insurer seeking an "alternative commitment" are undefined. For example, (j)(1)(C) cites "the frequency or severity of recent events impacting the insurer" as a basis for proposing an alternative commitment. The text does not even specify that the recent events must have caused the insurance company financial harm. Such vague terms open the door for any insurance company to demand the right to opt for a lesser "alternative" to either the 85% or 5% increment.

The regulation contains no standards that an acceptable "alternative commitment" must meet.

The regulation states, in (j)(2)(B) in one sentence with no further qualification, that the Commissioner will evaluate an insurance company's proposed alternative commitment based on whether "the alternative increases availability of qualifying residential property insurance and/or commercial property insurance."

Could an insurance company offer to sell a few more policies in a single ZIP code? Increase sales only in non-distressed areas? Start selling Difference In Conditions wraparound coverage, but drop more homeowners' full-benefit policies? Neither the regulation nor the ISOR addresses such questions.

An insurance company could apply for an alternative commitment from Day One. Or it could invoke this alternative commitment option at the two-year mark when it fails to meet the 85% market share or 5% increase commitments. This option creates one avenue to never-ending revisions of an insurance company's commitments.

And **Proposed Section 2644.4.8(g)(3)(C)3.** makes clear that insurance companies, not the Commissioner, will choose the timeline for fulfilment of an alternative commitment.

This "alternative commitment" loophole eliminates even the minimum commitments the regulation otherwise purports to impose.

> **Department Response:** An alternative commitment requires an insurer to propose and receive approval for the proposed commitment through the rate filing process. The regulation includes factors that must be considered when determining whether to authorize the use of an alternative commitment. Although coverages may vary, typically, a "Difference in Conditions" policy would not be a qualifying residential property insurance policy that an insurer could use to fulfill its commitment.

Multiple additional loopholes and off-ramps let insurance companies off the hook if they fail to meet their commitments.

Proposed Section 2644.4.8(i). An insurance company that has not met the 85% or 5% commitment after two years has only to file an "insurer attestation" that it "is taking reasonable steps to fulfill its insurer commitment." As the regulation does not define what an "insurer attestation" contains, it could be as little as a sentence informing the insurance commissioner whether a company met its commitment or not. "Reasonable steps" is also not defined.

After the attestation, the insurance company is granted an indefinite extension with no requirement or deadline for future reporting or compliance.

> **Department Response:** An insurer commitment is a commitment to do something in the future (i.e. forward-looking). Insurers are in a position to predict whether they will satisfy their commitments and the attestation requirement is a reasonable way to require insurers to examine their progress toward those commitments. The attestation is required at every rate filing until an insurer attests that it has met its commitment; the regulations cannot be reasonably read to the contrary.

Commitments have an expiration date.

Proposed Section 2644.4.8(i). Once an insurance company attests it has met a commitment it is relieved of the obligation of future reporting.

The ISOR (p. 61) states that attestations are only required "until such time as that insurer has attested that it has fulfilled that insurer commitment." In the unlikely event that, despite this regulation's failings, an insurance company does meet a commitment, this language makes clear it is a one-time deal.

This means a company could reverse course and restrict sales right after its attestation was filed.

In addition, **Proposed Section 2644.4.8(d)** states that insurance companies who already meet the 85% standard, and are therefore allowed to make a commitment to maintain that market share "for at least three years," have no obligation beyond the third year. As the ISOR (p. 39) confirms, "the identified time frame is reasonably necessary to address the problem of insurers not knowing how long they have to meet their commitments…."

There is no expectation that an insurance company's commitment to maintain current market share in distressed areas extends beyond the three-year timeframe.

Proposed Section 2644.4.8(h)(1). Another section directs insurance companies to submit a lower "modified insurer commitment" if their market share has decreased.

This encourages insurance companies to continue on the path they're on today. An insurance company that intentionally reduces market share by dropping policyholders would then trigger a re-evaluation (lowering) of the insurance company's commitment. There is no limit on the number of times these commitments can be reduced. Yet the regulation would allow a company that is actively choosing to non-renew policyholders to retain the financial boon of using private models to increase rates.

Proposed Section 2644.4.8(j). A third section allows insurance companies that can't meet their goals to propose the "alternative commitments" outlined above.

There are no timelines for meeting an insurer's commitments, or even reporting on an insurer's progress beyond the first two-year mark, if it says it is "acting in good faith" to comply.

> **Department Response:** This commenter speculates that insurers will, in bad faith, fail to fulfill commitments and need to modify commitments repeatedly. This speculation is at odds with an earlier point that essentially commitments are too easy for insurers to fulfill. ~~The commenter is correct that once an insurer fulfills its commitment, the insurer may continue to use catastrophe modeling without making further commitments.~~ Without factual support, commenter's speculations do not support a change in the proposed regulatory text.

One reason insurance companies are unlikely to meet these commitments is that policies in fire areas will be too expensive for most homeowners to afford.

A very likely outcome of this regulation is that insurance companies will technically offer policies in distressed areas, but that they will price them so prohibitively high that no one will be able to afford them. Insurance companies will then be able to claim they are "taking reasonable steps to fulfill" their goals—because they are offering the policies—but are unable to comply ***because no one can afford to buy them.***

> **Department Response:** This is speculative and ignores the entire prior rate approval process which requires that insurance companies justify their rates and mandates that rates shall not be excessive, inadequate nor unfairly discriminatory.

There are no penalties for failure.

Insurance Commissioner Lara has mentioned multiple enforcement mechanisms that are at his disposal: market conduct exams, rate reviews, even refunds.[10] The text of the regulation, however, does not name mandatory or even potential consequences if an insurance company does not meet its commitment at the two-year mark, or at any point in the future, as long as it says it is taking "reasonable steps" to fulfill it.

The regulation does not require the commissioner to investigate failures, order refunds, or take any other enforcement action against an insurer that fails to meet its commitments.

Proposed Section 2644.4.8(h)(2). The regulation does say that an insurance company that renounces its commitment shall no longer use catastrophe models. But since there is no timeline for an insurance company to meet its commitments, plenty of leeway to reduce its commitment when it fails to meet the mark, and no penalty for failure, there is no reason to expect an insurer will ever choose to renounce its commitment.

> **Department Response:** The Commissioner continues to have the enforcement mechanisms and penalties that are available under existing law. It would be needlessly redundant for the proposed regulation to reiterate them.

Companies will not have to prove they met their commitments publicly.

Proposed Section 2644.4.8(c). The only information under the proposed regulation insurance companies must file publicly as part of a complete rate application is notification of what commitment—85%, 5%, or some alternative—they have chosen.

Proposed Section 2644.4.8(g). The proposed regulation requires insurance companies to maintain a "wildfire risk portfolio register" that is meant to track an insurance company's progress on its commitment. But the regulation does not require the portfolio register to be made public in rate filings or at any other time. The public, policymakers, and the press will have no way of verifying if an insurance company is meeting its commitments.

One potential benefit of such reporting—if it were public, and if insurance companies were in fact meeting their commitments—would be new data to fill the massive existing information gap regarding Californians' access to coverage. That information could be used to better illuminate for policymakers and the public whether access is improving or getting worse in areas across the state. But no such disclosure is required.

Department Response: Insurer attestations, which are based upon the wildfire risk portfolio, are required as part of rate filings which are public.

The Commissioner has not disclosed details about how "distressed areas" were identified.

Proposed Section 2644.4.8(a). The regulation defines "distressed areas" to include undermarketed ZIP codes with high fire risk where at least 15% of policies are with the FAIR Plan, or where policies in lower-income ZIP codes cost at least $4 per $1000 in coverage. "Distressed areas" also includes counties where the percentage of high- or very high–risk structures is in at least the 50th percentile of all counties. However, no data or substantive explanation has been released to show why the Department chose the metrics it did for the ZIP codes and counties considered distressed.

The ISOR does not explain. ISOR (p. 29) states the reason for denoting counties as "distressed" if they have more structures "at high or very high wildfire risk" than half the state (or are "no lower than the 50th percentile") is that "the 60th percentile would be too narrow" while the 40th would be "too broad."

The June draft of the regulation contained a different standard. In that version a county was distressed if at least 20% of dwellings are at high or very high risk. Why did the metric change? The ISOR does not disclose if this change increased or decreased which counties qualify as distressed, and the Commissioner did not issue an updated map of distressed areas with the August draft regulation.

A reasonable metric would be comparing decreases in access to insurance and increases in cost of insurance over time. To what extent—other than FAIR Plan growth—did the Commissioner consider such changes?

The regulation also includes "properties that *the insurer* classifies as moderate to very high wildfire risk" [emphasis added] among those policies insurance companies can take on to meet any stated commitment to expand coverage. However, that metric relies on an individual insurance company's measure of wildfire risk. That could vary widely company to company given the variety of internal and external models insurance companies use to assign risk. By including policies classified at moderate risk by an insurance company's own, undisclosed metrics, it is easy to imagine an insurance company meeting its commitment by selling a small number of bare-bones policies to current FAIR Plan policyholders who are not even in high fire risk areas.

If distressed areas are not defined precisely, an insurance company's commitment could be met by sales to consumers not facing cost or access problems in the current crisis, or by too few policies to have any impact. The public should have more evidence of how those areas were identified. The data used by the Department to make these determinations should be made public.

Department Response:- To determine metrics for insurance distress, the Department considered the primary issue driving FAIR Plan growth, which is wildfire risk. The distressed areas were determined by using multiple approaches to combine wildfire risk and evidence of insurance distress, including FAIR Plan percentage and relative insurance pricing. The 15% FAIR Plan threshold aligns with the threshold of 85% of policies within a ZIP code being written by the admitted market.

The change in the metric for distressed counties between the June 2024 draft and the August 2024 draft reflects relative risk among counties and enables the distressed counties to be updated as conditions changed, based on a percentile rather than a single percentage threshold.

The Commissioner has not disclosed why the "85%" or "5% standard" were chosen as benchmarks.

The ISOR (p. 38) notes that "about 16% of statewide residential exposures were in distressed areas and about half of admitted insurers were already writing at least 85% of their statewide market share in distressed areas." It goes on to note that "a significant number of insurers are currently at approximately 80%."

If so many insurance companies are already at or near the 85% standard, will this regulation simply preserve the status quo when it comes to access to insurance, only with radically higher rates?

Department Response: The access to insurance for consumers in distressed areas is dynamic, particularly in the past few years. The percentages cited in the ISOR are based on 2021 data and therefore may or may not be reflective of more recent changes to insurance access. The commitments described in the regulatory text are intended to improve insurance access in distressed areas through new policies written by the diversity of insurance companies in California.

Part II: Section 2648.5. Pre-Application Required Information Determination ("PRID") Procedure

I. **PUBLIC TRANSPARENCY: The proposed regulation conflicts with Proposition 103's public disclosure requirement.**

Transparency is key to confirming that insurance companies have justified their requests for rate increases, which they are required to do under Proposition 103 as part of the prior approval process. Insurance Code section 1861.07 states: "All information provided to the commissioner pursuant to this article [Proposition 103] shall be available for public inspection, and the provisions of Section 6254(d) of the Government Code and Section 1857.9 of the Insurance Code [statutes barring disclosure of information the industry considers trade secrets or proprietary] shall not apply thereto."

Section 1861.07 therefore requires public disclosure of any information provided to the Commissioner in connection with review of an insurer's rate application or otherwise in connection to the Commissioner's powers and duties under Proposition 103. The regulation's attempt to create a procedure designed to segregate information about a model used for determining rates and premiums subject to prior approval under Insurance Code section 1861.05(a) in order to prevent public disclosure is a clear violation of the law, because PRID information is itself "information provided to the commissioner pursuant to [Proposition 103]."

The California Supreme Court has confirmed that there are no exceptions to the disclosure requirement, which applies to "any information necessary for determining whether [underlying] factors are impermissibly affecting the fairness, availability, and affordability of insurance."[11]

> **Department Response:** There is no conflict between Proposition 103 and the proposed regulations. The Commissioner agrees that all information provided to the Commissioner as part of a complete rate application must be made publicly available. Insurance Code section 1861.07 does not require public disclosure of any and all information the Department of Insurance receives that conceivably relates to Proposition 103. As explained in the ISOR, the Department has found that problems arise when Section 1861.07 is interpreted without emphasis on the words "provided to the commissioner," because during the rate review process, intervenors often ask companies to publicly provide more information and data than what the Commissioner requires as part of a compete rate application. The proposed regulation does not prevent, and in fact requires, public disclosure of information provided to the Commissioner.

Mandatory protective orders and sealing the record prioritize secrecy.

The proposed regulation intentionally moves model consideration out of the public eye in order to exempt models from Proposition 103's transparency requirements. Members of the public, journalists, and lawmakers would be required to enter into an NDA or propose protective orders unilaterally adopted by the Commissioner-appointed Model Advisor as a

prerequisite to participating in model oversight and gaining access to all information essential to assessing a model.

The broad NDAs and protective orders mandated in **Proposed Section 2648.5(j)(2)**[12] directly contravene the transparency mandate at the heart of successful rate oversight in California. They instead center the regulation around preserving secrecy in a key aspect of policyholders' rates, a direct violation of Section 1861.07's disclosure mandate. **Proposed Section 2648.5(j)(3)** purporting to give the Model Advisor authority to "balance" the public's interest in disclosure against Wall Street model owners' and insurers' demands for secrecy likewise conflicts with Section 1861.07.

> **Department Response:** The requirement for a nondisclosure agreement and protective order is reasonably necessary to ensure that public participants to a PRID procedure can explore a larger universe of potentially irrelevant or immaterial information and data regarding a model. To ensure that third-party modelers are not required to unnecessarily disclose proprietary information in a competitive marketplace, the Department has included reasonably necessary confidentiality protections so that proprietary information about the model that is not relevant to ratemaking is not made public. To the extent the comment posits there is a conflict between Proposition 103 and the proposed regulations, this comment is duplicative of previous written comments and the Commissioner incorporates his prior responses here.

Proposed Sections 2648.5(a)(7) and 2648.5(e) also purport to shield the entire administrative record created in the new PRID procedure from public view (including all evidence, testimony, briefs, pleadings, discovery, and other materials), except whatever information the Model Advisor decides must be submitted to the Commissioner as part of a complete rate application. Even that information determined by a PRID to be "required model information" does not have to be made public "**until or unless** an insurer subsequently submits a complete rate application to the Commissioner that relies upon the model." (**Proposed Section 2648.5(d)**, emphasis added.) Such a blanket sealing of the administrative record violates Section 1861.07's requirement that all information submitted to the Commissioner pursuant to Prop 103 shall be made publicly available.

As a result, any members of the public, including consumers, lawmakers, and journalists, who were not a party to the PRID proceeding will be barred from accessing any documents, data, legal filings, or other information presented.

> **Department Response:** It is not reasonably necessary to make publicly available sensitive, trade secret information regarding third-party models that is irrelevant to a complete rate application. To the extent this comment is duplicative of prior written comments, the Commissioner incorporates his prior responses here.

The updated draft regulations are now even more unfavorable to public participation than before, reflecting insurance industry demands. The March 14, 2024 draft regulation text required parties in a PRID procedure to agree on a stipulated NDA. Setting aside that requiring an NDA conflicts with the law, that version required CDI/insurers/modelers to work with

consumer participants on an NDA agreeable to all parties. The updated regulation now allows insurance companies and private modeling firms to refuse to agree on an NDA and instead individually propose the terms of protective orders to the Model Advisor. Given the information gap between consumer participants and modelers/insurers about the model itself, this incentivizes industry participants to refuse to work with consumer participants on an agreeable NDA, with confidence that the Model Advisor will ultimately defer to the modeler/insurer/CDI itself.

> **Department Response:** Allowing the parties to individually propose NDA terms is reasonably necessary to avoid unnecessary delays in the PRID procedure that may result if the parties must agree to all terms. It is pure conjecture that the Model Advisor will prioritize the interests of modelers or insurers over the interests of any consumer parties to the PRID procedure.

The confidential PRID procedure will prevent the public from understanding how technology determines what they pay for insurance.

Polling by the Pew Research Center finds the public has enormous concerns about the fairness and acceptability of using algorithms to make decisions with important real-world consequences.[13] Across the economy, decisions by algorithms and artificial intelligence are creating disadvantage and inequities in Americans' financial lives. The public has a right to understand what's impacting decisions about their futures, but the protective orders mandated by this draft will make certain those decisions will be opaque and the insurance industry unaccountable.

> Some of the many issues raised by the proposed regulation's reliance on secrecy include:

- If a public interest organization learns of a key flaw in a model during a PRID procedure, but that information is held secret as part of the PRID, the organization would be unable to use that knowledge during the rate review process when an insurance company seeks to use the model. Because the protective orders prevent public interest organizations from using the information they obtain to challenge an excessive rate, or from sharing their analysis of a model with the public, public participation in a PRID is meaningless and rate review will be severely restricted.

> **Department Response**: The hypothetical essentially posits that model information that allegedly should have been required has been omitted from the PRID. There are preexisting remedies to redress such a situation; the proposed regulation need not specifically enumerate them.

- The proposed regulation specifically bars sharing of information *within* an organization. It would prohibit an attorney for an organization that is a participant in a PRID from reporting back to their organization's president about the proceedings; prevent a participating reporter from reporting back to their editor; and prevent a legislative staffer from reporting back to their boss.

Department Response: The comment misunderstands the proposed regulation, which bars sharing of *confidential* PRID information with other persons. Nothing about the proposed regulation bars status reports of the type described by the comment.

- An organization will be barred from publicly discussing its views based on information kept secret by the protective order. A restriction common to protective orders in legal matters is prohibiting any person to discuss its terms, and corporate defendants are permitted to sue anyone they say has violated an NDA or protective order, which would be punishable by fines. Can a list of the data deemed confidential be shared? A description of that data? A critique of the confidentiality decision?

Department Response: With the exception of a few discreet instances, the proposed regulation does not enumerate the terms of the NDA. Thus, the terms a particular NDA might or might not contain and, whether or not the Model Advisor approves those terms, is beyond the scope of the proposed regulation and no further response is warranted

- This hypothetical scenario illustrates how an NDA or protective order will keep critical information about a model inaccessible during public rate review:

> A key question about a model's impact on rates concerns the relative weight for each input variable (risk factor) in the model. These weights result from analyses performed within the model based on a dataset used to calibrate the model's initial parameters ("training data"). Depending on a model's construction, small changes to the weights can become highly leveraged, resulting in substantial variability in the model's output. Consumers and their advocates have a legal right to know which risk factors are being used to calculate insurance premiums. They also need to be able to understand the sensitivity of a model's results to changes in risk factor values and their relative weights. Yet detail about how a model weights different factors is exactly the kind of information companies protecting a proprietary model are likely to claim is proprietary and the Model Advisor will likely deem confidential and not required to be publicly disclosed, because it is the kind of information competitors could use to try copying their model.

The proposed regulation also does not set out any baseline requirements about what must be disclosed about every model. This means that the concealed and public data will be different for every model based on how restrictive of a protective order the model's Wall Street owner is able to engineer.

Department Response: This is another hypothetical that essentially posits model information that allegedly should have been required has been omitted from the PRID. This comment is duplicative of prior written comments and the Commissioner incorporates his prior responses here.

II. ACCOUNTABILITY AND EFFICIENCY: The proposed regulation does not require review or approval of catastrophe models. It does not even require a PRID procedure.

The Department has suggested this proposal is intended to allow review of models, with full public participation in that process. The current text of the proposed regulation fails to achieve that goal.

The regulation splits the Department's model oversight function into three separate potential phases: first, a superficial, closed-door inquiry into the model—the "PRID"; second, a mini-proceeding—also with no public scrutiny—during which the Commissioner will determine that an insurance company's application is "complete" (the subject of a separate complete rate application regulation the Commissioner has proposed); and third, the public rate review process required by Proposition 103, in which an insurance company would seek to rely on the secret model to justify requests to change its rates.

The first possible consideration of a proposed model would be during the newly-created "PRID" procedure. **However, a PRID may never occur.**

The ISOR repeatedly emphasizes that the "PRID procedure is voluntary," and the newly **Proposed Section 2648.5(h)(3)** specifically provides that the "owner or vendor of a model may decline to participate as a party in a PRID procedure as to that model."

Given this, why would any insurer or modeler ever volunteer to submit its model for the PRID procedure? The presumed benefit would be to prevent any model information they deem confidential from being produced during the rate application review process. However, this is not a serious threat given that the Department has consistently failed to require such disclosure in any prior rate review, even under the regulation adopted by the Department in 2022 which explicitly requires that fire risk models be made publicly available (10 CCR § 2644.9).

If a PRID does occur, its stated purpose is solely to determine what insurance companies and their modelers must disclose about a model publicly. The text of **Proposed Section 2648.5(a)(2)** states the purpose of a "Pre-application required information determination procedure," or "PRID" procedure, is to "determine all information and data regarding a model that are required to be provided to the Commissioner as part of a complete rate application that relies upon the model for purposes of requesting a proposed rate change pursuant to Insurance Code section 1861.05."

This definition is repeated in **Proposed Section 2548.5(c)**.

The new Model Advisor is charged with two main jobs: entering and enforcing the protective order, and completing the PRID. <u>The only product of a PRID procedure is a determination about what information a modeler may keep confidential and what information an insurance company must disclose in a complete rate application</u>.

The rest of the information produced in the PRID procedure—all the evidence collected that the Model Advisor determines is not necessary to disclose, and the arguments the parties made about disclosure—will be kept secret, preventing non-participants from ever knowing what occurred behind closed doors.

Allowing participants in the PRID to ask questions about a model is contemplated in **Proposed Section 2648.5(l)**, which refers to discovery requests, testimony, and evidence. **Proposed Section 2648.5(m)** goes as far as suggesting that parties participating in a PRID may offer expert testimony "regarding the reliability of a model." However, the ISOR makes clear that the Model Advisor would not be allowed to use such testimony to say the model is reliable. The ISOR, p. 77, states: "a PRID is not an order or decision that the model is actually reliable for ratemaking purposes." What is the point of testimony "regarding the reliability of a model" if the PRID does not determine reliability, and that testimony is not made public?

The proposed regulation gives the Model Advisor a long list of other responsibilities, but neither **Proposed Section 2648.5(l)**, **(m)**, nor any other provision charges the Model Advisor with considering that testimony, let alone making a determination about a model's reliability and safety. Nor does the regulation state that the Model Advisor has the responsibility to review a model itself, whether for accuracy, bias, or the validity of the science. The Model Advisor is not granted any authority to reject or approve a model. With no regulatory mandate for the PRID to reach a conclusion beyond what information to share, participants who represent consumers would be denied the opportunity to argue that a model should be rejected.

Indeed, specific standards by which the reliability of a model would be evaluated by the Model Advisor are absent. Basic scrutiny of a model's functionality—such as bias testing, or comparison of the model's projections to past events—is not mentioned. Nor is any comparison of models to other models contemplated—as noted below, issues with a model may not be immediately apparent unless the model is compared to similar models demonstrating drastically different outputs.

> **Department Response**: The proposed regulations make clear that the owner or vendor of a model may decline to participate as a party in a PRID procedure, but may still be required to provide witness testimony, documents, and other information in response to subpoena. The remainder of the comment is duplicative of prior written comments and the Commissioner incorporates his prior responses here.

Catastrophe model inconsistency and the importance of testing.

The regulation does not define any specific rubric for evaluating or testing models. There are no guidelines for determining whether a model is reliable, accurate, unbiased, or based on the best available science and data. This omission means that even if the Department amended the proposed regulation to require model review and approval, the standards for that review could vary widely from model to model.

As former Risk Management Solutions ("RMS") Vice President of Model Development Dag Lohmann, now CEO of KatRisk, LLC, put it:

> "Multiple modelers could develop a wildfire model from all the components in current literature, tune the models to reasonably validate with historical data, and ultimately

have average annual losses ***2 or 3 times different than each other*** when projecting future losses."[14]

According to Milliman:

Model validation, as well as rigorous review of model operations and assumptions, are critical steps in assessing whether this value can be extracted from a cat model, given its intended use.[15] [Emphasis added.]

California must rigorously evaluate models if regulators, policymakers, and the public are to have confidence they are reliable.

Recent Bloomberg reporting makes clear that extreme variability in model output is a serious and persistent problem. The investigation examines evidence "that risk models often disagree with each other on fundamental assessments of vulnerability."

Bloomberg Green compared two black box models' analysis of flood risk in Los Angeles County. They found that "they clash with each other more than they agree."

"When compared only on a single, relatively simple metric, the models match just 21% of the time."

"Among the places where the Irvine model finds the highest level of flood risk are the cities of Compton and Long Beach, south of downtown Los Angeles."

"First Street, on the other hand, finds very high risk in the San Gabriel Valley and significant risk in Westside areas, including the cities of Beverly Hills and Santa Monica."[16]

Similarly, the nonprofit CarbonPlan compared the California wildfire risk predictions of two private models. While the models agreed that fire risk at 128 locations across the state would increase by approximately one-third, the two models agreed on how much that risk would increase just 12% of the time. Seven other modeling firms the organization contacted refused to provide even basic data for comparison.[17]

By setting no standards for testing, review, and approval of models, the proposed regulation leaves Californians at the mercy of widely inconsistent outcomes.

Department Response: This comment is duplicative of the commenter's prior written comments, and therefore the Commissioner incorporates his prior responses here.

Even Florida, better known for passing industry-friendly legislation than consumer protection, requires review and approval of public and private catastrophe models.

A 2022 article examining the design and implementation of the Florida Public Hurricane Loss Model ("FPHLM") details how system evaluation is critical to ensuring the

effectiveness and reliability of the model. The authors identify "multiple quantitative and qualitative evaluation methods" that are "presented to ensure the correctness, usability and robustness of FPHLM."

Comparing modeled insured losses from specific storm events with actual insured losses from claims data is the primary method of FPHLM evaluation identified. Such a test enables confirmation that actual results and model results have no statistically significant differences. It is also one way to test bias. In the tests presented in the paper, 51% of actual losses were higher than modeled losses, and 49% were lower, suggesting the model is unbiased.[18]

In addition, the authors perform a sensitivity analysis that shows how FPHLM modeled losses due to the hurricane peril vary with changes to parameters such as deductible amount, year built, number of stories, and construction type. Analyses like this of the sensitivity of loss estimates to various characteristics are critical in ensuring the equitable application of a catastrophe model's output values, as required by law. Californians must also be able to perform sensitivity analyses to evaluate any model being considered for use in rating the wildfire peril. In order to do that, unfettered access to the model itself is necessary to ascertain exactly how modeled loss amounts are impacted by user-controlled changes to input parameters.

Although the state of Florida allows the use of private catastrophe models in addition to the public model, it requires private models to be approved by an independent commission that tests the models' reliability before they are approved for use.

In 1995, the Florida Legislature created the Florida Commission on Hurricane Loss Projection Methodology. The Commission conducts on-site testing of private catastrophe models (the public FPHLM model is also tested) and is charged "with adopting findings relating to the accuracy or reliability of particular methods, principles, standards, models, or output ranges used to project hurricane losses, flood losses, and probable maximum loss calculations."

The Commission's November 2023 report on activities contains **174 pages of specific standards the Commission uses to determine whether a model is acceptable for use** by insurance companies in Florida.[19] These are the types of standards that must be developed in California so consumers can be confident the models are fair.

There is no evidence that the Commissioner has made any effort to investigate how other states evaluate models. Under this proposal, once model information is sanitized through a secret PRID procedure, regulators and the public will be incapable of verifying the models' science or math, and regulators and consumer representatives will be left with inconsistent outputs and uncertainties that cannot be explained. By limiting both access to the model and information about the model, the draft regulation forecloses such testing.

Other than bowing to demands for secrecy from the insurance companies and the Wall Street firms that sell them models, how will this process enable consumer representatives and the Department staff to effectively assess a model? It won't.

See also testimony submitted by consulting actuary Allan I. Schwartz on behalf of Consumer Watchdog regarding **Proposed Section 2648.5** and the Florida Commission on Hurricane Loss Projection Methodology ("FCHLPM").[20]

> **Department Response**: As referenced in the ISOR, the Department has considered a commission similar to Florida's Commission on Hurricane Loss Projection Methodology as an alternative in this rulemaking. However, this alternative has been rejected. The proposed rulemaking provides the Model Advisor, with the possible assistance of outside consultants with subject matter expertise, to make an initial determination regarding what information and data regarding a model is required to be included as part of a complete rate application. Such an approach more directly aligns with the rate-review and rate-making process used in California. This ensures that the proposed rulemaking does not overstep statutory boundaries, protecting all parties involved in a complete rate application proceeding. Moreover, the Commissioner retains discretion to accept, reject, or amend a rate decision that relies in part upon a PRID, should the Commissioner desire additional information regarding the model.

No standards and variable disclosures will result in ad hoc review.

The lack of specific, uniform standards for model approval, or review of a model's impact on a rate, in the proposed regulation sets up bespoke oversight in which every company's rate application will be treated differently.

One of the reasons why California consumers, homeowners, renters, and small businesses have benefitted from fair and reasonable rates under Proposition 103 is that a highly detailed set of regulations govern the ratemaking process and apply to every insurance company. The staff of the Department are obligated by law to apply those rules uniformly.

10 CCR § 2643.1 requires the Insurance Commissioner to use "a single, consistent methodology" to evaluate insurers' rates.

The California Supreme Court has confirmed that Proposition 103 requires uniform regulation of insurance companies. (*20th Century Insurance Co. v. Garamendi* (1994) 8 Cal.4th 216, 312; see also Order Adopting Proposed Decision, *In re American Healthcare Indemnity Company*, File No. PA02025379, July 24, 2003, p. 8.) Uniform rules of the road are not only a protection for consumers against unfair and arbitrary rates, they are a guarantee of efficient, fair, and equal treatment for all insurance companies, large or small.

The draft text does not meet these baseline legal requirements.

Proposed Section 2644.4.5, subdivisions (f)(1) and (4), for example, require an insurer to prove that the model is based on "what in the Commissioner's assessment is the best available scientific information for assessing frequency, severity, damage and loss" and "best available scientific information on risk mitigation at the property." However, the regulation is silent on exactly how the Commissioner makes that "assessment."

The Model Advisor has even less instruction, being charged simply with "determining required model information." (**Proposed Section 2648.5(f)**.) "Required model information" is defined in a vague way, to mean "all required information and data regarding a model . . . because such information and data will aid the Commissioner in determining whether the model is reliable " (**Proposed Section 2648.5(a)(4)**.) **Proposed Section 2648.5(b)** in turn states that "required model information" shall include "information that demonstrates the model uses established concepts, data, equations, and principles, as well as best available scientific information and data, insurance claims expertise, and other assumptions appropriate for the risk or peril being modeled," but there is no specific minimum set of information that every modeler would have to disclose.

The lack of comprehensive and precise definitions and standards will lead to arbitrary, discriminatory, and excessive rates.

Giving the Commissioner and the Model Advisor unbounded discretion with no published guidelines for their decisions opens the door to the "standardless, ad hoc decision-making" decried by the California Supreme Court in *20th Century*, *supra*, 8 Cal.4th at pp. 280, 312.

Department Response: This comment is duplicative of the commenter's prior written comments, and therefore the Commissioner incorporates his prior responses here.

Even whether a PRID is valid, or must be redone, is unclear.

Proposed Section 2648.5(o) states a PRID is good for four years, but does not say whether a PRID is valid for all uses of a model—i.e., underwriting, risk segmentation, and rating—even if a PRID procedure only reviewed a model for purposes of projecting rates.

Furthermore, while **Proposed Sections 2648.5(o) and (p)** purport to invalidate a PRID when a model is "substantively updated, amended, altered, or changed . . . ," it is unclear how anyone would know a PRID should be invalidated.

There is no requirement for a modeler or other knowledgeable company to notify the Department when a previously approved model has been "substantively" changed. Without access to the model itself or any "confidential PRID information," no one—the Commissioner included—will be able to assess whether a model has been substantively changed simply by reviewing a rate application. Nor is there any apparent penalty for knowingly relying on a PRID determination for a substantively changed model.

The previous version of this regulation did not include the "substantively" limitation, which only makes it more difficult to determine when a PRID should be deemed invalid, as the regulations do not explain what a "substantive" change would be.

Department Response: The proposed regulations make clear that an insurer seeking to rely upon a model for purposes of a complete rate application is responsible for

submitting a valid PRID, to the extent one exists, regarding that model as part of the complete rate application submission. Like any software, models are frequently updated to implement nonsubstantive changes, and it would be overly burdensome to initiate a PRID in response to every change to the model. Insurers are already subject to laws and penalties, including a requirement to submit complete rate applications under penalty of perjury, and the proposed regulations do not seek to change that existing requirement. To the extent this comment is duplicative of the commenter's prior written comments, the Commissioner incorporates his prior responses here.

III. INDEPENDENT EXPERTISE: The proposed regulation does not leverage California's vast resources in academia and industry, instead giving vast authority to the Model Advisor—who is appointed by the Commissioner—with no required qualifications or experience.

Contrary to representations by the Commissioner and Department staff, including the March 14, 2024 press release promising a "new process for review of models by a panel of experts" to "evaluate the appropriateness and soundness of each model," the regulation does not require the appointment of an independent panel of scientific and other experts.

Expert panels with advisory, audit, and oversight authority operate across California government. The enacting legislation and regulations for such bodies will typically lay out the responsibilities of the body and parameters for choosing appointees, including: frequency of meetings, size of the panel, duties, qualifications of members, and specific stakeholders that must be represented—often requiring a diversity of viewpoints and expertise. The Department of Insurance's own website lists ten such panels and boards[21]—each of which has specific parameters for appointees.

The American Academy of Actuaries' discussion of the difficulties of model testing demonstrates the appropriateness of such an expert panel here:

> "While the technical documentation of the models is available to users for their general knowledge, some core assumptions are considered proprietary and are not readily accessible to users. A catastrophe model is developed by a group of scientists (meteorologist, seismologist, hydrologist, statisticians, engineers, actuaries, computer scientist, etc.) with specialized knowledge in different fields. It is not an easy task for model users to develop even a basic understanding of the model, as required by U.S. actuaries' standards of practice."[22]

Yet **Proposed Section 2648.5(f)** does not mandate such a panel. This section states only that the Model Advisor "is authorized to hire outside consultant(s) with relevant knowledge and subject matter expertise to assist in determining required model information." Consultants hired by the agency report to the Department and the Commissioner; they are not independent.

Moreover, the draft regulation places no conditions on hiring of the consultants, such as a requirement that they be free of conflicts of interest. This employer/consultant relationship does not resemble the kind of diverse, interdisciplinary panel of independent experts with a

wide array of engineering, computing, climate, and other scientific expertise that is necessary to assist the Department in correctly and independently understanding and evaluating a model's operation.

The proposed regulation requires that any work consultants submit to the Department and the Commissioner remain confidential unless it is included in a final PRID and is subsequently submitted in a rate application (**Proposed Section 2648.5(d)**).

In the past, when the Department has hired outside consulting firms to evaluate underwriting models used to determine eligibility for a homeowners policy based on wildfire risk, it has refused to disclose any of the information or analysis provided by those firms.

In one instance, a Consumer Watchdog petition for hearing in a proceeding on a Farmers rate application was denied by the Commissioner, based in part on an outside actuarial consulting firm's evaluation of Farmers' use of the Zesty.ai Z-FIRE underwriting model. The denial stated only that based on that outside actuarial firm's review of the model, the Department was "satisfied that the model is sufficient for the purpose in which it is intended to be used, as a secondary new business eligibility tool" and that "the Department has no concerns about its accuracy or reliability."[23] In violation of Proposition 103's transparency requirement, the Department refused access to the consulting firm's analysis of the model. [24]

Because the Model Advisor can conduct the PRID procedure by meeting behind closed doors with—or even relying entirely upon—"outside consultants" and exclude their work from disclosure, public access is negated.

Finally, nothing requires the Model Advisor to actually seek expert input, raising the concern that the Model Advisor could rely solely on the representations of an insurance or modeling company in a PRID procedure.

> **Department Response**: As explained in the ISOR, the Commissioner considered the creation of an autonomous body to review proposed models but rejected it in favor of the creation of the PRID procedure.
>
> To the extent the comment seeks to address the proposed minimum qualifications of the Model Advisor, this comment is outside the scope of the proposed regulations. Under Government Code section 18931, the State Personnel Board will establish minimum qualifications to determine the fitness and qualifications of each class position of state employees. This includes criteria for education, experience, knowledge, and abilities.
>
> To the extent this comment is duplicative of prior written comments, the Commissioner incorporates his prior responses here.

The Model Advisor is given unchecked power.

The proposed regulation envisions that the Model Advisor will make many technical and legal determinations. The regulations describe the Model Advisor's power as "without

limitation," including to: "administer oaths; issue subpoenas; rule on motions to compel discovery; receive evidence and testimony" **(Proposed Section 2648.5(k))**. It is extremely problematic that the draft regulation sets forth no qualifications for the Model Advisor, who is effectively acting as a pseudo–administrative law judge. The Model Advisor is not required to have legal or technical training, or indeed, to have any relevant experience at all while making these determinations.

The Model Advisor will determine what information will be made public and will determine "whether there is a significant public interest in the non-disclosure of confidential PRID information." **(Proposed Section 2648.5(j)(2)**.)

Yet there are no specific guidelines to govern these determinations by the Model Advisor.
Allowing such open-ended discretion without specific regulatory guidelines epitomizes the "standardless, ad hoc decision-making" advocated by the insurance industry and rejected by the California Supreme Court in *20th Century*, *supra*, 8 Cal.4th at p. 312.

Department Response: This comment is duplicative of prior written comments by the commenter, and the Commissioner incorporates his prior responses here.

IV. HIGHER RATES: Limited model disclosure will make determining a model's impact on rates impossible.

According to the draft regulation, the PRID will decide what information can be accessed by the public in the third phase of oversight: Prop 103 review of an insurance company's rate application.

Proposed Section 2644.4.5(f) states that in the context of a specific insurance company's rate application, "the applicant shall have the burden of demonstrating" to the Commissioner that the models used rely on the best science and meet actuarial standards. This is the only place in the regulation that explicitly states the reliability of models will be subject to evaluation during the rate review process. Even so, the ability to review a model's impact on rates at this stage will be extremely limited because the PRID procedure will restrict the information about the model that will be available to make that evaluation.

Access to the model itself, the model's weighting of different factors, any data used to build a model, and model output reports—including but not limited to size of loss distributions along with the probability associated with each event—are among the types of information certain to be foreclosed from public disclosure by the PRID. In recent years, insurance companies and modelers have refused to provide the Department or public participants access to such information regarding underwriting models in the rate review process, even though they are required by law to do so. The same will be true for catastrophe models.

This is the only place the proposed regulation contains any guidelines for what the commissioner would consider in reviewing a model's impact on rates. Unfortunately, as noted

above, the guidelines are far too broad to provide any practical standards for regulators to follow.

Further, it is unclear how the Department would be able to determine if an applicant has met its burden, particularly as to **Proposed Section 2644.4.5(f)(2)**, which requires an applicant to show that its "use of its selected model(s) produces the most actuarially sound estimate of projected catastrophe losses." How does the Department plan to evaluate, based on limited "required model information," whether the use of any particular model will "produce the most actuarially sound estimate"? Surely the answer requires some sort of comparison between models or some other baseline to measure against, but the regulation provides for neither.

Unbelievably, the ISOR, p. 92, takes the position that the "use of catastrophe models is not expected to significantly change the total amount of aggregated premiums collected by the insurance industry." The Department proffers no specific support for this absurd conclusion. The impetus behind this and other Department regulatory efforts has been pressure from insurance companies who say they must use catastrophe modeling to reflect higher future risks due to climate change than are reflected in historic data. The companies are not pushing for these changes so that they can lower their rates—they are seeking to price higher levels of catastrophe risk into their rates.

> **Department Response**: This is speculative and duplicative of other comments and the Commissioner incorporates his prior responses here.

V. CONFLICTS WITH OTHER RECENT REGULATIONS: The draft regulation prioritizes the protection of trade secrets over longstanding principles of government accountability and transparency, in violation of existing law and regulations.

Wall Street modeling companies have made clear in their public statements, comments to the Department of Insurance, and testimony before the Legislature that they are unwilling to disclose their algorithms or datasets or to provide access to the actual catastrophe models.

Zesty.ai submitted testimony regarding the wildfire mitigation discount regulation stating:

> . . . the current draft regulations would jeopardize the industry's ability to protect intellectual property and thus limit new innovation from being introduced in the California insurance market. As such, we would recommend that "data, algorithms, [and] computer program" as currently detailed in subsection (f) should be excluded from the public inspection process.[25]

At the July catastrophe modeling workshop, Moody's RMS submitted a list of what it insisted it would not disclose:

> Any elements that are considered Intellectual Property
> Proprietary data sets (in-house / third party)

Software programs
Source Code
Notional sensitivity analyses showing all possible combinations of output of model
Client Specific Results[26]

The proposed catastrophe model regulation capitulates to those demands. In fact, Consumer Watchdog has repeatedly objected to the Commissioner's failure to enforce the public disclosure requirements for wildfire risk models set forth in the wildfire mitigation regulation (10 CCR § 2644.9) he adopted, and CDI has reversed course on positions it took in adopting those regulations and in amendments to the "complete rate application" regulation Commissioner Lara proposed earlier this year (REG-2019-00025). However, the confidentiality provisions in **Proposed Section 2648.5(a)(7)**—"confidential PRID information shall not be public information and shall be considered to be information received in official confidence by the Department of Insurance"—and the protective order provisions in **Proposed Section 2648.5(j)(2)** conflict with the public disclosure requirements of Proposition 103's Section 1861.07.

The Department made a robust case for the submission and full disclosure of models, their algorithms, and all data associated with a model in the rulemaking documents supporting the necessity of both regulations.

Proposed Sections 2648.5(a)(4) and (5), and Proposed Sections 2648.5(b) and (r), incorporating the "complete rate application" regulation (section 2648.8), directly conflict with the Department's proposed amendments to that regulation. Together, these provisions define the limited scope of the "model information" that must be provided as part of a complete rate application. Such information is not a substitute, however, for providing the "model" itself and any model "algorithm" as part of a complete rate application, as required by CDI in proposed amendments to section 2648.4 and section 2644.9 as adopted.

Proposed section 2648.4 of the "complete rate application" regulation requires that models and algorithms used to accept, reject, or rate a risk must be provided as part of a complete rate application and made publicly available. Wildfire risk models used to determine individual premiums are similarly required to be submitted to the Commissioner and publicly disclosed pursuant to section 2644.9(c) and (f) as adopted in 2022.

In proposing the "complete rate application" regulation in February, the Department explained the necessity of providing models and algorithms as part of a complete rate application as follows:

> In order to fully evaluate an insurer's request to change its rates and determine whether the requested rate change is appropriate and not excessive, inadequate, or unfairly discriminatory, the Commissioner must be able to review all information that may have a potential impact on the requested rate during the projected rating period. Relevant here, the general criteria, guidelines, systems, manuals, models and/or algorithms that an insurer uses to determine whether to accept or reject new and

renewal business and to determine an applicant's or insured's coverage or coverage options may loosely be referred to as "underwriting guidelines."[27]

The Department similarly argued the necessity of disclosing models and algorithms in adopted regulation and the Final Statement of Reasons in the Mitigation in Rating Plans and Wildfire Risk Models rulemaking, REG-2020-00015. Subdivision 2644.9(f) of that adopted regulation states that any "Wildfire Risk Model," and "any records, data, algorithms, computer programs, or any other information used in connection with the rating plan or Wildfire Risk Model used by the insurer" shall be available for public inspection. In responding to public comments in that rulemaking proceeding, the Department explained, in no uncertain terms, that section 2644.9(f) requires all Wildfire Risk Models used in support of a rate application to be publicly filed:

> The commenter wants to modify text of proposed section 2644.9(c) . . . ***instead of requiring the insurer to file publicly the model*.**
>
> The Department responds that in order for the Commissioner to determine whether an insurer's rates are excessive, inadequate, or unfairly discriminatory, insurers ***must provide as part of a complete rate application any rating plan or Wildfire Risk Model that segments rates, creates a risk differential, or surcharges premium***. Any such information regarding the Actuarial Standards of Practice (ASOPs) or the scientific basis underlying a Wildfire Risk Model provided to the Commissioner would be ***in support of the requirement that the Wildfire Risk Model itself be provided as part of the insurer's complete rate application***. Without this information, the Department is not able to review an insurer's rates for compliance with Proposition 103, in particular the requirement in Insurance Code section 1861.05(a) that an insurer's rates not be excessive, inadequate, or unfairly discriminatory. ***The Department has determined that it is necessary for a Wildfire Risk Model, if used to segment rates, create a risk differential, or surcharge the premium, to be submitted to the Commissioner as part of an insurer's complete rate application***."[28]

The proposed regulation appears to empower the Model Advisor to override these requirements through the PRID procedure, which would conflict with both regulations and Insurance Code section 1861.07.

> **Department Response**: The Commissioner's use of the term "model" in these proposed regulations as well as the Safer from Wildfire and Complete Rate Application regulations is intended to require insurers to include data and information regarding those model components that are necessary to evaluate the application to determine whether the rate is excessive, inadequate, or unfairly discriminatory, as required by Insurance Code section 1861.05. That is the information that the Commissioner relies on in approving rates. The Department disagrees that these proposed regulations would require insurers to deliver a model in its entirety as part of a complete rate application, either under these proposed regulations or other regulations.

VI: LIMITING GOVERNMENT ACCOUNTABILITY: The proposed draft seeks to exclude model review from the protections of the California Administrative Procedures Act and Proposition 103 that are required in rate hearing.

Proposed Section 2648.5(a)(1) and (2) refer to the "Pre-application required information determination" and "procedure" (the PRID) as "nonadjudicative." To the extent the Department is seeking to exempt review of models used in determining rates, premiums, and underwriting from the longstanding protections against government overreach set forth in the California Administrative Procedures Act (APA), which applies to all "adjudicative proceedings," it should reverse course.

The Administrative Procedures Act provides baseline procedural protections through its "Bill of Rights," found in Articles Six through Eight of the APA (Gov. Code §§ 11425.10–11435.65). Among the most important of those rights are that (1) hearings must be open for public observation; (2) the adjudicative function must be separated from investigative and advocacy functions; (3) presiding officers are subject to disqualification for bias; (4) decisions must be based on the record; and (5) ex parte communications are restricted. (Gov. Code§ 11425.10.)

Moreover, the proposed PRID procedure would permit the Model Advisor to conduct the entire procedure behind closed doors without any public participation. **Proposed Section 2651.10(e)** gives the Model Advisor "discretion to grant or deny a request to initiate or intervene in a PRID procedure." (Emphasis added.) This conflicts directly with Proposition 103, which provides California consumers with an *unqualified* right to initiate or intervene in any proceeding permitted or established pursuant to chapter 9 of Part 2 of Division 1 of the Insurance Code.[29]

Section 1861.10(a) states:

> Any person may initiate or intervene in any proceeding permitted or established pursuant to this chapter, challenge any action of the commissioner under this article, and enforce any provision of this article.

Even if the Model Advisor chooses to permit such participation, as discussed above, the regulation purports to make the entire PRID procedure confidential, including any hearings. (**Proposed Section 2648.5(a)(7)**.) No provisions prevent the Model Advisor from engaging in ex parte communications, or require the separation of decision-making and advocacy functions. Additionally, nothing in the regulations specifies that the Model Advisor must state the factual basis of their decision based exclusively on evidence in the record when determining what model information must be provided. The APA should explicitly apply to any model review. The APA will ensure minimum protections are in place to help rectify these issues by requiring public observation, limiting ex parte communications, requiring separation of functions, and requiring the ultimate decision be based on facts in the record.

Department Response: There is no conflict between statutory law and the proposed regulations. The PRID procedure is not a statutory proceeding and does not have qualities

of an adjudicative proceeding, so it is not appropriate to apply each and every APA provision that applies to adjudicative proceedings. The PRID is a voluntary, nonadjudicative procedure resulting in an initial determination by Department staff regarding what information is relevant and therefore required to be submitted regarding a model for purposes of a complete rate application that relies upon the model. The Commissioner has amended the proposed regulations to make clear that the PRID is not itself a final order or decision of the Commissioner and is therefore not adjudicative nor subject to judicial review.

Nor is there a conflict between the authority for intervention in Insurance Code section 1861.10(a) and the Model Advisor's discretion to grant or deny petitions to participate. Again, the PRID procedure is a "nonadjudicative procedure," not a statutory "proceeding." Section 1861.10(a) only applies to statutory "proceedings," so there is no conflict that would require amendment of the proposed text.

To the extent this comment is duplicative of previous written comments, the Commissioner incorporates his prior responses here.

VII. ERECTING ADDITIONAL BARRIERS TO PUBLIC PARTICIPATION—OR A PRID HAPPENING AT ALL.

Responding to insurance industry comments, **Proposed Section 2648.5(h)** of the August 16, 2024 proposed text erects additional barriers to deter and diminish the public's ability to participate meaningfully, or indeed, to initiate a PRID procedure in the first place.

The updated regulation erects three new hurdles in order for a petition to initiate a PRID procedure to be granted.

First, the Model Advisor must determine that "the petitioner has demonstrated it is more likely than not that the Commissioner would benefit from a PRID." This is a vague and subjective standard with no further elaboration. The ISOR states the purpose of this subdivision is "to allow for broad public participation" in the PRID process and "to encourage public review of models at the outset" (ISOR, pp. 79–80). As drafted, this provision instead gives the Model Advisor nearly unbounded discretion to deny petitions to initiate a PRID procedure and block public participation before it begins.

Department Response: The proposed regulations make clear the PRID procedure is a voluntary, nonadjudicative procedure resulting in an initial content determination by Department staff. The Department has limited resources, and it is reasonably necessary to provide the Model Advisor with discretion to determine whether to initiate a PRID procedure upon request. To the extent this comment is duplicative of previous written comments, the Commissioner incorporates his prior responses here.

Second, the Model Advisor must find that "the model has not been previously been [sic] subject to public review in any other forum in California, including without limitation as part of a complete rate application, within the prior four years." The regulation does not

explain when a model would be considered to have "been subject to public review in any other forum." However, taking the regulation and the ISOR commentary together, it appears the Department's position is that models that have been previously used in a rate application that has been approved in the last four years will not be subject to a PRID procedure, which is highly problematic.

Department Response: This comment is duplicative of previous written comments, and the Commissioner incorporates his prior responses here.

It is unclear what "public review" in proposed subdivision (h)(1) means. The ISOR, p. 80, states this provision was added to address concerns following prior public workshops "about models that have already been subject to extensive public review having to be re- reviewed through the PRID procedure if any person can petition to initiate at any time." Consumer Watchdog knows from experience, however, that the Department has not been subjecting models to "extensive public review" in the rate review process, and nothing in the proposed regulation requires any such "extensive public review." Indeed, the Department has not been requiring insurers to publicly provide models or extensive information about their inner workings, in deference to the complaints of modelers and insurers over disclosing allegedly confidential information, and the proposed regulation enshrines this practice. Moreover, nothing in the proposed regulation specifies how the public would be informed of which models have been previously subject to "extensive public review" and would thus be exempted from a PRID procedure.

The ISOR, p. 80, further states: "The PRID procedure is not intended to invalidate previously approved models." However, the Department has previously taken the position that it doesn't "approve" models, so it is unclear how this new provision (h)(1) would be interpreted and applied to models used in past approved rate filings. Moreover, it is unclear whether "any other forum" includes forums outside the Department of Insurance. If so, this would be highly problematic as other jurisdictions are not subject to Proposition 103's prior approval and public disclosure requirements.

Department Response: This comment is duplicative of previous written comments, and the Commissioner incorporates his prior responses here.

Finally, once a PRID petition is granted, newly **Proposed Section 2648.5(j)(1)** purports to require parties in a PRID procedure to state how they will "avoid duplication" with no further direction. It is entirely unclear how this provision will work in practice, particularly given that parties will know nothing about the model under consideration before the proceeding begins.

Department Response: The text of the regulation already provides direction about the types of arrangements parties might utilize to avoid duplication. In fact, in *In re State Farm General Insurance Company* (PA-2015-00004) and other cases, the commenter has repeatedly utilized such arrangements for the purpose of avoiding duplication with other parties.

The proposed regulation makes it more difficult for participants to demonstrate a substantial contribution.

Proposition 103 enables consumer participation in insurance oversight by requiring compensation for consumers and organizations that represent consumers, creating a level playing field with the insurance—and in this case modeling—industries. Under the prior version of the proposed regulation, whether a participant in a PRID procedure made a "substantial contribution" for purposes of being entitled to compensation was assessed under the definition contained in section 2661.1(k) that has been applicable to every other request for compensation in proceedings before the Department for nearly 20 years.

Newly **Proposed Section 2648.5(h)(4)(A)** conflicts with Insurance Code section 1861.10(b) and purports to significantly restrict the definition of "substantial contribution." This appears to be a clear effort to disincentivize rather than encourage public participation, which courts have held is the key purpose underlying the Insurance Code section 1861.10(b). (See, e.g., *Econ. Empowerment Found. v. Quackenbush* (1997) 57 Cal.App.4th 677, 686 [the purpose of intervenor fees is to encourage consumer participation].)

Under the "substantial contribution" standard in Insurance Code section 1861.10(a), a party's entitlement to fees "requires a significant, distinct contribution, but not more" (*State Farm General Insurance Company v. Lara* (2021) 71 Cal.App.5th 197, 214). **Proposed Section 2648.5(h)(4)(A)** creates an additional requirement that a participant demonstrate that "as a result of its participation, the Model Advisor ***has included in the PRID*** additional information or data regarding the model that would not otherwise have been identified." (Emphasis added.)

This narrowed definition is particularly problematic in the context of a procedure that is effectively entirely confidential. By definition, a PRID will not include any information or data that is not found to be "required model information." This means that if a participant's involvement led to a wealth of information being provided that would not otherwise have been available for the Model Advisor to make their ultimate determination, but that information is not deemed "required model information," the participant could not show a substantial contribution, even if the additional information was highly relevant.

Additionally, **Proposed Section 2648.5(h)(4)(C)** directly conflicts with Section 1861.10(b)'s requirement that: "The commissioner or a court *shall* award reasonable advocacy and witness fees and expenses to any person who demonstrates that he or she has made a substantial contribution…." However, **Proposed Section 2648.5(h)(4)(C)** states the commissioner may deny fees to two parties if: "the substantial contribution claimed by a participant duplicates the substantial contribution of another party…." This provision purports to allow the Commissioner to deny fees to a party that the provision itself acknowledges made a "substantial contribution." The Commissioner lacks discretion under Section 1861.10(b) to deny fees to parties that he acknowledges made a substantial contribution.

Department Response: The PRID is an initial nonadjudicative determination by Department staff. Under Insurance Code section 1861.10, a consumer representative is only entitled to reasonable fees and expenses if they make a "substantial contribution to the adoption of any order. . . or decision by the [C]ommissioner." The PRID is not a final order or decision by the Commissioner. Therefore, the Commissioner has revised the proposed regulations text to make clear that a consumer representative who participates in a PRID procedure may not seek compensation unless it demonstrates it made a "substantial contribution" to the Commissioner's subsequent order or decision on a complete rate application relying upon the PRID.

VIII. ALLOWS MODELS FOR AUTO AND OTHER FORMS OF INSURANCE. The regulation goes beyond wildfires to grant the commissioner broad, unrestrained authority to approve models for other purposes.

Proposed Section 2644.4.5(c)(1)–(3) allows the commissioner to expand the use of catastrophe models to "additional lines or exposures" and determine not only the catastrophe load, but project average annual losses in any line "at the Commissioner's discretion."

This rulemaking was convened in response to the shortages in the home insurance marketplace and insurance companies' insistence that they can't do business in California unless they are allowed to use catastrophe models to predict wildfire risk. It is easy to imagine the potential for abuse if the Commissioner starts receiving requests from insurance companies to expand their use of catastrophe models to predict losses in any line, as will surely occur. This expansion would be a dramatic and unnecessary change when models can be inaccurate and inconsistent and contain biases.

As noted above, 10 CCR § 2643.1 requires the Insurance Commissioner to use "a single, consistent methodology" to evaluate insurers' rates and the California Supreme Court said open-ended discretion without guidelines opens the door to "standardless, ad hoc decision-making."

To allow insurers to use models in any line to project average aggregate non-cat losses in place of insurer-specific data and specified trend periods and making that determination a discretionary one will lead to the very inconsistency in application of the regulatory formula across insurers that 10 CCR § 2643.1 prohibits.

Also see testimony of consulting actuary Allan I. Schwartz submitted on behalf of Consumer Watchdog regarding **Proposed Sections 2644.4.5** and **2644.5**.

Department Response: To the contrary, Section 2644.4.5(c) provides guidelines the Commissioner shall use when determining whether to allow the use of catastrophe models for additional perils.

IX. PAST TESTIMONY

We incorporate and submit here our previous comments of July and September 2023 and April and June 2024 that contain further resources and examples of why thorough, transparent review of models and their impact on rates is so necessary.[30]

See these comments for additional information on:

- Models' inconsistency. For example:

> At the Virtual Meeting Regarding Home Hardening and Wildfire Catastrophe Modeling held by the California Department of Insurance on December 10, 2020, Allan I. Schwartz, Fellow of the Casualty Actuarial Society and a Member of the American Academy of Actuaries, presented testimony to illustrate how this variability manifests in the private earthquake models already in use in California.
>
> He identified examples of dramatic differences in the results of the models consulted by insurance companies.

- The academic scrutiny of flaws in financial industry climate prediction software. For example:

> Boston School of Law Professor Madison Condon presented a public interest critique including: the modeling firms' conflicts of interest; the disproportionate impact of data bias on communities of color; and how the secrecy of private models hides errors.

- Detailed questions about a model's function and impact that reviewers require access to a model to answer. For example:

> How is risk scoring determined for quantitative variables that have multiple components (e.g., Fire station proximity: Physical distance, staffing, average drive duration, complications in an active wildfire scenario, etc.)?
>
> How are elements that fluctuate quickly but have a significant impact on model output—such as demand surge, inflation, and construction and labor costs—treated in the model?

- The lack of a California investigatory record concerning models' accuracy and reliability in other states, and the lack of analysis projecting models' impact on rates in California.

- Algorithmic bias and discrimination in other aspects of consumers' financial lives, such as higher mortgage interest rates charged to Black and Latino borrowers than white borrowers.

- The Wall Street and insurance industry ties creating financial conflicts of interest at some of the largest modeling firms.

Department Response: This comment is not specifically directed at the text of the regulation or rulemaking procedures followed in this regulatory action. Because the comment is neither objecting to the proposed text nor suggesting any changes, no further response is warranted.

CONCLUSION

Responsible use of catastrophe models in compliance with California's rate oversight and transparency requirements requires that models be publicly reviewed for accuracy, reliability, and bias, and be approved for use. Full access to a model and the ability to test its results are a prerequisite for the public and regulators to be able to determine if its predictions and impact on consumers' rates are fair and justified. We urge the Department to redraft the proposal with these standards in mind.

A public California Wildfire Catastrophe Model would best meet these fairness and accountability goals, and empower consumers, communities, and the state to incentivize risk reduction and more transparently predict climate risk.

Department Response: These comments appear to be a summary of the previous written comments and therefore the Commissioner incorporates his prior responses here.

6. Written Comment from Consumer Watchdog (2)

COMMENTS BY ALLAN I. SCHWARTZ ON BEHALF OF CONSUMER WATCHDOG REGARDING CALIFORNIA DEPARTMENT OF INSURANCE AUGUST 23, 2024 PROPOSED REGULATION TEXT

CATASTROPHE MODELING AND RATEMAKING REG-2023-00010

September 17, 2024

Section 2644.4.5 Use of Catastrophe Models

Sub-section (c)(1) states in part "… at the Commissioner's discretion, models may be used in cases where limited historic insurance data is available".

This is vague in that it does not specify when and how the Commissioner could exercise that discretion. Would it occur on an ad hoc basis for individual filings? If yes, then when?

Before the filing is made? While the filing is being reviewed? After a settlement or hearing on the filing?

If the Commissioner is to exercise such discretion, it should follow the same procedure required for adding additional rating factors beyond the three mandatory ones for private passenger automobile insurance.[311] That is, any additional use of models for ratemaking should be done through regulation.

Setting forth in the regulation any additional cases where models can be used will limit the possibility of different entities being treated unfairly.

With regard to the "limited historic insurance data", the criteria for that should be clearly set forth. Does that involve years of data? The volume of data? Data for that filer or wider industry data? What type of data – premiums, losses, exposures?

By setting out criteria ahead of time, entities involved in the rate filing process will have a better understanding of what procedures should be followed, which should expedite the rate filing review process.

Department Response: Section (c)(2) sets forth the conditions necessary for the Commissioner to allow model use and Section (c)(3) sets forth the factors that the Commissioner must consider when exercising their discretion.

Section 2644.5. Catastrophe Adjustment

Sub-section (a)

This states in part "For fire following earthquake, wildfire, and terrorism exposures in any line of insurance, an insurer may include an adjustment based on the average annual loss generated from one or more catastrophe models."

The filer should be required to submit the data and output of every catastrophe model for which it has results. Otherwise, an insurance company could run several models and show only the results for the model output it finds most favorable to itself, which could be disadvantageous to California policyholders. Furthermore, if the filer only submitted the results of one model, it will likely be asked for the results of other models during the rate filing review process, which could lead to delay.

> **Department Response:** This is speculative. It is unnecessary and burdensome to the Department's staff to require insurers to submit additional model data and outputs that do not provide a basis for a proposed rate.

Furthermore, it would be useful to have the results of more than one model to mitigate the results that may come from an abnormal model. North Carolina requires the use of more than one computer model for property insurance. "If the Rate Bureau presents any modeled hurricane losses based upon a commercial hurricane simulation computer model with a property insurance rate filing, the Bureau shall present data from more than one such model." N.C.G.S. 58-36-10(3).

> **Department Response:** California does not have a Rate Bureau for property insurance. A rating bureau generally has the authority to set rates and has access to data from multiple insurers. Given the differences between North Carolina's regulatory scheme where rates are set by a rating bureau and California's prior approval system, requiring multiple catastrophe models be used by insurers in California would not achieve the same effect that requiring a rating bureau to use multiple models would achieve. The Department declines to amend the regulation to require additional information.

The filer should also be required to show that the catastrophe model, or combination of catastrophe models used in the filing is the most actuarially sound. This would be consistent with 2644.7 and 2644.8, both of which require the insurer to use the most actuarially sound procedure.

By requiring all model results to be included in the filing and requiring a showing of most actuarially sound, entities involved in the rate filing process will have a better understanding of what is needed, which should expedite the rate filing process.

This sub-section also states in part "Further, the average annual loss may be adjusted to include a provision for defense and cost containment expenses (DCCE), either by applying a historical ratio of noncatastrophe DCCE to noncatastrophe loss or by applying a historical ratio of catastrophe DCCE to catastrophe loss."

The filer should be required to submit both sets of DCCE and loss data – both noncatastrophe and catastrophe. Otherwise, an insurance company could select the results it

finds most favorable to itself, which could be disadvantageous to California policyholders. Furthermore, if the filer only submitted one set of data, it will likely be asked for the other data during the rate filing review process, which could lead to delay.

The filer should also be required to show that the DCCE and loss data used in the filing are the most actuarially sound. This would be consistent with 2644.7 and 2644.8, both of which require the insurer to use the most actuarially sound procedure.

By requiring all data to be included in the filing and requiring a showing of most actuarially sound, entities involved in the rate filing process will have a better understanding of what is needed, which should expedite the rate filing review process.

Department Response: The Department carefully considered and set forth in subsection (c) the documentation it requires, and, as the commenter points out, the Department may request additional information as needed. The Department declines to add unnecessary documentation requirements.

Sub-Section (b)2

This states in part, "The number of years over which the average shall be calculated shall be at least 20 years for residential and commercial property lines and at least 10 years for private passenger, and commercial, auto physical damage."

The filer should be required to submit data for as many years as available. Otherwise, an insurance company could select the number of years results it finds most favorable to itself, which could be disadvantageous to California policyholders. Furthermore, if the filer only submitted a limited number of years of data, it will likely be asked for more data during the rate filing review process, which could lead to delay.

The filer should also be required to show that the number of years of data used in the filing is the most actuarially sound. This would be consistent with 2644.7 and 2644.8, both of which require the insurer to use the most actuarially sound procedure.

By requiring all available data to be included in the filing and requiring a showing of most actuarially sound, entities involved in the rate filing process will have a better understanding of what is needed, which should expedite the rate filing review process.

Department Response: A broad requirement for unnecessary documentation creates burdens on the Department and the rate filing system. The Department declines to add unnecessary documentation requirements.

Sub-Section (c)10

This states, "The insurer's current definition of catastrophe and the period of time it has used such definition."

The insurer should provide the catastrophe definition used over the entire catastrophe data period and the time frame of each, not just the current. This complete information is needed to make any adjustments that may be necessary to derive an actuarially sound catastrophe provision. If this is not included in the rate filing, it will likely be asked for more information during the rate filing review process, which could lead to delay.

Requiring the complete information in the filing should expedite the rate filing review process.

Department Response: The Department carefully considered and set forth in subsection (c) the documentation it requires, and, as the commenter points out, the Department may request additional information as needed. The Department declines to add unnecessary documentation requirements.

Sub-Section (c)12

This states, "The name of any major event or events contributing to the year's catastrophic losses, for instance, the 'Cedar Fire,' and the peril or perils associated with those losses."

The amount of losses and DCCE associated with each event for each peril should be provided. This is needed to evaluate the impact of each event on the catastrophe provision, and the numerical value of adjustments that may be needed to be made to reflect Sub-Section (d).

Sub-Section (d)

This states in part, "The catastrophe adjustment shall reflect any changes between the insurer's historical and prospective exposure to catastrophe due to a change in", and then lists two items.

Additional items that should be included in the list are changes to:

(3) The definition of catastrophe,
(4) The impact of mitigation measures, both on the individual policyholder level, community level, and state level,[2]
(5) The insurer's business practices including, but not limited to, operations, claims, underwriting and marketing,
(6) Building and land use practices, and
(7) Other items that impact the prospective exposure to catastrophe events.

Department Response: This is outside the scope of this rulemaking. The commenter does not explain why these items should be added to subsection (d).

Sub-Section (e)

This states "For any individual peril, projected aggregate catastrophe losses cannot be based upon a combination of modeled and historical losses associated with that peril."

A list of perils by line of insurance should be provided in the regulation. This will allow all entities to know what procedures are allowed and also to be treated fairly. In addition, it would eliminate possible disputes regarding what constitutes a peril, which should expedite the rate filing review process.

Department Response: The Department declines to add unnecessary language based on hypothetical future disputes

Section 2648.5. Pre-Application Required Information Determination ("PRID") Procedure

The procedures set forth in this section seem vague and complicated.

A much better procedure would be to follow the practices used by the Florida Commission on Hurricane Loss Projection Methodology ("FCHLPM"). The FCHLPM website states "The Florida Commission on Hurricane Loss Projection Methodology (FCHLPM) was created during the 1995 Legislative Session as an independent panel of experts to evaluate computer simulation models and other recently developed or improved actuarial methodologies for projecting hurricane and flood losses."[333] The FCHLPM publishes a "Hurricane Standards Report of Activities" which set forth in detail the standards and procedures used to evaluate hurricane computer models.[344] The standards used by the FCHLPM cover six broad categories. Those are: (i) General, (ii) Meteorological, (iii) Statistical, (iv) Vulnerability, (v) Actuarial and (vi) Computer/Information.[355] Within each of these broad categories there are numerous detailed requirements. By setting forth the requirements in a document, the FCHLPM informs modelers of the information that is required for model examination. That expedites the process of examining and approving the use of models for rate filings. Using that type of procedure would be much better from an actuarial and regulatory perspective than the procedure set forth in the proposed regulation.

Department Response: The Florida Legislature statutorily created the FCHLPM in 1995 to develop standards to evaluate and pre-approve catastrophe models for use in ratemaking. This comment proposes an alternative to the current set of proposed regulations that the Commissioner considered but previously rejected because the California Legislature has not enacted similar statutes providing the Commissioner with the authority to evaluate and pre-approve catastrophe models for use in ratemaking. This comment is otherwise not specifically directed at the text of the regulation or rulemaking procedures followed in this regulatory action. Because the comment is neither objecting to the proposed text nor suggesting any changes, no further response is warranted.

The title of this Section appears to indicate that this section deals with Information Determination. The regulation is not clear whether the end result of the PRID will simply be the information required in a rate filing, or if the PRID will be used to determine that the model can be relied upon in the rate filing. That needs to be clarified.

As discussed above, the preferred procedure would be similar to that used by the FCHLPM. Reviewing computer models in the context of individual rate filings would be a duplicative inefficient process. However, the review of computer models in the PRID proceeding should be thorough, complete, detailed and transparent. This is needed so all the participants, as well as the public, are assured that the result is a reasonable impartial assessment of the model that is fair to both insurance companies and policyholders.

However, even if the intent of a PRID is that the model can be relied upon by insurers, it should be made clear that during the rate review process the application of the model by the particular insurance company making the rate filing can be reviewed and evaluated.

> **Department Response:** The text of the proposed regulations makes clear that the purpose of the PRID procedure "shall be for the Department of Insurance to issue a PRID that specifies all required model information to be included in a complete rate application that relies upon the model" and that it "shall not be to determine how a specific model shall apply in any particular complete rate application." To the extent this comment is duplicative of prior written comments, the Commissioner incorporates his prior responses here.

An example of the types of issues that can arise regarding the use and application of a computer model to project losses can be found in an Order by the North Carolina Commissioner of Insurance I/M/O a January 3, 2014 filing by the North Carolina Rate Bureau for Revised Homeowners Insurance Rates.[366] The Order took into account the issues raised by lowering the otherwise calculated losses from the computer model by 13.9%.[377] The North Carolina Court of Appeals upheld the Commissioner's Order stating, "Upon full review of the Commissioner's analysis of the modeled hurricane losses, the Order shows the Commissioner performed a careful review of the evidence and did not arbitrarily reduce the modeled hurricane losses to be used in ratemaking. The Commissioner removed those sources of the modeled hurricane losses that he determined were questionable and not fully supported by the Bureau."[388]

> **Department Response:** This comment is not specifically directed at the text of the regulation or rulemaking procedures followed in this regulatory action. Because the comment is neither objecting to the proposed text nor suggesting any changes, no further response is warranted.

Sub-section (r) states in part that even "if the Model Advisor determines that there is no set of required model information that could reasonably be relied upon to support the use and inclusion of any of the modeled financial projections, modeled catastrophe adjustments, modeled projected losses, or any other type of modeled loss outputs and projections for purposes of reviewing an insurer's complete rate application" the "insurer may still seek to rely upon the model in a subsequent complete rate application." That seems completely unreasonable. If there if no set of information that could show the model "could reasonably be relied upon," there would seem to be no rational basis for allowing that model to be used to charge premiums to California policyholders.

Department Response: The purpose of the proposed regulations is not to determine a model's reliability for an insurer's use in any particular complete rate application. As previously stated, the Commissioner does not expressly approve models. To the extent this comment is duplicative of prior written comments, the Commissioner incorporates his prior responses here.

[1] CIC 1861.02(a)(4) states in part "Those other factors that the commissioner may adopt by regulation and that have a substantial relationship to the risk of loss."
[2] This is consistent with proposed Senate Bill No. 1060.
[3] https://fchlpm.sbafla.com/about-the-fchlpm/
[4] https://fchlpm.sbafla.com/media/532jql0c/2023-hurricane-roa.pdf
[5] *Ibid*.
[6] https://www.ncrb.org/Portals/0/ncrb/personal%20lines%20services/Rate%20Filings/2014%20Commissioners%20O rder.pdf?ver=2019-10-02-142509-227
[7] *Ibid*., Page 94, FOF 225
[8] State ex rel. Comm'r of Ins. v. N.C. Rate Bureau (In re Filing Dated Jan. 3, 2014) 248 N.C. App. 602 (N.C. Ct. App. 2016), 791 S.E.2d 211

386. Oral Comment from Carmen Balber, Consumer Watchdog

Thank you, Lucy, and thank you for the opportunity. My name is Carmen Balber, I'm the executive director of Consumer Watchdog.

We all know, and we have heard testified that Californians are investing massive resources into mitigating their homes and their communities against fire. But the insurance industry is ignoring those steps and abandoning homeowners when they need them most. This has caused the insurance crisis that we're facing right now. The current regulation will make insurance premiums even more affordable for California homeowners, renters, and small business owners across the state, but it won't get Californians access to coverage again.

Commissioner Lara's plan is to allow insurance companies to use unverified black box models to set rates, to charge consumers for unregulated reinsurance and to roll back regulatory oversight that has protected consumers in California for four decades. These so-called solutions are a deal with the insurance industry, but the Commissioner promised that in return consumers would get a quid pro quo for all of these concessions. He said that insurance companies would have to sell to homeowners and fire heirs again. This is false.

The regulation contains no provision requiring insurance companies to expand sales in distressed areas up to 85% of what they sell elsewhere. Instead, insurers can opt to increase sales by just 5% in wildfire areas. You can easily see how a 5% commitment would be marginal for insurers who have already abandoned risky parts of the state, and an insurance company can choose to reject both options in favor of a third undefined alternative commitment that has no standards at all. Insurance companies also will not have to sell a comprehensive policy, they instead can offer a bare bones policy equivalent to what is already available to consumers today on the FAIR plan. That will not leave a single homeowner better off than they are today.

Rate hikes would start on day one, whenever this regulation is approved and a rate hike is approved, but insurers won't report progress towards these commitments for two years, that is, 2027 at the earliest, and then, after those two years, an insurance company who claims to be making a reasonable effort towards meeting their commitment, but who failed to meet their commitment, can put off that commitment indefinitely.

Finally, there are no penalties if a company fails. So, all told, insurers will not have to sell a single new wildfire policy under this regulation, and it's time for the Department and the Commissioner to be honest about that. The other half of this regulation creates a convoluted procedure that's exempt from California's rate transparency requirements in order to create the false impression that somehow, black box catastrophe models are being publicly reviewed and approved. But the PRID, proceeding for black box models violates Prop 103's basic requirement that insurance rates be transparent and justified. It's right there in the name, the Commissioner called it the Pre-application Required Information Determination, not the Catastrophe Model Transparency Review and Approval Regulation.

This regulation does not require approval and review of models. The purpose of the PRID is solely to determine what limited information ends up in a rate application. The regulation creates a process that is really designed to keep models and their algorithms private, violating the state's

public disclosure requirements, and, as other speakers have said, it creates no uniform standards, or really any standards that would require wildfire models be proven, reliable, accurate, or unbiased, that they're using the best science, etc. There are no guidelines for minimum information, meaning whatever is disclosed will be different for every single model, and it actively discourages public participation. So, the promised public review of models and public participation is also false.

Finally, this whole process is voluntary, and any model that's in use, and has already been used in a rate that has been approved in California will be exempt for four years from that approval. So, we urge the Commissioner to rethink this approach. Any use of third-party models in California needs to require public access to the model, mandate standards and testing requirements and approval of these models, so, we have real oversight. Ultimately, as our organization and many other consumer organizations have urged the creation of a public model will better serve Californians, give us confidence that their mitigation efforts are reflected in rates fairly, and the model is accurately predicting climate risk.

We were glad to see the Commissioners finally acknowledged those calls today for the need to investigate in advance the creation of a public wildfire model, but that belated announcement does not fix the flaws in today's regulation. This regulation still needs to be improved in order to require public accountability for the pricing that models are going to be imposing on consumers, because the insurance industry is already shifting all of the costs of climate change onto homeowners. That's why public scrutiny and accountability of rates, including models, impacts on rates, is so important, and also as a final note, why we continue to urge the Commissioner to embrace a mandate, that if consumers do the right thing, mitigate their home against fires, that they are guaranteed access to coverage as well. Thank you.

> **Department Response:** The commenter raises points substantially similar to those provided in the commenter's 45-day comments. The Department directs the commenter to its response to Comment No. 5 *et seq.*

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Commissioner Lara's plan is to allow insurance companies to use unverified black box models to set rates, to charge consumers for unregulated reinsurance and to roll back regulatory oversight that has protected consumers in California for four decades. These so-called solutions are a deal with the insurance industry, but the Commissioner promised that in return consumers would get a quid pro quo for all of these concessions. He said that insurance companies would have to sell to homeowners and fire heirs again. This is false.

The regulation contains no provision requiring insurance companies to expand sales in distressed areas up to 85% of what they sell elsewhere. Instead, insurers can opt to increase sales by just 5% in wildfire areas. You can easily see how a 5% commitment would be marginal for insurers who have already abandoned risky parts of the state, and an insurance company can choose to reject both options in favor of a third undefined alternative commitment that has no standards at all. Insurance companies also will not have to sell a comprehensive policy, they instead can offer a bare bones policy equivalent to what is already available to consumers today on the FAIR plan. That will not leave a single homeowner better off than they are today.

Rate hikes would start on day one, whenever this regulation is approved and a rate hike is approved, but insurers won't report progress towards these commitments for two years, that is, 2027 at the earliest, and then, after those two years, an insurance company who claims to be making a reasonable effort towards meeting their commitment, but who failed to meet their commitment, can put off that commitment indefinitely.

Finally, there are no penalties if a company fails. So, all told, insurers will not have to sell a single new wildfire policy under this regulation, and it's time for the Department and the Commissioner to be honest about that. The other half of this regulation creates a convoluted procedure that's exempt from California's rate transparency requirements in order to create the false impression that somehow, black box catastrophe models are being publicly reviewed and approved. But the PRID, proceeding for black box models violates Prop 103's basic requirement that insurance rates be transparent and justified. It's right there in the name, the Commissioner called it the Pre-application Required Information Determination, not the Catastrophe Model Transparency Review and Approval Regulation.

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public disclosure requirements, and, as other speakers have said, it creates no uniform standards, or really any standards that would require wildfire models be proven, reliable, accurate, or unbiased, that they're using the best science, etc. There are no guidelines for minimum information, meaning whatever is disclosed will be different for every single model, and it actively discourages public participation. So, the promised public review of models and public participation is also false.

Finally, this whole process is voluntary, and any model that's in use, and has already been used in a rate that has been approved in California will be exempt for four years from that approval. So, we urge the Commissioner to rethink this approach. Any use of third-party models in California needs to require public access to the model, mandate standards and testing requirements and approval of these models, so, we have real oversight. Ultimately, as our organization and many other consumer organizations have urged the creation of a public model will better serve Californians, give us confidence that their mitigation efforts are reflected in rates fairly, and the model is accurately predicting climate risk.

We were glad to see the Commissioners finally acknowledged those calls today for the need to investigate in advance the creation of a public wildfire model, but that belated announcement does not fix the flaws in today's regulation. This regulation still needs to be improved in order to require public accountability for the pricing that models are going to be imposing on consumers, because the insurance industry is already shifting all of the costs of climate change onto homeowners. That's why public scrutiny and accountability of rates, including models, impacts on rates, is so important, and also as a final note, why we continue to urge the Commissioner to embrace a mandate, that if consumers do the right thing, mitigate their home against fires, that they are guaranteed access to coverage as well. Thank you.

> **Department Response:** The commenter raises points substantially similar to those provided in the commenter's 45-day comments. The Department directs the commenter to its response to Comment No. 5 *et seq.*

403. Written Comment from Consumer Watchdog

Comments of Consumer Watchdog on October 2, 2024 Amended Regulation Text
Catastrophe Modeling and Ratemaking Rulemaking (REG-2023-00010)

October 17, 2024

The amended regulatory text noticed by the Department on October 2, 2024 fails to resolve nearly every issue Consumer Watchdog raised in its previous comments dated September 17, 2024.

Erecting new hurdles to public participation. While the Department's October 2 amendments added a provision to require notice by an insurer of the filing of a complete rate application relying on a PRID, and eliminated the provision **(Proposed Section 2648.5(h)(4)(A))** requiring a PRID participant to show that "as a result of its participation, the Model Advisor has included in the PRID additional information or data regarding the model that would not otherwise have been identified," which as Consumer Watchdog discussed in prior comments directly contravened Insurance Code section 1861.10(b), the amendments erect new hurdles to consumer participation.

> **Department Response**: This is an introductory comment not specifically directed at the text of the regulation or rulemaking procedures followed in this regulatory action. Because the comment is neither objecting to the proposed text nor suggesting any changes, no further response is warranted.

The amended regulation replaces the deleted provision with another onerous provision restricting participants' ability to seek compensation unless and until a complete rate application relying on the PRID is resolved. Previously, a PRID participant could request compensation for work done in the PRID procedure immediately after issuance of the PRID. Now, participants are required to wait until "after the resolution of a complete rate application relying upon the PRID." **(Proposed Section 2648.5(h)(6)(D).)** There are three major problems with this change. First, if a PRID procedure does not ultimately result in a PRID being issued –for example, because a participant demonstrated problems with the model – a participant can never be compensated for work done in the PRID process. Second, if no complete rate application ever "relies" on the PRID, a participant can never be compensated for work done in the PRID process. Third, requiring participants to wait for a complete rate application relying upon a PRID to be resolved before seeking compensation will substantially delay any award of compensation for many months, if not years, after the work was performed.

The third point is problematic for several reasons. The Department has recently taken the position that it would like to see a more diverse range of consumer intervenors and participants in Departmental matters. Consumer Watchdog would also welcome more voices representing insurance consumers before the Department of Insurance. However, conditioning compensation for a PRID procedure on the PRID's eventual usage in a resolved complete rate application means participants will be required to wait a substantial length of time to obtain compensation, presuming the PRID is ever relied upon at all. This built-in uncertainty as to whether

compensation can ultimately be sought for the work performed in the PRID process potentially months or years down the road will significantly discourage many potential participants from seeking to participate in the first place. (See *Economic Empowerment Foundation v. Quackenbush* (1997) 57 Cal.App.4th 677, 686 [the "purpose of intervenor fees is evidently to encourage consumers to participate … by compensating them for their contribution"].)

The Department has characterized the PRID process as a way "to allow the public a fulsome opportunity to thoroughly investigate the inner workings of models." (Initial Statement of Reasons, p. 7.) However, its proposed regulation text throughout this regulatory process and in the October 2 amendments has been contrary to this stated goal. Having removed one objectionable substantive standard that consumer participants must meet to be entitled to compensation, the Department now implements mandatory procedural delays in compensation, while also removing any guarantee that a participant in a PRID process will be able to ultimately seek compensation regardless of the amount of work done. If fulsome public review is desired, participants should be entitled to seek compensation at the time a PRID process concludes.

> **Department Response**: The problems identified by the commenter are with applicable law, not the proposed regulation. Under Insurance Code section 1861.10, consumer participants are entitled to reasonable advocacy and witness fees but must demonstrate, in part, that they have "made a substantial contribution to the adoption of any order, regulation, or decision *by the commissioner or a court*." (Emphasis added.) The PRID procedure is an initial nonadjudicative determination by Department staff and not an order or decision by the commissioner or a court. Accordingly, the issuance of the PRID cannot be a triggering event for a request for compensation. In an effort to encourage consumer participation and to ensure that compensation is fair and reasonable, the Commissioner has made the following changes to Subdivision (h)(6) and created a pathway for consumer participants to seek and receive compensation that accords with Insurance Code section 1861.10. With that said, consumer representative participants in Proposition 103 proceedings are not guaranteed or entitled to automatic compensation. The amended language does not result in any more uncertainty as to whether a consumer representative participant will ultimately receive compensation.

No mandate wildfire mitigation be considered in sales decisions or rate segmentation.

In public statements, the Commissioner has repeatedly said that this regulation is needed to allow insurance companies to take into account wildfire mitigation. The implication is that the regulation will make companies consider mitigation when deciding who gets insurance, and what they will pay based on their individual fire risk. However, as other public interest organizations have also testified, **Proposed Section 2644.4.5(f)(4)** only requires models that determine an insurance company's catastrophe adjustment – or how much rates should increase based on the overall projected average annual losses for the insurer due to catastrophe - consider "risk mitigation at the property, community and landscape scales". The October 2 amendments added "nature-based flood risk reduction" to this consideration. However, these amendments did not change how insurance companies use models to generate the wildfire scores that price an individual's wildfire risk, or how they use wildfire scores to decide who to deny coverage entirely. The existing "Mitigation in Rating Plans" regulation –Section 2644.9 – governs such

rating decisions for individual properties. That regulation does not mandate that wildfire risk models used to classify or rate individual structures consider property, community or landscape-scale mitigation in sales or rating decisions, however. Instead, under that regulation as applied by the Department, insurance companies have only been required to offer marginal discounts for property and community-level mitigation steps as their reflection of mitigation in rates.

> **Department Response**: The proposed regulations require, in Subdivision (f)(4) of Section 2644.4.5, that insurers demonstrate that catastrophe models used for purposes of projecting annual losses "incorporate[] what in the Commissioner's assessment is the best available scientific information on risk mitigation at the property, community, and landscape scales." As the commenter correctly notes, Section 2644.9 governs the use of models in rating plans to price individual risks and proposed amendments to that section are beyond the scope of this regulatory proposal. The commenter alleges no inconsistency between these two provisions, so no further response is warranted.

Despite the Commissioner's promises of transparency, the process set forth in the proposed regulations does not entitle the public to any more in-depth review of models than occurs today. The Department has been clear, and the October 2 amendments confirm, that the PRID process is not intended to determine whether a model is actually reliable and will result in premiums that are fair and not excessive.

> **Department Response:** The commenter submits comments that are substantively identical to those it previously offered in its September 17, 2024 letter submitted in response to the Department's Notice of Proposed Action. The Department refers the commenter to the Department's prior response to comment no. 5.

EXHIBIT 20

State of California
Office of Administrative Law

In re: **Department of Insurance**	**NOTICE OF FILING AND PRINTING ONLY**
Regulatory Action:	**Government Code Section 11343.8**
Title 10, California Code of Regulations	**OAL Matter Number: 2024-1113-01**
Adopt sections: 2644.4.5, 2644.4.8, and 2648.5 **Amend sections:** 2644.4, 2644.5, 2644.8, and 2644.27	**OAL Matter Type: File and Print Only (FP)**

In this file-and-print action, the Department of Insurance is adopting and amending regulations regarding rate application and variance request requirements for insurers, which are part of the regulations implementing Proposition 103. Specifically, these regulations will, amongst other things, (1) permit insurers to use forward-looking catastrophe models in their rate calculations, (2) change the rate-making formula, and (3) create a procedure to allow the public to investigate these models. This action is exempt from the Administrative Procedure Act pursuant to Government Code section 11340.9, subdivision (g), and was submitted to the Office of Administrative Law ("OAL") only for filing with the Secretary of State (the "SOS") and printing in the California Code of Regulations (the "CCR").

OAL filed these regulations with the SOS, and will publish the regulations in the CCR.

Date: December 12, 2024

Steven J. Escobar
Senior Attorney

Original: Ricardo Lara, Commissioner
Copy: George Teekell

For: Kenneth J. Pogue
Director

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

FILE PRINT

STD. 400 (REV. 10/2019)

For use by Secretary of State only

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

DEC 12 2024
1:46 PM AB

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z- 2024-0806-05	2024-1113-01P	

For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW
2024 NOV 18 AM 11:49

NOTICE | REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY: California Department of Insurance

AGENCY FILE NUMBER (If any): REG-2023-00010

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE

3. NOTICE TYPE	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
☐ Notice re Proposed Regulatory Action ☐ Other			

OAL USE ONLY	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
	☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn	2024,33-Z	8/16/24

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S): Catastrophe Modeling and Ratemaking

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S):

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT: 2644.4.5, 2644.4.8, 2648.5

AMEND: 2644.4, 2644.5, 2644.8, 2644.27

TITLE(S): 10

REPEAL:

3. TYPE OF FILING

- ☐ Regular Rulemaking (Gov. Code §11346)
- ☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- ☐ Emergency (Gov. Code, §11346.1(b))
- ☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
- ☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- ☐ Emergency Readopt (Gov. Code, §11346.1(h))
- ☒ File & Print
- ☐ Print Only
- ☒ Other (Specify) Gov. Code Section 11340.9(g)
- ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)

PER AGENCY REQUEST SJE 12/11/2024

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
October 2, 2024-October 17, 2024

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
- ☐ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
- ☒ Effective on filing with Secretary of State
- ☐ §100 Changes Without Regulatory Effect
- ☐ Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
- ☐ Department of Finance (Form STD. 399) (SAM §6660)
- ☐ Fair Political Practices Commission
- ☐ State Fire Marshal
- ☐ Other (Specify)

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
George Teekell	(415) 538-4390		George.Teekell@insurance.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE: Lucy Wang — DATE: 11/8/24

TYPED NAME AND TITLE OF SIGNATORY: Lucy Wang, Deputy Commissioner & Special Counsel

For use by Office of Administrative Law (OAL) only

AUTHORIZED FOR FILING AND PRINTING

DEC 12 2024

Office of Administrative Law

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

FINAL TEXT OF REGULATION

CATASTROPHE MODELING AND RATEMAKING

November 13, 2024 **REG-2023-00010**

Title 10. Investment
Chapter 5. Insurance Commissioner
Subchapter 4.8 Review of Rates
Article 4. Determination of Reasonable Rates

Amend Section 2644.4. Projected Losses.

(a) Unless projected losses are based on catastrophe models as permitted pursuant to subdivision (d) of this Section 2644.4, ~~"P~~projected losses~~"~~ means the insurer's historic noncatastrophe losses per exposure, adjusted by catastrophe adjustment, as prescribed in ~~s~~Section 2644.5, by loss development, as prescribed in ~~s~~Section 2644.6, and by loss trend, as prescribed in ~~s~~Section 2644.7.

(b) Projected losses shall be calculated by applying the loss development and loss trend factor separately to data from each accident-year, report year or policy year, as applicable, in the recorded period.

(1) For occurrence policies, projected losses shall be calculated on an accident-year basis. ~~However,~~

(2) ~~f~~For claims-made policies, projected losses shall be calculated on a report-year basis.

(3~~e~~) For mechanical breakdown and similar insurance as defined in subdivision (b) of Section 2642.7~~policies providing multi-year coverage, such as mechanical breakdown~~, projected losses may be calculated on a policy-year basis.

(c~~d~~) For professional liability and errors and omissions coverage, the insurer shall, in lieu of the computation of projected losses specified in ~~s~~Sections 2644.5 through 2644.7, tender an alternative computation of projected losses, which the Commissioner shall approve if the Commissioner finds the projection to have been made in the most actuarially sound ~~actuarial~~ manner. ~~Nothing in this section precludes the Commissioner from requiring the additional filing of~~The insurer shall also provide projected losses computed in the manner specified in ~~s~~Sections 2644.5 through 2644.7 and in any other manner as may be required by the Commissioner.

(d) For the earthquake, flood, or any other line of insurance for which projected losses are permitted to be modeled pursuant to subdivision (c) of Section 2644.4.5, projected losses may be based on catastrophe models.

~~(e) For the earthquake line of business and for the fire following earthquake exposure in other lines, projected losses and defense and cost containment expenses may be based on complex catastrophe models using geological and structural engineering science and insurance claim expertise. The use of such models shall conform to the standards of practice as set forth by the Actuarial Standards Board and the applicant shall have the burden of proving, by a preponderance of the evidence, that the model is based upon the best available scientific information for assessing earthquake frequency, severity, damage and loss, and that the projected losses derived from the model meet all applicable statutory standards.~~

Note: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi;* (1994) 8 Cal.4th 216 ~~(1994)~~. Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805.

Adopt Section 2644.4.5. Use of Catastrophe Models.

(a) Permitted uses.

(1) For the earthquake and flood lines, projected annual aggregate losses may be based on catastrophe models.

(2) The catastrophe adjustment for the fire following earthquake exposure, and for terrorism exposure, in lines other than earthquake and flood may be based on projected annual aggregate losses derived from catastrophe models.

(b) Wildfire exposure.

The catastrophe adjustment for wildfire exposure for commercial property insurance may be based on catastrophe models, provided that the insurer complies with the provisions of Section 2644.4.8 that are applicable to commercial property insurance. The catastrophe adjustment for wildfire exposure for "qualifying residential property insurance," as that term is defined in Section 2644.4.8, may be based on catastrophe models, provided that the insurer complies with the provisions of Section 2644.4.8 that are applicable to such qualifying residential property insurance. For an insurer that thus complies with Section 2644.4.8 with respect to such qualifying residential property insurance, the catastrophe adjustment for wildfire exposure covered under a renter's insurance policy, an HO-6 policy, or the equivalent of an HO-6 policy, may also be based on catastrophe models.

(c) Additional lines or exposures.

(1) In addition to the permissible uses of catastrophe models specified in subdivisions (a) and (b) of this Section 2644.4.5, at the Commissioner's discretion, models may be used in cases where limited historic insurance data is available:

(A) To project annual aggregate losses in lines of insurance other than those specified in subdivision (a)(1) of this section, or

(B) To determine the catastrophe adjustment for exposures to perils other than those specified in subdivision (a)(2) or (b) of this section.

(2) The Commissioner may allow modeling for such additional lines or exposures only if, taking into account the circumstances under which, and the conditions pursuant to which, modeling for the additional line or coverage in question is to be permitted, it is in the Commissioner's judgment reasonably foreseeable that permitting modeling would serve two or more of the following purposes of Proposition 103:

(A) Protecting consumers from arbitrary insurance rates and practices.

(B) Encouraging a competitive insurance marketplace.

(C) Ensuring that insurance is fair, available and affordable to all Californians.

(3) In the event the requirement of subdivision (c)(2) of this section is satisfied, the Commissioner's decision as to whether to allow modeling for additional lines or exposures shall be based upon the following factors:

(A) The degree to which the peril is an emerging or a newly recognized peril for ratemaking purposes.

(B) The degree to which a model is likely to be reliable for ratemaking purposes.

(C) The extent to which any historical insurance data is unavailable.

(D) The degree to which available historical insurance data is not predictive of future costs.

(d) Under no circumstances, however, will modeling be permitted for the reason that an individual company lacks data that is otherwise available.

(e) Catastrophe models shall be run on the insurer's in-force business as of the end of the most recent year in the recorded period.

(f) The use of catastrophe models shall conform to the standards of practice as set forth by the Actuarial Standards Board, and the applicant shall have the burden of demonstrating that:

(1) the model is based upon what in the Commissioner's assessment is the best available scientific information for assessing frequency, severity, damage and loss,

(2) the applicant's use of its selected model(s) produces the most actuarially sound estimate of projected catastrophe losses,

(3) the projected losses derived from the model meet all applicable statutory, regulatory and other legal standards, and

(4) the model incorporates what in the Commissioner's assessment is the best available scientific information on risk mitigation at the property, community, and landscape scales including, but not limited to forest management, prescribed fire, nature-based flood risk reduction, and risk mitigation initiated by local and regional utility companies.

(g) This section is hereby expressly included within the range of regulations sections specified in subdivision (a) of Section 2648.4, notwithstanding that this section's adoption is subsequent in time to the adoption of, or the effectiveness of any amendments to, Section 2648.4.

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805.

Adopt Section 2644.4.8. Distressed Areas; Insurer Commitments.

An insurer that opts to make, fulfill and document the fulfillment of its insurer commitments in the manner specified in this Section 2644.4.8 may use catastrophe modeling as permitted by Subdivision (b) of Section 2644.4.5.

As used in this section, the term "qualifying residential property insurance" shall mean a policy of residential property insurance as defined in Insurance Code section 10087, except that renter's insurance policies do not fall within the meaning of qualifying residential property insurance. Additionally, an HO-6 policy, or its equivalent, is not included within the meaning of qualifying residential property insurance.

(a) Distressed areas, and properties insured by FAIR Plan policies, that are to be used in insurer commitments.

(1) Distressed areas.

For purposes of this section distressed areas shall include the following:

(A) Undermarketed ZIP Codes.

The Commissioner shall publish an initial bulletin containing a list of the Undermarketed ZIP Codes determined pursuant to this subdivision (a)(1)(A). The Commissioner shall by subsequent bulletins update the list of Undermarketed ZIP Codes from time to time as conditions warrant, but in any event no less frequently than once per year. For purposes of this section, an Undermarketed ZIP Code shall mean a ZIP Code, as determined by the Commissioner, which at least partially overlaps a high or very high fire hazard severity zone as shown on current maps published by the Department of Forestry and Fire Protection (Cal Fire) and in which ZIP Code either:

1. At least fifteen percent (15%) of the sum of the following are insured by the FAIR Plan:

   a. The number of residential properties in the ZIP Code that are insured by the FAIR Plan, and

   b. The number of residential properties in the ZIP Code that are insured in the voluntary market by admitted insurers under a policy of qualifying residential property insurance; or

2. The average premium per $1,000.00 of Coverage A in the ZIP Code is at least four dollars ($4.00) while the median income of the ZIP Code is no higher than the fiftieth (50th) percentile for California.

(B) Distressed counties.

The Commissioner shall publish an initial bulletin containing a list of the distressed counties determined pursuant to this subdivision (a)(1)(B). The Commissioner shall by subsequent bulletins update the list of distressed counties from time to time as conditions warrant, but in any event no less frequently than once per year. For purposes of this section, a county shall be a distressed county if the percentage of structures situated in that county that are at high or very high wildfire risk is no lower than the 50th percentile of counties in the state, as determined by the Commissioner.

(2) Properties insured by the FAIR Plan exposed to wildfire risk.
Policies insuring properties that the insurer has classified as moderate to very high wildfire risk and that immediately prior to the insurer's insuring them, on a date subsequent to the approval of its rate application described in subdivision (c) of this section, had been covered under the FAIR Plan.

(b) Statewide market calculations.

(1) Calculation of statewide market share.

For purposes of this section the Department will calculate an estimate of the number of earned exposures of qualifying residential property insurance statewide based on the most recent experience year reported to the Department, such initial evaluation period ending on December 31, 2023, which figure shall be used as the denominator in the calculation of statewide market share for each insurer. The Commissioner shall publish a bulletin with the estimate of statewide earned exposures, no less frequently than once per year.

The numerator to be used in the calculation of each insurer's statewide market share shall be the number of earned exposures of qualifying residential property insurance policies in the most recent 12-month period used in its recorded period as submitted in the insurer's rate application pursuant to subdivision (c) of this section.

In order to calculate its statewide market share, the insurer shall divide its numerator by the denominator, each as described in this subdivision (b)(1), and the insurer's statewide market share shall be the resulting quotient, rounded to the thousandths place.

(2) Statewide distressed areas earned exposures.

For purposes of this section the Department will calculate an estimate of the total number of earned exposures of qualifying residential property insurance in both the voluntary market and the FAIR Plan inside the distressed areas of the state based on the most recent experience year/dataset reporting such relevant information to the Department, such initial evaluation period ending on December 31, 2023, which figure shall be used in the calculation of each insurer's residential commitment inside the distressed areas pursuant to subdivision (d) below. The Commissioner shall publish a bulletin that includes the estimate of statewide distressed areas earned exposures, no less frequently than once per year.

(c) The insurer shall, as part of a complete rate application filing pursuant to Section 2648.4, submit an insurer commitment as set forth in subdivision (d), (f) and/or (j) of this section.

(d) Insurer commitments with respect to qualifying residential property insurance.

The insurer shall commit in writing to achieving no later than two years (730 days) after the approval of its rate filing (the insurer's "performance date" hereinafter), or maintaining, the insurer's earned exposure commitment in the distressed areas of the state as follows:

(1) Eighty-five percent standard.

(A) The insurer shall commit to write in distressed areas a number of policies that is no less than the product of (1) the insurer's statewide market share, as calculated pursuant to subdivision (b)(1), (2) 0.85, and (3) the total number of statewide distressed areas earned exposures pursuant to subdivision (b)(2) of this section; or

(B) In the event the insurer already meets or exceed the eighty-five percent standard set forth above in subdivision (d)(1)(A) of this section at the time of its rate application, the insurer shall commit to maintaining at least the same number of earned exposures in the distressed areas as it reported in the rate application filing pursuant to subdivision (c), for at least three years (1,095 days) after the approval of the rate application.

(2) Five percent increment.

The insurer may instead commit to writing additional policies as specified in subdivision (d)(3) in the voluntary market inside the distressed areas of the state such that, on the performance date, the insurer has increased its number of earned exposures inside the distressed areas by at least the number of policies equal to five percent (5%) of its earned exposures in the distressed areas of the state within the most recent 12 month period used in its recorded period as submitted in the insurer's rate application pursuant to subdivision (c) of the section.

(3) In the event that one or more of the bulletins described in subdivision (a) of this section that is or are referred to in an insurer's approved rate application pursuant to subdivision (c) of this section (the insurer's "starting bulletin or bulletins" hereinafter) have been updated since the time the application was filed, then the insurer may satisfy its insurer commitment by:

(A) Writing policies in distressed areas as defined in the insurer's starting bulletin or bulletins and/or in any subsequently updated bulletin as the commissioner may publish from time to time; or

(B) If subdivision (d)(1)(B) of this section is applicable to the rate application, maintaining earned exposures in distressed areas as defined in the insurer's starting bulletin or bulletins and/or in any subsequently updated bulletin as the commissioner may publish from time to time.

(4) The additional policies written in order to satisfy the requirement of this subdivision (d) shall include only the following:

(A) Policies of qualifying residential property insurance insuring properties in distressed areas of the state; and/or

(B) Policies of qualifying residential property insurance insuring properties that the insurer has classified as moderate to very high wildfire risk and that immediately prior to the insurer's insuring them, on a date subsequent to the approval of its rate application described in subdivision (c) of this section, had been covered under the FAIR Plan.

An insurer may count a policy described in this subdivision (d)(4)(B) as insuring a property within the distressed areas of the state for purposes of fulfilling its insurer commitment, any contrary provision of this section notwithstanding.

(e) Low-premium-volume insurers.

(1) An insurer whose direct California annual premium from qualifying residential property insurance policies is less than $10 million may comply with this section without making an insurer commitment pursuant to subdivision (d) of this section, until such time as subdivision (e)(2) is applicable to the insurer.

(2) No later than March 31 of the calendar year immediately following the calendar year during which an insurer described in subdivision (e)(1) of this section determines that it has met or exceeded $10 million of direct California annual premium from qualifying residential property insurance policies, the insurer shall submit a rate application as described in subdivision (c) of this section, which application contains an insurer commitment that conforms to subdivision (d) of this section.

(3) An insurer described in subdivision (e)(1) of this section shall calculate its direct California annual premium from qualifying residential property insurance policies annually.

(f) Insurer commitments with respect to commercial property insurance.

(1) For purposes of this subdivision (f), eligible ZIP Codes shall include all ZIP Codes in the state that at least partially overlap a high or very high fire hazard severity zone, as shown on the most current map published by Cal Fire. The Commissioner shall publish an initial bulletin containing a list of the eligible ZIP Codes determined pursuant to this subdivision (f)(1). The Commissioner shall by subsequent bulletins update the list of eligible ZIP Codes from time to time as conditions warrant.

(2) Insured exposure requirement. At the time of an insurer's first rate application filing subsequent to the effective date of this section, the insurer must commit in writing to increase, no later than two years (730 days) after the approval of that rate application, its writing of policies such that it insures additional properties in eligible ZIP codes whose total insurable value is, in the aggregate, at least equal to five percent (5%) of the sum of the total insurable value of its insured properties in all the eligible ZIP codes, taken as a whole, as of the end of the most recent 12-month period used in its recorded period.

(3) In the event that the bulletin described in subdivision (f)(1) of this section that is referred to in an insurer's approved rate application pursuant to subdivision (f)(2) of this section (the insurer's "initial bulletin" hereinafter) has been updated since the time the application was filed, then the insurer may satisfy its insurer commitment by writing policies in eligible ZIP Codes as defined in the insurer's initial bulletin and/or in any subsequently updated bulletin as the commissioner may publish from time to time pursuant to subdivision (f)(1).

(4) In the event the insurer is unable to timely meet the requirement in (f)(2), the insurer shall file a new application pursuant to subdivision (h)(1)(C), if applicable, or subdivision (h)(2), of this section.

(g) Documenting the insurer's fulfilment of its insurer commitment.

The insurer shall create and maintain a wildfire risk portfolio. An insured property shall be added to the insurer's wildfire risk portfolio at the time the location and, if applicable, prior FAIR Plan coverage status of the insured property are fully documented pursuant to the provisions of this subdivision (g).

(1) For qualified residential insurer commitment.

(A) In addition to the material called for in subdivision (g)(3) below that is applicable to any property in its wildfire risk portfolio, the insurer shall maintain and keep current a document entitled "Wildfire Risk Portfolio Register," which shall list, for each property added to the portfolio, the following information: the date the property was added to the portfolio; the address of the property, including the ZIP Code; if the property is being added to the portfolio solely on the basis that it lies within a distressed county but not any Undermarketed ZIP Code, the county in which the property is situated; the inception date of the policy; the termination date of the policy, if the policy has terminated; and if the property is being added to the portfolio on the basis of subdivision (g)(1)(B), below, an identification of the insurer's documentation of the property's prior FAIR Plan coverage.

(B) To document that the FAIR Plan was insuring the property in question immediately prior to the inception, on or after the effective date of this section, of a policy insuring that property that is issued by the insurer seeking to add the property to its portfolio after such effective date, the insurer shall have on file:

1. A carrier discovery report or

2. Other documentation demonstrating that the property had been insured under the FAIR plan immediately preceding the date the insurer issues its policy. Such documentation may include (1) copies of declaration pages from the FAIR Plan, (2) a subscribing loss underwriting exchange report and/or (3) an electronic copy of the entire application completed by the insured and submitted to the insurer, on which application the insured has identified the prior insurer as the FAIR Plan.

(2) For commercial insurer commitment. In addition to the material called for in subdivisions (g)(3) below that is applicable to any property in its wildfire risk portfolio, the insurer shall maintain and keep current a document entitled "Wildfire Risk Portfolio Register," which shall list, for each property added to the portfolio, the following information: the date the property was added to the portfolio; the address of the property, including the ZIP Code; the total number of exposures insured under each policy; the inception date of the policy; the property's total insurable value, and the termination date of the policy, if the policy has terminated.

(3) For both qualified residential insurer commitment and commercial insurer commitment.

(A) The Wildfire Risk Portfolio Register shall be maintained as a digital file that is sortable by all fields.

(B) The insurer shall maintain a digital file for each insured property added to its wildfire risk portfolio, in which file shall be stored an electronic copy of each record necessary for purposes of supporting the property's status of lying within a distressed area of the state for purposes of satisfying the insurer's insurer commitment.

(C) The insurer shall maintain its Wildfire Risk Portfolio Register, as well as the digital file described in subdivision (g)(3)(B) of this section for each

property added to its wildfire risk portfolio, until such time as at least five years (1,825 days) have passed since:

1. The date that is two years (730 days) following the approval of the insurer's rate application pursuant to subdivision (c) of this section, in the event that subdivision (d)(1)(A), (d)(2) or (f)(2) of this section is applicable;

2. The date that is three years (1,095 days) following the approval of the insurer's rate application pursuant to subdivision (d) of this section, in the event that subdivision (d)(1)(B) of this section is applicable;

3. The date by which the insurer has committed to fulfill or complete the fulfilment of its alternative commitment, in the event that subdivision (j) of this section is applicable; or

4. The date of the approval of the insurer's rate application renouncing the insurer's insurer commitment, in the event that subdivision (h)(2) of this section is applicable.

(h) Modification of, or failure to fulfill, insurer commitment.

(1) Modification when insurer loses significant market share.

(A) Residential insurers whose insurer commitment stated in the original rate application filing included an undertaking to write additional policies in distressed areas.

In the event that, subsequent to approval of its rate application described in subdivision (c) of this section (hereinafter, the "original application"), an insurer files a new rate application in which the insurer recalculates its insurer commitment as specified in subdivision (d) of this section on the basis that the insurer's statewide market share as calculated pursuant to subdivision (b)(1) of this section is at least five percent (5%) lower than was used for purposes of calculating the insurer commitment contained in the insurer's original rate application, then the new rate application may contain a modified insurer commitment pursuant to subdivision (d) of this section that reflects the recalculated insurer commitment, which insurer commitment shall become effective if and when the new rate application is approved.

(B) Residential insurers whose performance met or exceeded the applicable standard or requirement at the time of initial rate application filing.

An insurer may modify its insurer commitment that was made pursuant to subdivision (d)(1)(B) of this section as follows: The insurer may reduce its earned exposures in distressed areas of the state by up to five percent (5%) below the level reported in the original application, to the extent that is indicated by the amount of the diminution of the insurer's statewide market share, but in no event below the eighty-five percent standard set forth in subdivision (d)(1)(B) of this section.

(C) Modification of commercial insurer commitments.

An insurer may modify its insurer commitment as follows: In the event the insurer is unable to timely meet the requirement in (f)(2), the insurer shall file a new application in which it modifies its insurer commitment accordingly. The insurer may reduce its insurer commitment in eligible ZIP Codes of the state by no more than the decline in its total insurable value reported in the original rate application filing.

(2) Failure to fulfill an insurer commitment.

If at any time an insurer fails to fulfill its insurer commitment, or within a period of two years after the approval of its original application, or at any point thereafter, fails to make reasonable progress toward timely fulfilling its insurer commitment, then the insurer shall immediately submit a new rate application renouncing its insurer commitment as described in subdivision (d) or (f) of this section. In this case the new rate application shall not make use of catastrophe modeling as permitted by Section 2644.4.5.

(i) Insurer Attestation.

An insurer that obtained approval to use catastrophe modeling in its original application shall file one of the following attestations in every subsequent rate application until such time as that insurer has attested that it has fulfilled its commitment:

(1) An attestation that the insurer has fulfilled, or is taking reasonable steps to fulfill, its insurer commitment.

(2) An attestation that the insurer's rate application modifying its insurer commitment pursuant to subdivision (h)(1) of this section has been approved and the insurer has fulfilled, or is taking reasonable steps to fulfill, its modified insurer commitment.

(j) Alternative Insurer Commitments.

Any contrary provision of this section notwithstanding, if for any of the reasons stated in subdivision (j)(1) of this section, an insurer is unable, in good faith, to make a commitment as set forth in subdivisions (d) or (f) of this section, then an insurer may propose an alternative commitment in a complete rate application filing pursuant to subdivision (c), as described in subdivision (j)(2) of this section:

(1) An insurer may propose an alternative commitment pursuant to this subdivision (j) on one or more of the following bases:

(A) its size,

(B) its scope of coverages, or

(C) the frequency or severity of recent events impacting the insurer.

(2) Such rate application filing shall include a statement:

(A) setting forth the reason why this subdivision (j) is applicable, and

(B) describing the proposed alternative commitment in sufficient detail to allow the Commissioner to evaluate whether the alternative increases availability of qualifying residential property insurance and/or commercial property insurance.

(k) Nothing in this section shall be construed as limiting, in any way, an insurer's ability to offer qualifying residential property insurance or commercial property insurance in this state.

(*l*) If any provision or clause of this section or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this section which can be given effect without the invalid provision or application. To this end, the provisions of this section are hereby declared to be severable.

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company* v. *Deukmejian* (1989) 48 Cal.3d 805.

Amend Section 2644.5. Catastrophe Adjustment.

In those insurance lines and coverages where catastrophes occur, the actual catastrophic losses of any one ~~accident~~ year in the recorded period are replaced by an adjustment based on the average annual loss generated from one or more catastrophe models as described in Section 2644.4.5, or

an adjustment based on a multi-year, long-term average of catastrophe losses net of actual and anticipated salvage and subrogation recoveries, as described in subdivision (b) of this section, or except as prohibited in subdivision (e) of this section a combination of the methods specified in subdivisions (a) and (b).

(a) For fire following earthquake, wildfire, and terrorism exposures in any line of insurance, an insurer may include an adjustment based on the average annual loss generated from one or more catastrophe models. The use of such models shall comply with the requirements set forth in subdivision (e) of Section 2644.4.5. Further, the average annual loss may be adjusted to include a provision for defense and cost containment expenses (DCCE), either by applying a historical ratio of noncatastrophe DCCE to noncatastrophe loss or by applying a historical ratio of catastrophe DCCE to catastrophe loss.

(b) In any event, an insurer may project its catastrophe adjustment~~loading~~ based on a multi-year, long-term average of catastrophe ~~claims~~losses and DCCE, net of actual and anticipated salvage and subrogation recoveries. Catastrophe adjustment for perils other than those that are permitted to be modeled under subdivision (a) of this section or pursuant to subdivision (c) of Section 2644.4.5 must be based on such multiyear long-term average.

(1) For residential and commercial property lines, the adjustment shall be based on the average of the ratio of ultimate catastrophe losses and DCCE to amount of insurance years (AIY). For purposes of this section, the term AIY shall reflect the total combined limits (dwelling, additional structures, personal contents and loss of use) pertaining to the property coverages underlying each policy. For private passenger and commercial automobile physical damage, the adjustment shall be based on the average of the ratio of ultimate catastrophe losses and DCCE to ultimate noncatastrophe losses and DCCE.

(2) The number of years over which the average shall be calculated shall be at least 20 years for ~~homeowners multiple peril fire,~~residential and commercial property lines and at least 10 years for private passenger, and commercial, auto physical damage. Where the insurer does not have enough years of data, or has a limited amount of data for years for which it does have data, the insurer's data shall be supplemented by appropriate data for those years. The number of years over which the average shall be calculated for any other line with catastrophe exposure that is permitted under this subdivision (b) to have a catastrophe adjustment shall be based on the most actuarially sound assumptions. There shall be no catastrophe adjustment for private passenger, or commercial, auto liability.

(c) Regardless of which method is used for catastrophe adjustment, insurers shall submit all of the following, based on the data aggregation method used for the recorded period,

whether the recorded period is expressed in terms of accident years, policy years or report years, through the most recent year of the recorded period:

(1) The insurer's history, by year, of California catastrophe losses, displayed separately for paid losses, case-incurred losses and Incurred But Not Reported (IBNR) reserves.

(2) The insurer's history, by year, of California noncatastrophe losses, displayed separately for paid losses, case-incurred losses and IBNR reserves.

(3) The insurer's history, by year, of California catastrophe Defense and Cost Containment Expenses (DCCE), displayed separately for paid DCCE, case-incurred DCCE and IBNR reserves.

(4) The insurer's history, by year, of California noncatastrophe DCCE, displayed separately for paid DCCE, case-incurred DCCE and IBNR reserves.

(5) The insurer's history, by year, of California received salvage and subrogation recoveries. Subrogation recoveries shall include the proceeds of any actual sale or divestiture of subrogation rights.

(6) The insurer's history, by year, of California anticipated salvage and subrogation recoverables. Subrogation recoverables shall include the reasonably foreseeable proceeds of any anticipated sale or divestiture of subrogation rights.

(7) The insurer's history, by year, of California AIY for residential and commercial property lines.

(8) For residential and commercial property lines, the insurer's projected AIY for the policy effective period. The trend factor that is used to project AIY shall be based on the exponential curve of best fit. Insurers shall file the most recent 27 quarters of company-specific AIY and earned exposure data. The insurer shall file its rate change application using the single data period for AIY and, as specified in section 2644.7, premium and loss trend, which data period the insurer determines to be the most actuarially sound. The Commissioner may require the use of an alternative data period if the Commissioner determines that use of such alternative data period is the most actuarially sound approach.

(9) For private passenger and commercial auto physical damage, the insurer's projected ultimate noncatastrophe losses for the most recent year in the recorded period, as determined by the application of Sections 2644.6 and 2644.7.

(10) The insurer's current definition of catastrophe and the period of time it has used such definition.

(11) The insurer's definition of wildfire and the period of time it has used such definition.

(12) The name of any major event or events contributing to the year's catastrophic losses, for instance, the "Cedar Fire," and the peril or perils associated with those losses.

(d) The catastrophe adjustment shall reflect any changes between the insurer's historical and prospective exposure to catastrophe due to a change in ~~the~~:

(1) The insurer's coverage or other policy terms; or

(2) The insurer's mix of business. ~~There shall be no catastrophe adjustment for private passenger auto liability.~~

(e) For any individual peril, projected aggregate catastrophe losses cannot be based upon a combination of modeled and historical losses associated with that peril.

(f) Catastrophe adjustment, whether based on modeled or nonmodeled losses as prescribed by 2644.5(a) or (b) above, shall apply as a single annual projection once all other adjustments to loss have been made. The catastrophe adjustment shall be expressed as a dollar amount of catastrophe losses per earned exposure, where earned exposure is taken from the most recent year of the recorded period.

(g) For residential and commercial property lines, no trend shall be applied to the catastrophe adjustment except for the trend factor that is used to project AIY as described in subdivision (c)(8) of this section.

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi*, (1994) 8 Cal.4th 216 ~~(1994)~~. Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805.

Amend Section 2644.8. Projected Defense and Cost Containment Expenses.

(a) The meaning of the term "~~P~~projected defense and cost containment expenses (DCCE)" ~~means~~includes both the company's noncatastrophe historic costs ~~per exposure~~ associated with the defense and cost containment of noncatastrophe claims, ~~adjusted for catastrophes,~~ developed and trended in the manner described in ~~s~~Sections ~~2644.5,~~ 2644.6 and 2644.7, and the company's costs associated with the defense and cost containment of catastrophe claims, as prescribed in Section 2644.5.

(1) DCCE associated with noncatastrophe losses shall be developed:

(A) separately from losses;

(B) with losses; or

(C) as a ratio to losses.

(2) DCCE associated with noncatastrophe losses shall be trended:

(A) separately from losses; or

(B) with losses.

(3) Any provision for DCCE associated with catastrophe losses shall be determined in accordance with subdivisions (a) and (b) of Section 2644.5.

(b) ~~Defense and cost containment expenses may be added to losses for loss development and trend or may be developed using ratios of defense and cost containment expenses to losses.~~ The insurer shall provide its data separately for loss and DCCE, and demonstrate that its selections of development and trend for DCCE ~~is~~are the most actuarially sound selections.

(c) The projected DCCE shall be reflected per exposure for purposes of subdivision (a)(1)(A) of Section 2644.2 and subdivision (a)(1)(A) of Section 2644.3.

(d~~e~~) For professional liability and errors and omissions coverage, the insurer shall tender an alternative computation of projected ~~defense and cost containment expenses~~DCCE, which the Commissioner shall approve if the Commissioner finds the projection to have been made in the most actuarially sound ~~actuarial~~ manner. The insurer shall also provide projected DCCE in a manner specified in subdivisions (a) through (c) of this Section 2644.8 and in any other manner as may be required by the Commissioner. ~~Nothing in this section precludes the Commissioner from requiring the additional filing of projected defense and cost containment expenses computed in the manner specified in sections (a) and (b).~~

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi*, (1994) 8 Cal.4th 216 ~~(1994)~~. Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805.

Amend Section 2644.27. Variance Request.

(a) A request that the maximum permitted earned premium or minimum permitted earned premium should be adjusted is referred to as a "variance request."

(b) Requests for variances shall be filed with the Rate Regulation Branch, together with the insurer's complete rate application. All such variance requests shall specifically:

(i) identify each and every variance request;

(ii) identify the extent or amount of the variance requested and the applicable component of the ratemaking formula;

(iii) set forth the expected result or impact on the maximum and minimum permitted earned premium that the granting of the variance will have as compared to the expected result if the variance is denied; and

(iv) identify the facts and their source justifying the variance request and provide the documentation supporting the amount of the change to the component of the ratemaking formula.

(c) A ~~R~~requests for variances shall be filed at the same time as the insurer's complete rate application to which it applies or after the filing of the complete rate application and before any final determination regarding that application. Public notice of all variance requests shall be provided as set forth in Insurance Code sections 1861.05, subdivision (c), and 1861.06.

(d) A variance request shall be deemed approved sixty days after public notice unless:

(i) a consumer or a consumer's representative requests a hearing within forty-five days of public notice and the Commissioner grants the hearing, or determines not to grant the hearing and issues written findings in support of that decision, or

(ii) the Commissioner on the Commissioner's own motion determines to hold a hearing.

(e) Variance requests shall be determined in conjunction with the related complete rate application or rate hearing thereon.

(f) The following are the valid bases for requesting a variance:

(1) That the insurer should be allowed relief from the efficiency standard for bona fide loss-prevention and loss-reduction activities as set forth below.

(A) The insurer meeting the qualifications set forth below may obtain an increase in the applicable efficiency standard by the amount of its "Allocated Costs" for its Special Investigations Unit ("SIU") expense for the most recent year. The term SIU as used in this section has the same meaning as that term has in Section 2698.30, subdivision (p). The term "Allocated Costs" means those costs set forth in subsection (iii) and attributable to investigations of claims made on the line of insurance subject to Insurance Code section 1861.05, subdivision (b) for which the variance is sought.

(i) An insurer may recover its "Allocated Costs" for its SIU expenses only in its approved rate filing for the line of insurance affected by the SIU investigation costs.

(ii) Affiliated insurers who utilize the same SIU unit may recover the portion of their "Allocated Costs" for their SIU expenses attributable to investigations of claims made on the line of insurance in the rate application only in one approved rate application for the line affected by the Allocated SIU costs. The term "Affiliated Insurers" has the same meaning as that term has in Insurance Code section 1215.

(iii) The only recoverable SIU expenses are those expended for investigators whose sole duties are investigation of insurance fraud, software dedicated solely to analysis of data for indications of insurance fraud, training of employees whose sole duty is the investigation of fraud and equipment to be used solely by the insurer's SIU. The recoverable expenses do not include the costs of employing or other costs for adjustors or underwriters.

(iv) The only recoverable SIU expenses are for SIU's dedicated to investigation of insurance fraud within the State of California or for the portion of an SIU's operations within California. The burden of demonstrating the amount of SIU expenses, and that those expenses are for the investigation of insurance fraud within the State of California, is the insurer's.

(v) An insurer may recover the "Allocated Costs" of retaining an independent contractor to perform SIU services as described in sub-paragraph (iii). The variance shall be calculated by multiplying the fees paid for the independent agency with whom the insurer contracts by the percentage of referrals of claims made on the line of insurance for which the rate application and variance application are made and that the contracted agency investigates in California on behalf of the insurer seeking the variance.

(vi) No expense that is included within the Defense and Cost Containment Expense portion of an insurer's complete rate application can be included in whole or in part as the basis for a variance based on SIU expenses. The terms "Defense and Cost Containment Expense" or "DCCE" when used with regard to any variance have the same meaning as those terms have in Section 2644.23, subdivision (c).

(vii) An insurer that asserts that payments to: (1) an independent contractor; or (2) an SIU owned by an Affiliated Insurer; or (3) an SIU independent of an insurer, but which is owned directly or indirectly, in whole or part by the insurer applying for a variance or by an Affiliated Insurer, shall in its variance request, provide the Department of Insurance with documentation showing the costs of

investigation for the purported "Allocated Costs" claimed in the variance request. The payments constituting the basis for the variance must be *bona fide* payments for investigation of individual cases of suspected insurance fraud. It shall be the burden of the insurer to demonstrate that the costs are *bona fide* costs for investigation of insurance fraud in the State of California.

(B) An insurer meeting the qualifications set forth below will be allowed to recover its expenses for the most recent year for dedicated loss prevention programs such as brush clearance, driver education, risk management, hazard mitigation or accident prevention. Loss prevention expenses do not include SIU expenses under subsection (A).

(i) An insurer may recover its "Allocated Costs" for its loss prevention expenses only in its approved rate for the line of insurance affected by the loss prevention expenses.

(ii) The insurer must provide documentation detailing the loss prevention program, what additional costs are being incurred and what losses are being prevented.

(iii) Recoverable loss prevention expenses are those expended for employees whose duties are loss prevention, software dedicated to loss prevention, and equipment to be used for loss prevention. Recoverable loss prevention expenses do not include the routine and customary costs of marketing or employing underwriters or adjusters.

(iv) The only loss prevention expenses recoverable are for loss prevention programs dedicated to loss prevention in the State of California or for the portion of the program within California. The burden of demonstrating the amount of loss prevention costs, and that those costs are expended for loss prevention in the State of California, is on the insurer.

(2) That the insurer should be allowed relief from the efficiency standard due to any or all of the following:

(A) Higher quality of service, as demonstrated by objective measures of consumer satisfaction; or

(B) Demonstrated superior service to underserved communities, as defined in Section 2646.6; or

(C) Significantly smaller or larger than average California policy premium, including any applicable fees. These fees include but are not limited to: policy fees, installment fees, endorsement fees, inspection fees, cancellation fees, reinstatement fees, late fees, SR-22, and other similar charges.

(3) That the insurer should be authorized leverage factor different from the leverage factor determined pursuant to Section 2644.17 on the basis that the insurer either writes at least 90% of its direct earned premium in one line or writes at least 90% of its direct earned premium in California and its mix of business presents investment risks different from the risks that are typical of the line as a whole. The leverage factor shall be adjusted by multiplying it by 0.85. The surplus ratio in Section 2644.22 shall likewise be divided by 0.85. If an insurer writes at least 90% of its direct earned premium in one line and writes at least 90% of its direct earned premium in California, the insurer will only be authorized one leverage factor adjustment of 0.85.

(4) That the insurer should be granted relief from operation of the efficiency standard for a line of insurance in which the insurer has never previously written over $1 million in earned premiums annually and in which the insurer has made or is making a substantial investment in order to enter the market. Any such request shall be accompanied by a proposed amortization schedule to distribute the start-up investment.

(5) That the minimum permitted earned premium should be lowered on the basis of the insurer's certification, and the Commissioner's finding, that the rate will not cause the insurer's financial condition to present an undue risk to its solvency and will not otherwise be in violation of the law.

(6) That the insurer's financial condition is such that its maximum permitted earned premium should be increased in order to protect the insurer's solvency. Any application for authorization under this subsection shall include:

(A) A showing of the insurer's condition, based on generally accepted standards such as the National Association of Insurance Commissioners' Insurance Regulatory Information System;

(B) A plan to restore the financial condition;

(C) A showing that, consistent with the claimed condition, the insurer has reduced or foregone dividends to stockholders or policyholders; and

(D) A plan to reduce rates once the insurer's condition is restored, in order to compensate consumers for excessive charges.

(7) That the insurer should be granted relief from using its in-force business as specified in subdivision (e) of Section 2644.4.5 because the insurer's in-force exposures do not reflect the insurer's prospective exposure to risk, such that the modeled catastrophe adjustment in subdivision (a) of Section 2644.5 does not produce the most actuarially sound result.

(~~8~~7) That the loss development formula in Section 2644.6 does not produce an actuarially sound result because

(A) There is not enough data to be credible;

(B) There are not enough years of data to fully calculate the development to ultimate;

(C) There are changes in the insurer's reserving or claims closing practices that significantly affect the data;

(D) There are changes in coverage or other policy terms that significantly affect the data;

(E) There are changes in the law that significantly affect the data; or

(F) There is a significant increase or decrease in the amount of business written or significant changes in the mix of business.

(~~9~~8) That the trend formula in Section 2644.7 does not produce the most actuarially sound result because

(A) There is a significant increase or decrease in the amount of business written or significant changes in the mix of business;

(B) There are not enough years of data to calculate the trend factor;

(C) There is a significant change in the law affecting the frequency or severity of claims;

(D) It can be shown that a trend calculated over a period of at least 4 quarters other than a period permitted pursuant to Section 2644.7, subdivision (b) is more reliable prospectively;

(E) There are changes in the insurer's claims closing practices that significantly affect the data; or

(F) There are changes in coverage or other policy terms that significantly affect the data.

(109) That the maximum permitted earned premium would be confiscatory as applied. This is the constitutionally mandated variance articulated in *20th Century v. Garamendi* (1994) 8 Cal.4th 216 which is an end result test applied to the enterprise as a whole. Use of this variance requires a hearing pursuant to Section 2646.4.

(g) If there is more than one actuarial analysis of a variance, each of which is based on reliable data and utilizes methods which are shown by qualified expert evidence to be generally accepted as sound by the actuarial community and the appropriate methods for the particular variance, then the variance shall be granted, denied or calculated utilizing the actuarial proposition that results in the soundest actuarial result.

(h) Notwithstanding any other section of these regulations, the aggregate total adjustment to the efficiency standard for all variances combined shall not exceed the difference between the insurer's most recent year total expense ratio excluding defense and cost containment expenses and the efficiency standard.

NOTE: Authority cited: Sections 1861.01 and 1861.05, Insurance Code; and *20th Century v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 1861.01 and 1861.05, Insurance Code; and *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805.

Title 10. Investment
Chapter 5. Insurance Commissioner
Subchapter 4.8. Review of Rates
Article 8. Timelines for Scheduling and Commencing Hearings

Adopt: Section 2648.5. Pre-Application Required Information Determination ("PRID") Procedure

(a) Definitions.

As used in this section, each of the following terms has the meaning set forth below:

(1) "Pre-application required information determination" or "PRID" means a nonadjudicative initial determination the California Department of Insurance issues before an insurer submits a complete rate application and that specifies all information and data regarding a model that are required to be provided to the Commissioner as part of a complete rate application that relies upon the model for purposes of requesting a proposed rate change pursuant to Insurance Code section 1861.05.

(2) "Pre-application required information determination procedure" or "PRID procedure" means a nonadjudicative initial procedure before the California Department of Insurance that takes place before an insurer submits a complete rate application and the purpose of which is to make an initial determination of all information and data regarding a model that are required to be provided to the Commissioner as part of a complete rate application that relies upon the model for purposes of requesting a proposed rate change pursuant to Insurance Code section 1861.05.

(3) The term "model" means any simplified representation of relationships among real world variables, entities, responses, actions, or events using appropriate statistical, financial, economic, mathematical, non-quantitative, or scientific concepts and equations, or any combination thereof, and that consists of three components: one or more information input components, which deliver data and assumptions to the model; one or more processing components, which transform input into output; and one or more results components, which translate the output into useful business information. Types of models include, without limitation, "catastrophe risk models," "complex catastrophe models," "probabilistic catastrophe models," "third-party models," "wildfire models," "wildfire risk models," "risk models," and models referencing other perils; the meaning of the term "model" also includes without limitation a "Wildfire Risk Model" as described in Section 2644.9, subdivision (b)(6)(A).

(4) "Required model information" means all required information and data regarding a model, that the Commissioner requires to be submitted as part of a complete rate

application that relies upon the model, because such information and data will aid the Commissioner in determining whether the model is reliable to perform the functions for which an insurer proposes to use the model, for purposes of the Commissioner's evaluation of a complete rate application.

(5) "Complete rate application" means an application submitted by an insurer desiring to change any property and casualty rate pursuant to Insurance Code section 1861.05 and shall include without limitation all required model information and all information and data specified in Section 2648.4, regardless of whether any such information and data is included in its initial complete rate application submission or is subsequently submitted as part of the rate proceeding, including without limitation in response to requests for further information and data by the Department.

(6) "Public information" means all information provided to the Commissioner as part of a complete rate application submitted pursuant to article 10 of division 1, part 2, chapter 9 of the Insurance Code.

(7) "Confidential PRID information" means information, data, testimony, evidence, hearings, briefs, pleadings, correspondence, discovery, working papers, and other material created or exchanged for purposes of a PRID procedure, and that are not included in any complete rate application subsequently submitted or otherwise provided to the Commissioner.

(8) "Model Advisor" means the person within the Department of Insurance who oversees a PRID procedure.

(b) For purposes of determining appropriate rates for a property and casualty line of business, the Commissioner requires insurers seeking to rely upon modeled information, including without limitation modeled financial projections such as aggregate catastrophe loss projections and other types of projected losses, to submit all required model information as part of a complete rate application. Required model information shall include, in addition to any information specified in the complete rate application requirements set forth in Section 2648.4, information that demonstrates the model uses established concepts, data, equations, and principles, as well as best available scientific information and data, insurance claims expertise, and other assumptions appropriate for the risk or peril being modeled.

(c) The purpose of a pre-application required information determination procedure or PRID procedure shall be for the Department of Insurance to issue a PRID that specifies all required model information to be included in a complete rate application that relies upon the model. The purpose of the PRID procedure shall not be to determine how a specific model shall apply in any particular complete rate application, nor shall the parties examine any nonaggregated insurer-specific information as part of the PRID procedure.

(d) Required model information specified in a PRID shall not be provided to the Commissioner and shall not be public information until or unless an insurer subsequently submits a complete rate application to the Commissioner that relies upon the model.

(e) Confidential PRID information shall not be public information and shall be considered to be information received in official confidence by the Department of Insurance. Accordingly, confidential PRID information shall not be subject to disclosure in response to requests pursuant to the California Public Records Act (commencing with Government Code section 7920.000).

(f) The Commissioner shall delegate authority to oversee a PRID procedure and issue a pre-application required information determination to the Model Advisor. The Model Advisor is authorized to hire outside consultant(s) with relevant knowledge and subject matter expertise to assist in determining required model information.

(g) The Department of Insurance may initiate a PRID procedure by submitting a notice of PRID procedure to the Model Advisor.

(h) Any person other than the Department may petition to initiate a PRID procedure, or petition to participate in a PRID procedure, by following the procedure set forth in Section 2661.4. The procedures for awarding advocacy fees, witness fees and other expenses to participants shall be subject to Insurance Code section 1861.10, Sections 2661.1 through 2662.8, and this section. A petition to initiate a PRID procedure may be combined with a petition to participate in a PRID procedure.

(1) The Model Advisor shall provide public notice of the Department's notice of PRID procedure, or a petition to initiate a PRID procedure, within three business days after receiving the notice or petition.

(2) Any person may submit to the Model Advisor a response to the petition, no later than three business days after public notice of the petition to initiate a PRID procedure.

(3) The Model Advisor shall grant the petition to initiate a PRID procedure only if the Model Advisor determines that the petitioner has demonstrated it is more likely than not that the Commissioner would benefit from a PRID and either of the following conditions exist: (i) there is no currently valid PRID under this section; or (ii) the model has not previously been subject to public review in any other forum in California, including without limitation as part of a complete rate application, within the prior four years.

(4) The Model Advisor shall rule on a petition to initiate the PRID procedure, a petition to participate in a PRID procedure, or a combined petition, within 10 business days after receipt of the petition by the Model Advisor.

(5) The owner or vendor of a model may decline to participate as a party in a PRID procedure as to that model, but shall provide witness testimony, documents, and other information in response to subpoena.

(6) For purposes of a request for an award of compensation based upon participation in a PRID procedure, the following additional standards shall apply:

(A) A party may not request compensation for fees and expenses based upon work that unnecessarily duplicates the work of another party. Work that materially supplements, complements, or contributes to the substantial contribution of another party shall not be considered unnecessarily duplicative.

(B) To the extent the substantial contribution claimed by a participant duplicates the substantial contribution of another party to the PRID procedure, the decision awarding compensation may find that neither party has made a substantial contribution.

(C) An insurer that relies upon a PRID when submitting a complete rate application to the Department shall provide notice to all participants in the PRID procedure that led to the PRID upon which the insurer relies, no later than two business days after submission of the complete rate application. Any participant intending to request compensation for reasonable fees and expenses incurred in the PRID procedure preceding the complete rate application shall provide notice of such intent to all parties in the PRID procedure, no later than five business days after the insurer provides notice of submission of the complete rate application.

(D) A participant in a PRID procedure who intends to request an award of compensation shall submit a request only after the resolution of a complete rate application relying upon the PRID. The Model Advisor's issuance of the PRID shall not be deemed an order, decision, or other action of the Commissioner within the meaning of section 2662.3. A participant to a PRID procedure need not intervene or participate in the complete rate application proceeding relying upon the PRID in order to request an award of compensation for reasonable fees and expenses arising out of participation in the PRID procedure, Section 2662.3 notwithstanding. The request for an award of compensation shall delineate fees and expenses incurred in the PRID procedure separately from any fees and expenses that may have been incurred in the complete rate application proceeding.

(E) Any compensation award shall be payable by the insurer that submitted the complete rate application relying upon the PRID. The insurer may pass on the cost of the award to the owner or vendor of the model for which the PRID was issued. The award shall not be treated as an expense for the

purpose of establishing rates of the insurer, Section 2662.6(d) notwithstanding.

(F) Once a party to a PRID procedure has been awarded its reasonable fees and expenses incurred in the procedure following a complete rate application that relied upon the PRID, it shall not be entitled to further compensation awards based upon the same fees and expenses incurred in the PRID procedure in any other complete rate application that relies upon the same PRID.

(i) The Model Advisor shall publicly notice a PRID procedure within three (3) business days after granting a petition to initiate a PRID procedure or a Notice of PRID Procedure from the Department. Petitions to participate shall be considered timely if submitted within five (5) business days after the Model Advisor issues public notice of the PRID procedure. The PRID procedure shall be initiated five (5) business days after the Model Advisor has issued a ruling granting any petition to participate in the PRID procedure.

(j) No later than 15 business days after a PRID procedure has been initiated, all parties to a PRID procedure under this section shall:

(1) File a statement with the Model Advisor. The statement shall describe how the parties will avoid duplication and shall disclose without limitation working agreements among the parties, lead counsel arrangements on certain issues, sharing of expert witnesses among the parties, and intent to file joint documents. The statement shall also disclose any commercial interests a party has related to the model at issue in the PRID procedure, including without limitation any involvement in the ownership, development, or marketing of competing models; and

(2) Enter into a stipulated nondisclosure agreement that shall only govern the treatment of all confidential PRID information. The agreement shall specify, at a minimum, that (i) the representatives of the parties that participate in the PRID procedure shall not share any confidential PRID information with any other person, including without limitation persons employed by the same party but not involved in the PRID procedure; and (ii) the parties that participate in the PRID procedure shall return or destroy all confidential PRID information within an agreed-upon length of time after a PRID has been issued. After all parties have entered into the agreement, the parties shall submit a stipulation and proposed protective order based upon the parties' nondisclosure agreement to the Model Advisor for review. Alternatively, if the parties are unable to agree upon a stipulated nondisclosure agreement, any party may, no later than the fifteenth business day after the initiation of the PRID procedure as determined pursuant to Subdivision (h), submit a proposed protective order to the Model Advisor. No later than 10 business days after a proposed protective order has been received by the Model Advisor, the Model Advisor shall determine whether there is a significant public interest in the non-disclosure of confidential PRID information, and, upon a finding there is, enter an order thereon.

Following the conclusion of the PRID procedure, the Model Advisor shall retain jurisdiction to enforce the terms of the protective order.

(3) Unless a party is the Department of Insurance or demonstrates that it represents the interests of consumers, the Model Advisor may, upon a finding that the disclosure of certain confidential PRID information to such non-Department or nonconsumer party would cause irreparable harm to the owner or vendor of the model, enter an order specifying the confidential PRID information that party shall not receive.

(k) To the extent not otherwise specified herein, the Model Advisor may, without limitation: control the course of the PRID procedure; grant or deny a petition to initiate or participate in the PRID procedure; administer oaths; issue subpoenas; rule on motions to compel discovery; receive evidence and testimony; upon notice, hold appropriate conferences before and during the procedure; rule upon procedural objections or motions; receive offers of proof; hear argument; and fix the time and place for the filing of any briefs.

(*l*) During a PRID procedure, all parties may propound discovery on the owner or vendor of the model to provide information and data regarding the model, including the production of documents and testimony. The parties shall not otherwise engage in discovery.

(m) During a PRID procedure, any party may proffer expert testimony and cross-examine other parties' experts regarding the reliability of the model and what constitutes required model information.

(n) The terms of the confidentiality order notwithstanding, the inclusion of any required model information in a subsequent complete rate application proceeding shall make such information public information.

(o) In a complete rate application that is submitted by an insurer subsequent to a PRID procedure, any person may rely upon the PRID to determine what is required model information. A PRID is not specific to any one complete rate application but may be relied upon in multiple complete rate applications by unaffiliated insurers. A PRID shall be valid in any complete rate application proceeding relying upon that model through the four-year anniversary date of its issuance, provided that the model has not been substantively updated, amended, altered, or changed subsequent to the issuance of the PRID. The validity of a PRID shall be determined as of the date of the submission of the complete rate application relying upon the PRID.

(p) In the event a model is substantively updated, amended, altered, or changed subsequent to the issuance of a PRID but prior to the submission of a complete rate application using or relying upon the model as substantively updated, amended, altered, or changed, then (i) the original PRID is no longer valid for purposes of determining required model information, and (ii) any party may initiate or participate in, pursuant to this section, a subsequent PRID procedure limited to the issue of whether and how the prior PRID should be substantively updated, amended, altered, or changed.

(q) The PRID procedure shall stand submitted when the Model Advisor closes the record. The Model Advisor shall close the record no later than 90 business days after issuing the confidentiality order specified in this Section unless all parties agree or the Model Advisor determines there is good cause to keep the record open. The Model Advisor shall issue a pre-application required information determination that specifies all required model information within 15 business days after the PRID procedure is submitted.

(r) As an alternative to issuing a PRID, the Model Advisor may issue a declination to specify a set of required model information after a PRID procedure, if the Model Advisor determines that (1) there is no set of required model information that could reasonably be relied upon to support the use and inclusion of any of the modeled financial projections, modeled catastrophe adjustments, modeled projected losses, or any other type of modeled loss outputs and projections for purposes of reviewing an insurer's complete rate application, or (2) there is good cause to conclude the PRID procedure without issuing a PRID. In the event the Model Advisor declines to specify a set of required model information, any insurer may still seek to rely upon the model in a subsequent complete rate application but shall publicly produce any information and data the Commissioner requires regarding that model as part of the complete rate application.

(s) At any time prior to the Model Advisor issuing a PRID, the parties to a PRID procedure may stipulate to a set of required model information. The parties shall submit any such stipulation and a proposed set of required model information to the Model Advisor for review. No later than 15 business days after submission of the stipulation and proposed set of required model information, the Model Advisor shall determine whether the proposed required model information satisfies the standards set forth herein and issue an order either adopting or declining to adopt the proposed set of required model information as the PRID for that model.

(t) A PRID shall be subject to judicial review as part of the Commissioner's decision on a complete rate application relying upon the PRID, in accordance with Insurance Code sections 1858.6 and 1861.09. For purposes of judicial review, no determination, declination, or other action by the Model Advisor shall be considered a final determination, ruling, finding, rule, decision or order of the Commissioner.

(u) Any Department costs associated with a PRID procedure shall be construed to be administrative and operational costs arising from the provisions of article 10 of division 1, part 2, chapter 9 of the Insurance Code.

(v) Nothing in this section shall be construed as prohibiting the creation of a publicly available model for use in projecting annual aggregate catastrophe losses.

NOTE: Authority cited: Sections 1850.4, 1858.6, 1861.01, 1861.05, 1861.07, 1861.09, 1861.10, and 12924, Insurance Code; Sections 7922.630, 7927.705, 11415.50 and 11415.60, Government Code; and *20th Century v. Garamendi*, 8 Cal.4th 216 (1994). Reference: Sections 7, 1077.3, 1850.4, 1858.6, 1861.01, 1861.05, 1861.07, 1861.08, 1861.09, 1861.10, 12919, and 12921, Insurance Code; Sections 7922.630, 7929.000, 11415.50, 11415.60, 11507.6, 11507.7, and

11513, Government Code; Sections 350, 351, 352, and 1040, Evidence Code; *Calfarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805; and *State Farm Mutual Automobile Ins. Co. v. Garamendi*, 32 Cal.4th 1029 (2004).

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 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 South San Vicente Boulevard, Suite 250, Los Angeles, California 90048, and I am employed in the city and county where this service is occurring.

On February 28, 2025, I caused service of true and correct copies of the document entitled

DECLARATION OF PAMELA PRESSLEY 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 FAX SERVICE, by facsimile transmission this date to the FAX number stated to the person(s) named.

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

3. If marked U.S. MAIL or OVERNIGHT or HAND DELIVERED, 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.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 28, 2025 at Los Angeles, California.

Kaitlyn Gentile

Service List

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Sara Ahn
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Attorneys for CONSUMER WATCHDOG

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Rulemaking Hearing re: Catastrophe Modeling and Ratemaking.	File No.: REG-2023-00010 **DECLARATION OF ALLAN I. SCHWARTZ IN SUPPORT OF CONSUMER WATCHDOG'S REQUEST FOR COMPENSATION**

I, Allan I. Schwartz, declare:

1. I am an actuary with over 40 years consulting actuarial experience currently employed by and President of AIS Risk Consultants, Inc., an actuarial consulting firm I founded in 1984, located in Freehold, New Jersey. I have provided actuarial consulting services to Consumer Watchdog ("CWD") in this matter and numerous other Proposition 103 proceedings, administrative and civil, for more than 20 years. This declaration is submitted in support of Consumer Watchdog's Request for Compensation. I have firsthand knowledge of the matters set forth herein, and if called as a witness, I could and would testify competently to the facts stated in this declaration.

2. The type of survey of fees that CWD presented for legal services through the Declaration of Richard M. Pearl in support of its Request for Compensation is not available for consulting actuarial services, to the best of my knowledge. Reasons for this are discussed in ¶¶ 11–13 below. Given that situation, other information will be provided to support the actuarial hourly rates used in CWD's Request for Compensation.

3. AIS Risk Consultants, Inc. has entered into agreements to provide actuarial services with several entities in various places, including cities / states with medium and large populations, where the applicable hourly rates for my work was $955 in 2024 and $915 in 2023.

4. AIS Risk Consultants, Inc. was compensated by these clients for work done by me at the hourly rates of $955 in 2024 and $915 in 2023.

5. As mentioned above in ¶ 2, there are no public surveys of the hourly rates charged for consulting actuarial services. Public information regarding the hourly rates charged for actuarial work by specific actuaries is equally limited. One instance where such information is available is from an administrative hearing in California in 2015–2016 concerning an application for a homeowners insurance rate increase by State Farm General Insurance Company ("SFGIC") (File No. PA-2015-00004).[1] SFGIC's expert witnesses in that case charged hourly rates of $685 (Dr. David Appel) and $700 (Ms. Nancy Watkins). (*See* true and correct copies of excerpts of the testimony in that proceeding attached as Exh. 1.) Nancy Watkins was based in San Francisco and Dr. Appel was based in New York

[1] SFGIC made the filing in December 2014. The evidentiary portion of the hearing took place in 2015 to 2016. The Order Adopting the Revised Proposed Decision was dated November 6, 2016.

City, and both were with Milliman, Inc. Ms. Watkins and Dr. Appel have comparable experience to mine. (*See* https://us.milliman.com/en/consultants/watkins-nancy and https://us.milliman.com/en/consultants/appel-david with links to download bios.)[2] Consumer Federation of California ("CFC") also participated in that case as an intervenor and billed at an hourly rate of $650 for its two FCAS experts—Mr. Mark Priven and Ms. Nina Gau. (A true and correct copy of CFC's attorney declaration in support of its request for compensation in that matter is attached as Exh. 2, which includes the hourly rates of Mr. Priven and Ms. Gau [at p. 10] and their CVs attached thereto.) I have been an FCAS for a considerably longer period of time than either Mr. Priven or Ms. Gau.[3]

6. My hourly rate for that proceeding was $695. That $695 value falls within the range of the hourly rates used by other expert witnesses in that case with similar or less actuarial experience than me. Consumer Watchdog requested compensation for my fees and expenses at that hourly rate. The Commissioner approved my hourly rate in that case, notwithstanding State Farm's objections, and ordered compensation in full for my fees and expenses, finding "that the hourly rates requested for the attorney, advocates and experts who worked on this matter are within the reasonable market range that attorneys, advocates and experts with similar skills and experience in San Francisco and Los Angeles charged in 2016….CW's requested hourly rates are within the range of rates previously approved by the Department for attorneys, and experts of similar professional background and experience in recent, similar matters." (Amended Decision Awarding Compensation to Consumer Watchdog, June 22, 2017, *In the Matter of the Rate Application of State Farm General Insurance Company*, Prior Approval File No. PA-2015-00004, p. 8; a true and correct copy of this decision is attached as Exh. 3.)

7. Adjusting a $695 hourly rate in 2016 by 3.95% a year over a period of eight years gives a value of $985 in 2024 ($985 = $695 X 1.0395 ^ 9).[4]

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[2] I am a Fellow of the Casualty Actuarial Society ("FCAS") and Dr. Appel has a Ph.D. These are considered comparable educational achievements. I have been an FCAS since 1981 and Ms. Watkins has been an FCAS since 1991. (This information is accessible at https://netforum.casact.org/eWeb/DynamicPage.aspx?webcode=CASActuaryDirectory.)

[3] I have been an FCAS since 1981, Mr. Priven has been an FCAS since 1995, and Ms. Gau has been an FCAS since 2009. (This information is accessible at https://netforum.casact.org/eWeb/DynamicPage.aspx?webcode=CASActuaryDirectory.)

[4] The regulations base the market rate on when the Commissioner issues a decision, not when the work was performed. (See Cal. Code of Regs., tit. 10, § 2661.1(c).)

8. The Commissioner has awarded Consumer Watchdog compensation for my actuarial consulting services based on my 2024 rate of $955 per hour in prior proceedings, including Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate Application of State Farm General Insurance Company*, File No. PA-2023-00007; Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate Application of Allstate Northbrook Indemnity Company*, File No. PA-2023-00014; Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate Application of State Farm Mutual Automobile Insurance Company*, File No. PA-2023-00012; and Decision Awarding Compensation, Dec. 6, 2024, *In the Matter of the Rate Application of Pacific Specialty Insurance Company*, File No. PA-2020-00009. My 2025 rate of $985 per hour is an increase of 3.14% from my 2024 rate of $955 per hour.[5] The Commissioner also awarded Consumer Watchdog compensation for my actuarial consulting services based on my 2023 rate of $915 per hour in prior proceedings (Decision Awarding Compensation, July 12, 2023, *In the Matter of the Rate Applications of Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company*, File No. PA-2022-00007, p. 16; Decision Awarding Compensation, Nov. 8, 2023, *In the Matter of the Rate Application of CSAA Insurance Exchange*, File No. PA-2023-00004, p. 11). The Commissioner awarded Consumer Watchdog compensation for my actuarial consulting services based on my 2022 hourly rate of $870 in prior proceedings (Decision Awarding Compensation, June 29, 2022, *In the Matter of the Rate Applications of Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company*, File No. PA-2021-00007, p. 10; Decision Awarding Compensation, March 8, 2023, *In the Matter of the Rulemaking Hearing Re: Risk in Mitigation Plans and Wildfire Risk Models*, File Nos. REG-2020-00015 and REG-2020-00016, pp. 25–26). The Commissioner also awarded Consumer Watchdog compensation for my actuarial consulting services based on my 2021 hourly rate of $835 in three proceedings. In the decisions awarding compensation in these matters issued in 2021 for work performed in 2020–2021, the Commissioner found that the hourly rates requested for Consumer Watchdog's attorneys and experts were reasonable. (*See* Decision Awarding Compensation, Oct. 6, 2021, *In the Matter of the Rate Applications of Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company*, File No. PA-2020-00006, p. 10; Decision Awarding Compensation, Feb. 14, 2022, *In the Matter of the Rate Application of Homesite Insurance Company of*

[5] The Consumer Price Index ("CPI") for the 2024 compared to 2023 was an increase of 2.95%.

California, File No. PA-2020-00003, p. 9; Decision Awarding Compensation, Feb. 16, 2022, *In the Matter of the New Program Applications of Farmers Insurance Exchange and Fire Insurance* Exchange, File No. PA-2020-00004, p. 9;[6] true and correct copies of these decisions are attached as Exh. 4.)[7]

9. I also have personal knowledge of some rates charged by expert witnesses in other insurance litigation cases. My hourly rate is generally consistent with those other rates, being neither the highest nor the lowest. Because of confidentiality and proprietary issues, discussed further below, I am not able to provide more details regarding those other hourly rates.

10. In evaluating hourly rates, the regulation indicates that it should reflect the hourly rates of "experts with similar experience, skill and ability." While it is difficult to make an exact comparison, I would like to point out some examples of my "experience, skill and ability." I have over 40 years of consulting actuarial experience. I have also served as Assistant Commissioner of the New Jersey Department of Insurance and as Chief Actuary for the North Carolina Department of Insurance. I am a Fellow of the Casualty Actuarial Society, an actuarial designation earned by completing a rigorous system of actuarial examinations, and also hold numerous professional designations from the Insurance Institute of America. My CV is attached as Exh. 5. Three court proceedings where my work was relied upon by the court, and which saved millions to hundreds of millions of dollars, are: (i) *Cleveland v. Bur. of Workers' Comp.*, 2018-Ohio-846, (ii) *Del. Comp. Rating Bureau, Inc. v. Ins. Comm'r of Del.*, 2009 Del. Ch. LEXIS 133, and (iii) *State ex. rel. Comm'r of Ins. v. N.C. Rate Bureau*, 248 N.C. App. 602. Additionally, my actuarial consulting services to CWD in over 100 insurance rate proceedings in California since 2003 alone have substantially contributed to over $6 billion in savings to consumers. Ms. Tollar assisted me in Proposition 103 rate matters in her time at AIS Risk Consultants, Inc., beginning in 1999. Ms. Tollar's CV is attached as Exh. 6.[8]

11. I previously mentioned the difficulty in obtaining a survey of consulting actuarial hourly rates similar to that presented by CWD for legal fees. There are at least two reasons for this.

[6] The request for compensation decisions in the *Homesite* matter (File No. PA-2020-00003) and the *Farmers* matter (File No. PA-2020-00004) also awarded Consumer Watchdog compensation for actuarial services performed by my associate, Ms. Tollar, at the rate of $380 per hour.
[7] Ms. Tollar's rate of $430 per hour for 2024 is an increase of 3.61% from $415 in 2023.
[8] Ms. Dwyer has similar experience to that of Ms. Tollar. Her CV is attached as Exh. 7.

12. First, the hourly rates charged for consulting actuarial work are generally considered to be proprietary and confidential. Exceptions could be when actuarial work involves court proceedings or work paid for with public funds. However, that would be a small part of overall actuarial consulting. Hence, obtaining a compilation of hourly rates for actuarial consulting is difficult.

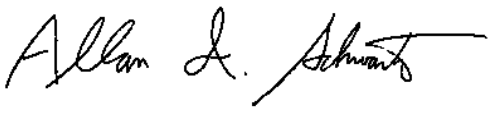
13. Second, the number of actuaries providing consulting services is much smaller than the number of lawyers performing work for which their fees would be disclosed. According to the Casualty Actuarial Society, the number of consulting actuaries with locations in San Francisco and Los Angeles are 10 in San Francisco and 13 in Los Angeles.[9] Even expanding this to all of California gives a total of 72 actuaries.[10] Segmenting these by "experience, skill and ability" would lead to even smaller groups to choose from. For instance, limiting the California number to FCAS would decrease the number from 72 to just 48.[11]

14. AIS Risk Consultants' billing records in this matter are attached to this declaration as Exh. 8. The attached time records were maintained contemporaneously and reflect the actual time spent and actual work performed by myself and others at AIS Risk Consultants.

15. In summary, the hourly rates billed by AIS Risk Consultants, Inc. are supported by consulting agreements used by AIS Risk Consultants, Inc. elsewhere, are consistent with the limited information available regarding the hourly charges by other insurance consultants with similar experience doing this type of work, and are supported based upon the hourly rate approved by the Commissioner in other cases.

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

Executed on February 28, 2025, at Freehold, New Jersey.



Allan I. Schwartz

[9] https://netforum.casact.org/eWeb/DynamicPage.aspx?webcode=CASActuaryDirectory (selecting for employment type: "consultant" and city: "San Francisco" or "Los Angeles", respectively); accessed Feb. 26, 2025.

[10] *Ibid.*

[11] *Ibid.*

EXHIBIT 1

ORIGINAL

1

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Attorneys for Applicant
STATE FARM GENERAL
INSURANCE COMPANY

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Rate Application of **STATE FARM GENERAL INSURANCE COMPANY,** Applicant.	File No PA-2015-00004 **PRE-FILED DIRECT TESTIMONY OF EXPERT WITNESS DAVID APPEL IN SUPPORT OF STATE FARM GENERAL INSURANCE COMPANY RATE APPLICATION** **Hearing Date: November 16, 2015**

publication, and public speaking on issues of current interest in insurance economics. I also served for twelve years, an Adjunct Professor of Economics at Rutgers University.

4. My curriculum vitae, listing my refereed publications and expert testimony, is included as Exhibit DA-1 to this Prefiled Direct Testimony.

5. In addition to my academic and professional experience, I have also frequently served as an expert witness in insurance rate proceedings or insurance related civil litigation. During the course of my career I have testified in well over 100 such matters, including at least 25 in the state of California. My testimony has covered a wide variety of issues, including such diverse topics as the impact of economic and demographic factors on insurance costs; the use of econometric and statistical models in insurance forecasting; and the use of modern financial theory in developing insurance prices. This testimony has covered most of the major lines of property casualty insurance, including automobile, homeowners, workers compensation, medical malpractice, reinsurance, and title insurance. In addition, I have served as an arbitrator on more than 25 occasions, as a member of the Panel of Neutrals of the AAA and a Certified Arbitrator and Umpire with ARIAS, the international insurance and reinsurance arbitration society.

6. I am being compensated for my work in this matter at my standard hourly rate of $685. My compensation does not depend in any way on the opinions I express or the outcome of this case.

II. NATURE OF ASSIGNMENT AND SUMMARY OF OPINIONS

7. I have been asked to provide my analysis and opinions in connection with three specific issues arising from the recent homeowners (HO) insurance rate filing made by State Farm General Insurance Company (SFG). While I understand that there are other issues in dispute between SFG and the California Department of Insurance (CDI), the questions I have been

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BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Rate Application of **STATE FARM GENERAL INSURANCE COMPANY,** Applicant.	File No PA-2015-00004 **PRE-FILED DIRECT TESTIMONY OF EXPERT WITNESS NANCY WATKINS** **Hearing Date: November 16, 2015**

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residual market exposure. I presented the results of both analyses to a North Carolina legislative panel.

- In 2010, I served on a panel of three actuaries appointed to conduct the resolution of a dispute regarding a commutation of FHCF recoverables between a Florida insurance company and the Florida State Board of Administration (SBA).
- In 2012, Citizens hired me in support of their 2013 rate filings. I attended pre-filing meetings between Citizens and the Florida Office of Insurance Regulation (OIR) and served as an expert witness for Citizens' OIR rate hearing.
- In 2013 I served as the actuarial thought leader on property pricing at a "National Cat Solutions" roundtable organized by the Property Casualty Insurers Association of America (PCI) and the Wharton School. Attendees included insurance commissioners, insurance company executives, rating agency analysts, catastrophe modelers, reinsurers and brokers. I am currently leading a joint work group including PCI members, regulators and actuaries from the AAA Extreme Events Committee to draft a "Best Practices in Property Ratemaking" document as one of the proposed solutions.
- In 2014 I presented on assessing and integrating risk into actuarial practices at the Climate Risk Forum. The forum was held at Stanford University, and co-sponsored by Stanford, the California Insurance Commissioner, Risky Business project, AAA and Sandia National Laboratories.
- I have presented on Homeowners pricing and predictive modeling at professional conferences such as the CAS Ratemaking & Product Management conference and the CAS Spring Meeting.

8. I meet the Qualification Standards of the American Academy of Actuaries to render the opinions contained herein.
9. My 2015 billable rate is $700 per hour payable to Milliman, Inc. for my actuarial consulting services, including expert witness support. My payment is not dependent on the outcome of this matter.

EXHIBIT 2

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Attorneys and Advocates for CONSUMER FEDERATION OF CALIFORNIA

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Rates Application of STATE FARM GENERAL INSURANCE COMPANY, Applicant.	File No. PA-2015-00004 **DECLARATION OF AARON LEWIS IN SUPPORT OF CONSUMER FEDERATION OF CALIFORNIA'S REQUEST FOR COMPENSATION**

I, Aaron Lewis, declare:

1. I am over eighteen years of age and counsel for the Consumer Federation of California ("CFC") in this matter. This declaration is submitted in support of CFC's Request for Compensation in the above captioned matter. I have personal knowledge of the information set forth herein and, if called as a witness, I could and would testify competently to the facts stated in this declaration.

2. Consumer Federation of California is a California-based non-profit 501(c)(4) federation of individual consumer members and several organizational members that are comprised of California consumers, including consumer groups, senior citizen groups, labor and other organizations.

Consumer Federation of California's Billed Hours Are Reasonable and in Compliance with the Regulations

3. Attached hereto as Attachment 1 are the true and correct billing records of CFC's advocates and attorneys in this matter, including Douglas Heller, Richard Holober, and Aaron Lewis.

4. Pursuant to 10 CCR section 2662.6, CFC has requested compensation at the prevailing market rates. The Department of Insurance has consistently awarded, and rate applicants have consistently paid, market hourly rates in fee awards.

5. I have reviewed the timesheets and believe that the hours expended were reasonable and necessary in order to make the substantial contribution detailed in the Request for Compensation.

6. Based upon the time-billing records of the entire team, CFC's advocates and attorney spent 701.51 hours on this matter through December 5, 2016. For Compensation, the hourly rates sought for each advocate and attorney are as follows: $295 for Douglas Heller, $250 for Richard Holober, and $315 for Aaron Lewis, Esq. These rates comport with what I expect would be charged in the private market for these or comparable services in Los Angeles and San Francisco, in accordance with 10 CCR section 2661.1(c).

7. In this matter, CFC's advocates and attorneys performed the following tasks:

- Drafted and edited CFC's Petition for Hearing and Petition to Intervene;
- Conferred regarding analysis, strategy and overall position;
- Conferred with CFC's actuarial experts during all phases of the proceeding;
- Participated and contributed to informal discussions among the parties;
- Propounded discovery requests and responded to Applicant's discovery request;
- Drafted and edited a Motion to Compel and motions to strike and defended against Applicant's motions to strike;
- Prepared for and participated in evidentiary hearings, including direct and cross-examination of witnesses;

- Drafted and edited post-evidentiary hearing briefing in the matter;
- Drafted and edited briefing on refund interest rates;
- Reviewed and responded to communications and questions of the parties to the matter;
- Participated in hearing and status conferences ordered by the ALJ;
- Reviewed and edited timesheets and billing records;
- Drafted, reviewed and edited the Request for Compensation, including the supporting declaration and exhibits.

In addition to fees, CFC incurred $16,262.69 in other expenses related to travel, printing, and hearing-related costs. These expenses are "reasonable, actual out-of-pocket costs," pursuant to 10 CCR Section 2661.1 and are detailed in Attachment 2, appended hereto.

Douglas Heller

8. Douglas Heller is an independent consultant and insurance expert with particular expertise in California property-casualty insurance ratemaking, and has served as Consumer Federation of California's lead advocate in this matter. He holds a Master of Public Administration degree and has seventeen years of experience as a consumer advocate focusing on property-casualty insurance rates and policies. He has participated and intervened in several rulemaking and ratemaking proceedings before the Department of Insurance since 1999, with a particular focus on matters related to, or governed by, Proposition 103. Between 1997 and 2013, he worked in various capacities for the nonpartisan, nonprofit organization Consumer Watchdog, including serving as its Executive Director from 2004 until 2012, and was its lead insurance advocate during most of his 16 years with the organization. Examples of his ratemaking, rulemaking and other insurance advocacy include:

- *In the Matter of the Rate Applications of Wawanesa General Insurance Company*, file number PA-2015-00011, in which he served as lead advocate and subject matter expert for Consumer Federation of California.
- *In the Matter of the Rate Applications of Safeco Insurance Company of America, First National Insurance Company of America, American States Preferred*

Insurance Company, file number PA 2015-00007, in which he served as lead advocate and subject matter expert for Consumer Federation of California.

- *In the Non-Compliance Matter Regarding GEICO Insurance Company*, file number NC-2015-00001, in which he served as lead advocate and subject matter expert for Consumer Federation of California.
- *In the Matter of the Rate Application of Hartford Underwriters Insurance Company and Trumbull Insurance Company*, file number PA-2014-00011, in which he served as lead advocate and subject matter expert for Consumer Federation of California;
- *In the Matter of the Rate Application of Infinity Insurance Company*, file number PA-2014-00002, in which he served as lead advocate and subject matter expert for Consumer Federation of California;
- *In The Matter Of The Rate And Rating Plan Application Of AIG Property Casualty Company*, file number PA-2013-00013, in which he served as lead advocate and subject matter expert for Consumer Federation of California;
- *In the Matter of the Rate Application of State Farm General Insurance Company*, file number IP-2013-00014, in which he served as lead advocate and subject matter expert for Consumer Federation of California;
- *In the Matter of the Rate Application of Progressive West Insurance Company*, file number IP-2012-00011, in which he served as an advocate and subject matter expert for Consumer Watchdog;
- *In re proposed amendments to Subchapter 4.9, Title 10 of the California Code of Regulations, Chapter 5, Subchapter 4.7, Section 2632.5* (Pay as you Drive, Usage Based Auto Insurance Regulations), file number IP-2008-00043, in which he served as an advocate for Consumer Watchdog; and
- *In re RH 03 02 6431 and RH 03 02 6432, Low Cost Automobile Insurance Rates*, file number IC 03 03 3218, in which he served as an advocate for Consumer Watchdog.

9. In each of the above matters, the Commissioner approved compensation for the time he billed. In the 2003 matter, Mr. Heller's discounted billing rate was $150 per hour. Beginning with the Pay as you Drive rulemaking of 2008, his rate, which was found to be reasonable by the Commissioner, was $225 per hour and identified as "discounted" in the Request for Compensation relative to market rates. In the 2013 and 2014 matters, the Commissioner approved compensation at the billing rate of $275 per hour. In the 2015 matters, the Commissioner approved compensation at the billing rate of $295 per hour.

10. In addition to the above selection of matters in which Mr. Heller served as an advocate and expert, he serves as an appointed Consumer Representative to the California Automobile Assigned Risk Plan Advisory Board; he was a featured speaker at a May 16, 2013

symposium regarding the regulation of California's insurance industry presented for MCLE credit by The Insurance Law Committee of the California State Bar; and he is the co-author of a 2013 report entitled *What Works: A Review of Auto Insurance Rate Regulation in America and How Best Practices Save Billions of Dollars*.

11. Given Mr. Heller's unique expertise and the Commissioner's prior approval of this rate, $295 per hour is reasonable and the market rate required under 10 CCR section 2661.1(c) and 2662.6 (b).

Richard Holober

12. Richard Holober is the Executive Director of Consumer Federation of California, a nonprofit, nonpartisan organization dedicated to protecting the interests of California consumers. Mr. Holober has served in this role since 2001. Mr. Holober served on the California Department of Insurance's Consumer Advisory Board established by former Insurance Commissioner Steve Poizner and has advocated on behalf of insurance consumers before regulators, lawmakers and in public campaigns.

13. Mr. Holober served as an advocate *In the Non-Compliance Matter Regarding GEICO Insurance Company*, file number NC-2015-00001; *In the Matter of the Rate Application of AIG Property Casualty Company,* file number PA-2013-00014; *In the Matter of the Rate Application of State Farm General Insurance Company*, file number IP-2013-00013; and *In the Matter of the Rate Application of Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company*, file number PA-2013-00011.

14. As the Executive Director of CFC, Mr. Holober is responsible for making strategic decisions on behalf of the organization, which includes assessing the facts of ratemaking, rulemaking and noncompliance matters to determine the appropriateness of decisions related to such choices as whether to file a petition for hearing, agree to a proposed settlement or stipulation, and how to deploy organizational resources in order to most effectively advocate for consumers. In addition to his work for CFC, Mr. Holober has served as an elected member of the Board of Trustees of the San Mateo Community College District since 1997 and served as an elected member of the Milbrae School Board between 1993 and 1997.

15. Given Mr. Holober's tenure leading a consumer advocacy organization, his role representing consumers in the legislative and regulatory setting, and his extensive experience with public governance, I believe that Mr. Holober's hourly rate of $250 is appropriate, reasonable, and the market rate under 10 CCR section 2661.1(c) and 2662.6 (b). In the 2015 matter identified above (¶ 13), the Commissioner approved compensation at the billing rate of $250 per hour for Mr. Holober.

Aaron Lewis

16. I am a staff attorney with the Consumer Federation of California. I am a 2008 graduate of Columbia University and a 2012 graduate of the University of California, Hastings College of the Law, where I focused my studies in civil litigation and graduated with recognition for Outstanding Achievement in Pro Bono. I also served as Senior Managing Editor of the Hastings Race and Poverty Law Journal, twice received the Wiley W. Manuel Award for Pro Bono Legal Services from the State Bar of California, and worked as a summer extern for the Honorable Thelton E. Henderson of the U.S. District Court for the Northern District of California.

17. I have worked as an attorney and lobbyist for CFC since July 2014, including work on various insurance-related issues ranging from an enforcement action before the Department of Insurance (*In the Non-Compliance Matter Regarding GEICO Insurance Company*, file number NC-2015-00001) challenging auto insurance discrimination based on gender, education level, marital status, and occupation in online quotation tools resulting in $6 million settlement, to legislative advocacy.

18. Prior to working at CFC, I was employed as an attorney by the National Asian American Coalition (NAAC), a 501 (c)(3), U.S. Department of Housing and Urban Development approved home counseling agency which advocates on behalf of communities of color, in particular Asian American communities and immigrant communities. While at the NAAC, I was lead attorney for the organization's intervention *In the Matter of the Rate Application of Mercury Casualty Company*, PA-2013-00004, a prior approval rate case before the CDI.

19. While at NAAC, I also worked on a number of rulemakings and rate applications before the California Public Utilities Commission including, Rulemaking 09-07-027, 2011 Cal. PUC LEXIS 276 (Cal. PUC 2011); Application 10-11-015, 2012 Cal. PUC LEXIS 379 (Cal. PUC 2012); Application 10-12-005, 2013 Cal. PUC LEXIS 283 (Cal. PUC 2013); Application 12-11-009, 2013 Cal. PUC LEXIS 145 (Cal. PUC 2013); Application 11-10-002, 2011 Cal. PUC LEXIS; Application 12-03-001, et al., 2013 Cal. PUC LEXIS 644 (Cal. PUC 2013); and Investigation 12-10-013, 2012 Cal. PUC LEXIS 483 (Cal PUC 2012).

20. I have been a member of the California Bar since December 2012, and have been practicing in administrative and regulatory settings, including before the Department of Insurance, since then. In 2015, *In the Matter of the Rates Charged, Rating Plan, Rating Systems, Rates and Underwriting Rules of Government Employees Insurance Company,* NC-2015-00001, I was awarded a rate of $315. In the past, the Commissioner has awarded an hourly rate of $325 to attorneys with one to three years of experience. *See In the Non-Compliance Matter Regarding Mercury Insurance Company,* IC-2007-00020; *In the Matter of the Rate Application of Mercury Casualty Company,* PA-2013-00004. Accordingly, I believe that my rate of $315 is consistent with compensation awards granted by the Commissioner and with prevailing market rates in the private sector for attorneys of comparable skill, qualifications and experience.

CFC's Actuarial Experts' Billed Hours Are Reasonable and in Compliance with the Regulations

21. In order to effectively advocate on behalf of consumers, CFC retained the consulting firm Bickmore to provide actuarial consulting and expert testimony in this proceeding. CFC incurred $437,281 for its consulting actuaries, who spent 838.4 hours providing expert analysis, testimony, and consultation during the proceeding. As is more thoroughly detailed in the billing records attached here as Attachment 3, Bickmore's actuaries provided the following services in support of CFC's challenge to Applicant's rates:

- Reviewed the filing and supplemental documents, including a detailed review of the premium and loss trends, catastrophe adjustment, projected yield, and information related to variance requests;
- Conferred with advocates regarding analysis of Application;
- Prepared actuarial memos and rate templates;
- Participated in discussions with parties regarding the filing, data, and questions related to actuarial soundness and regulatory compliance of the filing;
- Analyzed the impact of various settlement alternatives and proposed stipulations and advised CFC with respect to the actuarial soundness of same;
- Advised and assisted CFC in preparation of discovery requests;
- Produced information in response to discovery requests;
- Reviewed and analyzed information and data produced by Applicant in discovery;
- Reviewed testimony of other parties' witnesses;
- Prepared pre-filed direct and pre-filed rebuttal testimony;
- Prepared exhibits;
- Provided oral testimony on direct, cross-examination, and rebuttal during hearing;
- Advised CFC advocates and attorney during evidentiary hearing; and
- Advised and assisted CFC during preparation of post-hearing briefing.

22. I am informed and believe that the rates charged by Bickmore are 2016 market rates for actuaries with their experience and expertise, pursuant to 10 CCR sections 2661.1 and 2662.6. Mark Priven, FCAS, MAAA served as CFC's expert witness in the proceeding, analyzing Applicant's rate filing and related material, consulting with CFC on actuarial matters related to the proceeding, and providing written and oral testimony during the evidentiary phase of the proceeding. Mr. Priven began his actuarial career in 1988, has been a credentialed actuary for 23 years, and has been a Fellow of the Casualty Actuarial Society for 21 years. He is

President of Regulatory & Alternative Risk Consulting at Bickmore, a subsidiary of York Insurance Services and one of the largest independent risk consulting firms in the Western United States. Mr. Priven serves on the California Workers' Compensation Insurance Rating Bureau Actuarial Committee and is Past President of Casualty Actuaries of the Bay Area. His rate of $650 per hour is seven percent lower than the 2015 rate of the Applicant's consulting actuary. (Watkins PDT 3:25, Exhibit Z) Becky Richard, ACAS, MAAA, also of Bickmore, provided extensive actuarial analysis to CFC throughout the proceeding and worked closely with Mr. Priven in all aspects of his participation in this matter. Ms. Richard began her actuarial career in 1992, has been a credentialed actuary for 20 years, and has served as CFC's actuarial expert in at least ten rate challenges. Nina Gau, FCAS, MAAA, is Bickmore's Director of Property and Casualty Actuarial Services, and provided additional actuarial analysis to assist in the development of Mr. Priven's testimony. Ms. Gau has more than 20 years of experience in the actuarial field and a Master of Science in Applied Mathematics. Their curriculum vitae are appended hereto as Attachment 4.

23. In addition to fees, CFC incurred $4,081.26 in other expenses related to Bickmore's travel costs. These expenses are "reasonable, actual out-of-pocket costs," pursuant to 10 CCR Section 2661.1 and are detailed in the appended Attachment 5.

Consumer Federation of California's Fees, Inclusive of Actuarial Consultants

24. In order to calculate the requested fees for its advocates, attorneys, and consulting experts, CFC used the standard "lodestar" methodology of recording the amount of time worked on a project for each person and multiplying these billed hours by the market rate for that person. Consumer Federation of California's total lodestar for this matter is $649,119.92 as is shown below. Below is a summary of expenses:

CFC Fees and Expenses			
Advocate/Attorney	Total Hours	Hourly Rate	Total Lodestar
Douglas Heller	428.43	$295	$126,386.85
Richard Holober	8.7	$250	$2,175.00

Aaron Lewis, Esq.	264.38	$315	$83,279.70
Sub-Total	*701.51*		*$211,841.55*
Expenses			Total
Travel - Transportation			$2,036.01
Travel - Lodging			$3,202.37
Travel - Meals			$582.15
Transcripts			$9,759.80
Printing			$115.21
Postage			$566.75
Sub-Total			*$16,262.29*
TOTAL			***$228,103.84***

Bickmore Fees and Expenses			
Actuary	Total Hours	Hourly Rate	Total Lodestar
Mark Priven, FCAS, MAAA	277.2	$650	$180,180.00
Becky Richard, ACAS, MAAA	552.2	$455	$251,251.00
Nina Gau, FCAS, MAAA	9	$650	$5,850.00
Sub-Total	838.4		$437,281.00
Expenses - First Evidentiary Hearing (11/16/15-11/23/15)			Total
Travel - Transportation			387.92

Travel - Lodging			1,800.32
Travel - Meals			206.59
Expenses - Rebuttal Hearing (1/5/16-1/13/16)			
Travel - Transportation			333.96
Travel - Lodging			1,101.98
Travel - Meals			250.49
Sub-Total			*$4,081.26*
TOTAL			***$441,362.30***

Avoidance of Duplication

25. At the outset of this proceeding, CFC and intervenor Consumer Watchdog delineated the issue areas each organization would focus on in order to avoid duplication. CFC primarily addressed the catastrophe load, while Consumer Watchdog devoted its testimony and briefing principally to State Farm's variance requests and projected yield. Where it believed it had unique expertise or arguments on issues related to variance requests, projected yield, and other aspects of the Proceeding than the catastrophe load, CFC and its experts provided it.

Facts Concerning This Proceeding and Consumer Federation of California's Substantial Contribution

26. On or about December 4, 2014, State Farm filed its rate application with the California Department of Insurance seeking a 6.9 percent rate increase across its three lines of homeowners insurance. State Farm subsequently revised its requested rate increase to 6.4 percent.

27. On January 26, 2015, CFC filed its Petition for Hearing and Petition to Intervene, in which it alleged a multiplicity of deficiencies in State Farm's rate application. (Exhibit A) The Commissioner granted CFC's Petition to Intervene in this proceeding on February 10, 2015 and CFC has been found eligible to seek compensation pursuant 10 CCR Section 2662.2. (Exhibit AA) I am informed and believe that over the next few months, CFC engaged with State

Farm, Consumer Watchdog, and the Department of Insurance in an attempt to resolve the outstanding issues. In addition to teleconferences and exchanging information with all parties, CFC's engagement during this phase of the proceeding included conferring with its actuarial experts, analyzing additional data provided by Applicant, and providing all parties with its experts' actuarial analysis of the rate filing and rate templates that they deemed more actuarial sound than those provided by the Applicant.

28. CDI issued a Notice of Hearing on June 22, 2015. (Notice of Hearing, Exhibit B) State Farm filed its answer and the parties continued their discussions to narrow the issues that would potential be addressed in any subsequent hearing. In the course of these conversations, State Farm provided updates to their application. CFC and the other parties agreed on certain values and data that would be used for the purposes of evaluating the rate application. These items are detailed in three separate joint stipulations submitted by the parties on September 16, 2015, October 7, 2015, and November 13, 2015. (Joint Statement of Undisputed Facts and Disputed Issues, September 16, 2015; Supplemental Joint State of Undisputed Issues, October 7, 2015; Second Supplemental Joint Statement of Undisputed Issues, November 13, 2015; Exhibits C - E)

29. On July 13, 2015, Applicant propounded discovery on CFC (Exhibit F), to which CFC responded on August 11, 2015 (Exhibit G). On July 24, 2015, CFC propounded discovery on State Farm (Exhibit H). In response, State Farm produced numerous documents, some of which were responsive to some of CFC's requests. CFC and State Farm met and conferred as to the status of certain outstanding discovery requests but a resolution was not achieved, and CFC filed its Motion to Compel Discovery on September 8th, 2015. (Consumer Federation of California's Motion to Compel Discovery, Exhibit I)

30. CFC and State Farm were eventually able to reach agreement on outstanding discovery issues and CFC withdrew its motion to compel, on the understanding State Farm would provide such information. (Notice of Consumer Federation of California's Withdrawal of Motion to Compel Discovery, September 15, 2015, Exhibit J)

31. On September 25, 2015, CFC moved to strike parts of State Farm's expert witness testimony on the grounds that they contained legal conclusions and several passages constituted impermissible relitigation of the regulations applicable to the ratemaking process. (Consumer Federation of California's Motion to Strike Applicant's Pre-Filed Direct Testimony, Exhibit K) The ALJ granted in part and denied in part CFC's motion. (Final Rulings on Motions to Strike Applicant's Pre-Filed Direct Testimony, October 14, 2015, Exhibit L)

32. CFC and its actuaries reviewed the documents provided by State Farm during discovery and CFC's designated actuarial witness, Mark Priven, used these documents to prepare pre-filed direct testimony, which was filed on October 15, 2015. (Pre-Filed Direct Testimony of Mark Priven, Exhibit M) Mr. Priven's testimony primarily addressed the catastrophe adjustment proposed by the Applicant and its witnesses and presented an alternative method for calculating the adjustment that he believed to be more actuarial sound. He included six separate exhibits that reflected his analysis of State Farm's application and the documents that were produced in response to CFC's and other parties' discovery requests.

33. CFC successfully argued against Applicant's October 23rd motion to strike portions of Mr. Priven's pre-filed direct testimony (Exhibit N), with the ALJ rejecting all efforts to strike those contested paragraphs.

34. The evidentiary hearing began on November 16 and finished on November 23, 2015, over the course of which the parties' witnesses provided oral testimony and were made available for cross-examination. These included Mr. Priven, whose testimony focused primarily on the catastrophe adjustments in State Farm's rate filing. Mr. Priven provided additional direct testimony as to the purported leveraging effect of Applicant's fixed-dollar catastrophe threshold, the mixing of calendar and accident year data sets, the appropriate use of certain types of credibility tests for actuarial analysis, and the validity of Cal Fire data, among other items. (Tr., pp. 781-808, Exhibit NN) Mr. Priven also responded to cross-examination questions posed by other parties. During the evidentiary hearing CFC's advocate Douglas Heller and I elicited additional information from other parties' witnesses through cross-examination. CFC's actuarial team was present throughout the hearing to advise on technical matters.

35. On December 22, 2015, CFC, along with the other parties, submitted its pre-filed rebuttal testimony in response to issues that arose during the November evidentiary hearing. (Pre-Filed Rebuttal Testimony of Mark Priven, Exhibit O) On December 30, 2015, CFC filed a motion to strike certain testimony of Applicant witness Nancy Watkins, with Applicant filing a concurrent motion to strike certain testimony of CFC witness Mark Priven. On January 5th, at the commencement of the rebuttal phase of the evidentiary hearing, I defended CFC's witness's rebuttal against said motion, in which Applicant moved to strike approximately nine pages of Mr. Priven's 23-page rebuttal. The ALJ allowed all but one paragraph of the testimony into evidence. (Tr. 1510:8 - 1512:6, Exhibit P). Thereafter, Mr. Priven provided additional rebuttal testimony and was made available for cross-examination. Mr. Priven's testimony addressed issues that had arisen during the evidentiary hearing, including issues raised by State Farm, such as the suitability of using Fast Track data and Cal Fire data as relevant experience, the appropriateness of unadjusted CAT/AIY ratios in determining the credibility of catastrophe trend, and the use of certain statistical tests (such as R-squared, T-statistic, and P-value). In addition, Mr. Priven responded to cross-examination questions and CFC cross-examined other parties' witnesses.

36. During much of the initial evidentiary hearing and rebuttal hearing, CFC's actuarial experts from Bickmore attended the hearings and consulted with CFC regarding the proceeding and, in particular, the actuarial and rate filing related matters before the Court. I believe that Applicant also had actuarial experts and analysts, including witnesses and others not designated as witnesses, in attendance during most days of these hearings.

37. In response to the ALJ's January 22, 2016 Order (Amendment to Order Scheduling Motions to Admit Exhibits and Designate Evidence Confidential Under Seal, Exhibit Q), CFC and its actuaries prepared a series of rate templates reflecting various rate calculation methodologies and provided descriptions of the assumptions its actuarial experts made to prepare these template calculations on January 27. CFC and its actuaries developed eight different templates pursuant to this Order and worked with all parties to provide a joint submission of

template calculations on February 17, 2016. (Parties' Joint Submission of Template Calculations, February 17, 2016, Exhibit QQ)

38. On February 12, 2016, CFC filed its Opposition to State Farm's February 4 Renewed motion to seal (its initial motion was filed October 4, 2015). CFC's opposition argued for the applicability of Insurance Code section 1861.07, which mandates broad public disclosure during the prior approval rate application process. (Consumer Federation of California's Opposition to State Farm's Motion to Seal, February 12, 2016, Exhibit R) The ALJ subsequently denied State Farm's motion. (Final Rulings on Motion to Seal, Admission of Exhibits, Closing Evidentiary Hearing, and Briefing; March 3, 2016, Exhibit S)

39. On April 11, 2016, CFC, along with the other parties, filed its post-hearing opening brief in which it renewed its contention that State Farm's catastrophe load was not actuarially sound, as evidenced by, among other things, a lack of support for the number of years selected to calculate the average ratio, the reliance on countrywide and Cal Fire data to support a California catastrophe trend, and the unsupported use of a Beta factor in the calculation of earned premium. (Consumer Federation of California's Post-Hearing Opening Brief, April 11, 2016, Exhibit T) CFC submitted a reply brief on May 18, 2016, responding to errors and unsupported allegations in Applicant's opening brief as well as providing new argument related to the effective date for any rate change resulting from this proceeding. (Consumer Federation of California's Post-Hearing Reply Brief, May 18, 2016, Exhibit U)

40. The ALJ closed the record on June 8, 2016, and subsequently submitted his proposed decision to the Commissioner. (Order Closing Record, June 8, 2016, Exhibit V) On August 8, the Commissioner declined to adopt the ALJ's proposed decision, ordering the record re-opened to take additional evidence relevant to determining the appropriate interest rate for policyholder refunds of excess premium charged. (Notice of Non-Adoption of Proposed Decision, August 8, 2016, Exhibit W) The ALJ directed the parties to submit evidence and concurrently file briefs on the issue. (Order Regarding Taking Evidence, August 12, 2016, Exhibit X) CFC, along with the other parties, submitted opening and reply briefs on August 29 and September 20, respectively. (Consumer Federation of California's Opening Brief in Support

of Refund Interest Rates, August 29, 2016; Consumer Federation of California's Reply Brief in Support of Refund Interest Rates, September 20, 2016, Exhibit XX)

41. On October 6, 2016, ALJ Larsen issued a Revised Proposed Decision that was received by the Commissioner on October 7, 2016. On November 7, 2016, the Commissioner adopted the ALJ's Revised Proposed Decision, which found State Farm's existing rates to be excessive and ordering a 7.0 percent reduction, effective July 15, 2015. The decision also ordered refunds plus interest to be paid for excessive premiums charged after the effective date. (Order Adopting Revised Proposed Decision, November 7, 2016, Exhibit Y)

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

Executed on December 6, 2016, at Sacramento California.

Aaron Lewis

ATTACHMENT 1

Hours for Douglas Heller

Date	Time (Hrs)	Activity
1/5/2015	0.42	Call with B Richard about SF filing, including discussion of investment income and CAT load selections
1/21/2015	0.15	call with B Richard re State Farm filing
1/22/2015	0.24	Reviewing analysis of rate filing by B Richard and evidence that rate is excessive; emailing with B Richard re evidence (.1)
1/22/2015	0.32	hearing
1/22/2015	0.32	Preparing Petition for hearing
1/26/2015	1.05	Preparing petition for hearing; emailing with M Varvais re Service of Petition (.1)
2/2/2015	0.27	reviewing SF response to dual petitions.
2/9/2015	0.10	emailing with P Pressley re SF response
2/13/2015	0.47	reviewing SF response to CFC petition
3/19/2015	0.27	Reviewing SF responsive material (to CDI request)
3/23/2015	0.20	Email conference with B Richard re SF's 3/17 SERRF submission
3/31/2015	0.06	Reviewing March 31 SERFF update by State Farm
4/2/2015	0.10	Emailing with B Richard re new SF data
4/3/2015	0.35	Call w B Richard regarding new data provided by SF
4/3/2015	0.10	Email conference with All Parties re scheduling
4/9/2015	0.20	Emails with B Richard, N McKennedy re new material on WARRF
5/18/2015	0.10	emailing B Richard regarding the filing and CFC's memo regarding the indication.
5/20/2015	0.30	variance
5/26/2015	0.24	Call with B Richard re analysis of filing and rate indication
5/26/2015	0.14	Reviewing all parties emails and emailing All Parties regarding apparent exclusion of CFC from recent emails
5/27/2015	0.10	call with N McKennedy regarding emails not sent to CFC
5/27/2015	0.60	reviewing Bickmore memo on rate indications; emailing with B Richard re same.
5/27/2015	0.17	Call with B Richard regarding Cat Load and rate indications memo
5/27/2015	0.22	template
5/27/2015	0.14	parties
5/28/2015	0.17	reviewing material regarding NDA proposed by State Farm
5/29/2015	0.26	reviewing CDI rate indication comparison chart; emailing with B Richard re rate indications
5/29/2015	0.20	emailing with T Foreman, P Pressley re catastrophe adjustment
6/1/2015	0.26	Pre-call with with B Richard regarding All-Parties Call

6/1/2015	0.87	All Parties Call
6/5/2015	0.30	call with R Holober regarding V Wells note on inability to resolve and implications for going forward, including staffing needs.
6/10/2015	0.10	emailing with CFC Team re preparing for hearing
6/10/2015	0.18	Call with R Holober regarding staffing the impending hearing and State Farm's variance requests
6/17/2015	0.17	Call with B Richard, R Holober, M Priven re distribution of responsibilities in SF hearing
6/17/2015	0.72	B Richard, M Priven re coordinating State Farm hearing responsibilities
6/18/2015	0.38	call with A Lewis discussing State Farm's view of variance requests, CAT load and Yield issues
6/22/2015	0.10	emailing with P Pressley re likely hearing
6/23/2015	0.10	Reviewing notice of hearing and amended discovery from CDI
6/25/2015	0.33	Call with T Foreman regarding CDI Discovery request and views on use of Q1 2015 data
6/25/2015	0.39	reviewing CDI's discovery request
6/25/2015	0.31	call with N McKennedy about stipulation concerning a date certain cut-off for data in the matter (Q1)
6/26/2015	0.20	preparing email to CFC/Bickmore team updating them on possible data stipulation as well as review of the content of the Notice of hearing and discovery request.
7/2/2015	0.10	emailing with parties re discovery
7/2/2015	0.13	AHB
7/6/2015	0.10	call with A Lewis to prepare for State Farm scheduled mtg on discovery production and AHB scheduled call
7/6/2015	0.39	reviewing proposed confidentiality stipulation presented by V Wells
7/7/2015	0.56	conference call set up by State Farm with All Parties regarding discovery procedures
7/8/2015	0.92	All Parties Telephonic Status Conference noticed by AHB
7/9/2015	0.10	emailing team re discovery
7/9/2015	0.09	discussing confidentiality stip and discovery with A Lewis
7/10/2015	0.28	call with M Priven, B Richard, A Lewis regarding discovery request
7/10/2015	0.26	request
7/10/2015	0.15	call with T Foreman about discovery (non-duplication and preserving rights to compel) and protective order
7/10/2015	0.27	Call with A Lewis regarding proposed protective order
7/13/2015	0.21	call with N McKennedy regarding SF PO and discovery
7/13/2015	0.47	call w P Pressley, T Foreman and A Lewis regarding Protective Order and ageeing on who will make first draft of response and discussion of proposed data cutoff

7/13/2015	0.19	call and emails with B Richard regarding recorded period stip and discovery request
7/13/2015	0.51	reviewing SF discovery request of CFC and notice of Defense; reviewing and responding to related emails from parties
7/13/2015	0.30	reviewing and responding to emails from team, other parties re confidentiality, NOD, updated templates
7/14/2015	0.13	request
7/14/2015	0.60	reviewing CW's proposed alternate Protective Order and providing CFC's comments
7/14/2015	0.25	call with T Foreman regarding proposed Prot Order
7/14/2015	0.25	call with Becky Richard regarding response to discovery and our discovery
7/14/2015	0.20	call with A Lewis regarding request of SF that discovery response be delayed.
7/15/2015	0.15	call with N McKennedy regarding discovery response timeline, yield, CAT load
7/16/2015	0.11	reviewing emails from all parties re status conference, stipulation and timelines
7/16/2015	0.41	Discovery and possible stipulation regarding certain aspects of filing
7/16/2015	0.36	reviewing discovery request items from Bickmore
7/17/2015	0.80	call with A Lewis regarding discovery request, SF's NOD and response to SF's Discovery request
7/17/2015	0.24	reviewing SF letter to ALJ Larsen; reviewing emails from all parties
7/20/2015	0.94	call with B Richard, M Priven, A Lewis re CFC discovery request items of SF
7/20/2015	0.39	call with A Lewis regarding status conference and All Parties call to discuss timeframe and stipulations.
7/20/2015	0.95	All Parties call to discuss timeline and upcoming status conference
7/21/2015	0.39	reviewing SF proposed changes to Protective Order
7/23/2015	0.63	Reviewing CFC's draft Discovery Request for State Farm
7/23/2015	0.18	call w/ A Lewis regarding Discovery request
7/23/2015	0.24	Reviewing proposed Joint Scheuling Conference Statement
7/24/2015	0.72	Telephone Status Conference
7/24/2015	0.20	Emailing with all parites re Joint Statement
7/27/2015	0.10	Emailing with team re new SF data
7/28/2015	0.34	call with B Richard regarding new State Farm filing data
7/28/2015	0.44	call with R Holober about hearing schedule, impending State Farm proposal on non-key issues and legal questions that will be in focus during the hearing.

7/28/2015	0.09	reviewing email from C Mammen regarding SF objections to most recent draft of Protective Order
7/29/2015	0.52	call with R Holober, B Nussbaum, A Lewis regarding Bill's responsibilities in the matter - motions, prepping witnesses, hearing
7/29/2015	0.25	Reviewing department's Proposed Joint Scheduling Statement
7/30/2015	0.17	call with N McKennedy, A Lewis about July15 2015 effective date of rate
7/31/2015	1.08	AHB Scheduling Conference - appearing telephonically
8/3/2015	0.81	reviewing SF proposed settlement items and emailing with B Richard regarding questions, emailing all parties
8/3/2015	0.47	call with Aaron Lewis regarding discovery response to SF
8/3/2015	0.57	call with A Lewis, B Richard regarding discovery
8/4/2015	0.10	discussions
8/7/2015	0.20	reviewing discover related emails from various parties and data sent by Matt Frank
8/17/2015	0.35	call with A Lewis regarding SF discovery response, failure to link responses to questions and reviewing response 00018915
8/17/2015	0.18	designation
8/17/2015	0.59	call with A Lewis, B Richard, M Priven about discovery responses from SF and settlement negotiations regarding trend and othe items
8/17/2015	0.10	Email conference with All Parties re scheduling
8/18/2015	0.20	Reviewing CFC responses to SF discovery request in preparation for State Farm requested meet and confer call.
8/18/2015	0.26	Meet and Confer call with State Farm regarding CFC's response to discovery
8/21/2015	0.93	reviewing emails from all parties re discovery, settlement (.1), reviewing SF response to CFC discovery
8/24/2015	0.50	reviewing emails, docs re designation of witnesses
8/24/2015	0.12	call with N McKennedy re SF discovery
8/27/2015	0.22	discussing impending SF meet and confer withA Lewis
8/28/2015	0.08	reviewing CDI letter to ALJ related to SF discovery
8/28/2015	0.29	reviewing SF discovery responses Vol. # 5
8/31/2015	0.26	Reviewing materials for Meet and Confer with SF re SF discovery responses.
8/31/2015	0.35	prepping for Meet and Confer with SF re SF discovery responses
8/31/2015	0.85	Farm)
9/1/2015	0.36	preparing notes for A Lewis in response to ALJ requested submission regarding disputed discovery items; email conference with team re critical docs needed in discovery (.1)
9/2/2015	0.44	editing pleading regarding discovery disputes
9/2/2015	0.14	call with A Lewis regarding SF's production of load files

9/2/2015	0.75	Call with T Foreman, J Phenix and A Lewis regarding upcoming settlement discussion as well as division of labor regarding Cat Load, Yield and Leverage factor
9/2/2015	0.10	emailing Bickmore with thoughts on dividing up pre-filed direct as well as preparatory notes regarding Thursday settlement call
9/3/2015	0.69	Call with B Richard and A Lewis to prepare for all parties settlement discussion
9/3/2015	0.10	call with A Lewis regarding SF's discovery reference document and his conversation with C Mammen about how to use it.
9/3/2015	0.31	call with B Richard re Variance 2A in advance of setlement call
9/3/2015	1.63	All parties call regarding settlement of certain rate matters; emailing parties re settlement issues (.1)
9/3/2015	0.33	call with A Lewis regarding Exhibit 14 discovery request and SF contention that it is irrelevant
9/3/2015	0.38	call with B Richard regarding relevance of Exhibit 14D to our Cat load analysis for drafting of motion to compel and in advance of ALJ hearing on discovery questions.
9/4/2015	0.12	call with A Lewis in advance of ALJ meeting re discovery
9/4/2015	0.02	Preliminary discovery conference (by phone) with ALJ
9/7/2015	0.25	reviewing Motion to Compel
9/8/2015	0.40	reviewing motion to compel
9/8/2015	0.63	call with A Lewis re Motion to compel
9/8/2015	0.51	reviewing email from Vanessa Wells re CFC motion to Compel and responding with offer to focus on requests 40-42 regarding Cat adjustment
9/9/2015	0.10	emailing with B Richard re Exh. 14
9/10/2015	0.08	call with A Lewis re Motion to Compel items concerning Ex. 14
9/10/2015	0.17	Researching differences between Exhibit 14 and Ex. 9 for purposes of motion to compel
9/10/2015	0.27	call with C Mammen and A Lewis re CFC's motion to Compel
9/14/2015	0.16	reviewing and providing input to ALewis via email regarding joint statement of issues in dispute
9/14/2015	0.17	call with A Lewis regarding SF's request that we withdraw motion to compel
9/14/2015	0.19	documents in response to Requests 40-42 from CFC request for discovery
9/15/2015	0.22	Call with Aaron Lewis regarding SF's request that we withdraw MTC and on Statement of Issues.
9/15/2015	0.12	Call with A Lewis regarding the CAT load aspect of the Joint Statement on issues
9/15/2015	0.18	Reviewing items in Joint Statement of undisputed facts

9/16/2015	0.10	Reviewing all parties emails on Joint Statement
9/16/2015	0.11	call with N McKennedy regarding Joint Statement of Issues
9/18/2015	0.30	exhibits
9/21/2015	0.10	intervenors
9/21/2015	0.50	call with A Lewis, B Richard and M Priven about SF PDT and key issues for M Priven's PDT
9/24/2015	1.01	call with A Lewis, B Richard, M Priven, T Foreman, A Schwartz about parceling out the Pre-filed Direct Testimony issues and research on Catastrophe adjustment
9/24/2015	0.31	call with A Lewis re Motion To Strike State Farm Testimony
9/24/2015	0.19	call with B Richard re non-actuarial issues in SF PDT for inclusion in our motion to strike
9/24/2015	2.57	reviewing PDT of Terry, Chau & Watkins
9/24/2015	0.23	call with B Richard re problems with SF PDT
9/24/2015	0.37	call with Aaron Lewis regarding motion to strike
9/24/2015	0.33	Reviewing Draft Motion to Strike SF testimony
9/25/2015	0.13	call with Becky Richard regarding settlement options for FFEQ and Variance 2A
9/25/2015	0.07	emailing all parties regarding an effort to settle remaining issues outside of the the Big Three issues
9/28/2015	0.20	reviewing emails, exhibit, and letter to counsel sent by State Farm
9/29/2016	0.20	reviewing and responding to emails with CW and CDI and CFC team re FFEQ, Advertising expenses
9/30/2015	0.18	regarding possibility of settling Var 2A, FFEQ and excluded expenses
10/1/2015	0.29	calls with A Lewis (6 minutes) and B Richard regarding State Farm's discovery documents and items that do not appear to have been produced despite promises to produce; emails with team re same, and re coordinating with SF/C Mammen re discovery
10/2/2015	0.41	reviewing B Richard's memo on items still missing from discovery, 7 minute call with B Richard, and emailing request for responsive documents to C Mammen (5 minutes)
10/5/2015	0.24	call with A Lewis regarding Motion to Strike, issues related to use of AIY and prep for call with Chris Mammen
10/5/2015	0.27	call with Chris Mammen and A Lewis re discovery request #19
10/5/2015	0.29	reviewing V Wells email re settlement matters and particularly SF's rejection of CFC's Variance 2A offer; emailing all parties in response (2 minutes)
10/6/2015	0.16	call with B Richard regarding V Wells commentary on Variance 2A proposal

10/6/2015	0.44	call with N McKennedy regarding Variance 2A, motion to strike and updated joint statement
10/7/2015	0.26	conversation with A Lewis regarding Motion to Strike hearing, Variance 2a discussion at CW motion to Compel hearing, and confidentiality hearing.
10/7/2015	0.49	call with V Wells regarding Variance 2A
10/7/2015	0.20	call with N McKennedy re Variance 2A
10/7/2015	0.22	call with T Foreman re Variance 2A
10/7/2015	0.15	Call with C Mammen and A Lewis regarding SF production of CAT loss data from 1980-89 and from 90-2014 on Accident Year basis
10/7/2015	0.25	call with B Richard regarding SF's production of CAT loss data from 1980-89 and from 90-2014 on an accident year basis; discussion of Variance 2a.
10/7/2015	0.18	facts
10/7/2015	0.18	emailing C Mammen about the failure of SF to provide CAT data on AY basis despite assurance that the data were provided.
10/8/2015	0.16	call with N McKennedy regarding CDI's views on Variance 2A and their ability to settle.
10/8/2015	0.94	Call with A Lewis to prepare for Motion to Strike hearing
10/8/2015	0.16	reviewing MTS tentative ruling
10/9/2015	0.15	Call With A Lewis regarding MTS hearing and Variance 2A settlement discussions
10/12/2015	0.17	call with B Richard regarding PDT of Mark Priven
10/13/2015	0.46	Reviewing PDT of Mark Priven
10/13/2015	0.34	regarding State Farm's willingness to accept 0.5% Variance 2A adjustment
10/13/2015	2.44	Reviewing M Priven PDT including review of Cal-Fire website and related documents cited in Watkins testimony to support use of Cal-Fire data.
10/13/2015	0.54	call with M Priven, B Richard to discuss Cat Adjustment and Fast Track data used in PDT; emailing with team regarding questions about SF's witnesses PDT (5 min)
10/13/2015	0.24	reviewing CSAA Hearing matters related to credibility weighting of CAT adjustment
10/13/2015	0.25	call with B Richard regarding use of CalFire data
10/13/2015	0.09	call with A Lewis regarding confidentiality agreements
10/13/2015	0.40	call with V Wells to confirm settlement of Variance 2A matter and discuss confidentiality agreement
10/14/2015	0.57	reviewing Priven PDT draft 2
10/14/2015	0.76	PDT
10/14/2015	1.03	reviewing PDT draft and exhibits

10/15/2015	0.34	Fast Track Data exhibit, discussion of Confidential documents in SF PDT
10/15/2015	1.22	Reviewing final draft of M Priven's PDT
10/15/2015	0.10	emailing B Richard, T Foreman re Fast Track data
10/16/2015	0.25	three related calls with A Lewis regarding finalizing PDT, including issues of redaction and edits.
10/16/2015	0.27	call with B Richard, M PRiven, A Lewis regarding final edits to PDT and questions about SF switch from calendar year to accident year basis in its 35 year analysis
10/16/2015	0.26	call with B Richard regarding SF indicated trend or 1.6% vs. 2.0% selection and how M PRiven's testimony might address it.
10/20/2015	0.20	Reviewing emails from various parties and associated docs (SF discovery response, CDI ltr to ALJ)
10/20/2015	0.27	call with A Lewis regarding confidentiality-related motion and discussing strategy for hearing
10/21/2015	0.17	reviewing objections to confidentiality designations; 4 minute call with A Lewis regarding pleading
10/23/2015	0.88	call with T Foreman, N McKennedy, S Volkmer, D Gooddell, A Lewis regarding
10/26/2015	0.54	call with M PRiven, B Richard, A Lewis regarding SF MTS Priven testimony; preparatory call for hearing.
10/27/2015	0.90	reviewing emails from T Warren and ltr to ALJ (.1), from L Baltodano and motion to seal and related decs (.8)
10/29/2015	0.85	Reviewing PDT of Karen Terry in prep for hearing
10/29/2015	0.65	reviewing and editing response to SF's MTS Priven testimny
10/29/2015	0.47	call with A Lewis regarding response to SF's MTS Priven testimony
10/30/2015	0.15	call with A Lewsi regarding state farm motion to seal
10/30/2015	0.37	Reviewing testimony of K Terry in preparation for hearing
11/2/2015	0.25	reviewing Bickmore notes on SF testimony in preparation for examination of witnesses
11/2/2015	0.88	Watkins testimony and problems with her Cal-FIRE data set and regarding potential items that SF attys might ask of Priven at hearing
11/4/2015	0.45	conversation with A Lewis regarding MTS hearing and issues related to credibility of State Farm CAT data.
11/6/2015	0.15	call with a lewis about notice of rate filing instructions as requested by ALJ, as well as other issues related to scheduling of witnesses.
11/6/2015	0.20	emailing with B Richard re CDI CAT tutorial
11/10/2015	0.33	call with A Lewis re planning for hearing
11/10/2015	2.13	reviewing testimony of K Terry, D APpel and N Watkins and preparing questions for hearing

11/11/2015	0.20	reviewing joint statement as edited by SF; reviewing and responding to emails re same
11/12/2015	0.67	call with T Foreman and A Lewis regarding CAT losses and Watkins cross
11/12/2015	1.01	reviewing testimony of Nancy Watkins and exhibits.
11/13/2015	2.79	preparing for cross exam of N Watkins
11/13/2015	0.43	California data, AIY as a base and othe matters related to testimony of N Watkins
11/13/2015	0.65	Call with B Richard to discuss Watkins smoothing techniques for determining trends and use of California data
11/14/2015	1.08	questions
11/14/2015	0.41	questions
11/15/2015	4.67	Preparing testimony questions for N Watkins
11/16/2015	0.92	preparing testimony questions for N Watkins and opening statement for hearing
11/16/2015	2.54	representing CFC at state farm evidentiary hearing
11/16/2015	3.37	Watkins
11/17/2015	2.08	Watkins
11/17/2015	2.60	Participating in SF hearing (examination of K Terry)
11/17/2015	1.57	Review of testimony of Dr. Hemphill and M Priven in advance of witness testimony
11/18/2015	2.64	Participating in hearing, including additional questions of Ms. Terry
11/18/2015	4.00	SF evidentiary hearing
11/18/2015	1.00	conferring with B Richard regarding hearing issues and preparing for testimony of M Priven
11/19/2015	0.50	mtg with B Richard and M Priven in preparation for hearing
11/19/2015	2.75	SF evidentiary hearing
11/19/2015	4.27	SF evidentiary hearing
11/20/2015	3.10	SF hearing, including cross of Dr. Appel
11/20/2015	2.48	SF hearing
11/24/2015	0.19	Call with A Lewis regarding transcripts and possibility of a declaration from fire personnel
11/25/2015	0.10	emails with team re rebuttal planning, emails with T Foreman re rebuttal topics
11/30/2015	0.20	reviewing B Richard's write up of Cal Fire call and research
12/1/2015	0.65	call with Priven Richard & Lewis regarding rebuttal testimony
12/1/2015	0.33	reviewing budget in preparation for submitting amended budget.
12/3/2015	0.10	email conference with team re Fast Track Data
12/7/2015	0.94	Priven
12/8/2015	0.45	testimony
12/9/2015	0.67	testimony

12/9/2015	0.67	Call with B Richard and A Lewis regarding rebuttal testimony
12/9/2015	0.58	expert.
12/11/2015	0.10	reviewing emails/letters to ALJ from N McKenedy
12/14/2015	0.43	testimony
12/15/2015	0.40	testimony
12/17/2015	1.66	researching Cal-Fire practices and draft declaration
12/17/2015	0.35	call with Becky Richard regarding rebuttal testimony
12/18/2015	0.44	reviewing Fast Track data email from N McKennedy and reviewing Wildland Fire Data Reporting Initiative meeting report related to use of NFIRS property loss data
12/18/2015	0.10	call with B Richard regarding new fast Track data
12/19/2015	0.16	Reviewing CDI discovery response regarding Oakland Hills Fire
12/19/2015	1.71	Reviewing rebuttal testiony of M. Priven
12/20/2015	1.01	reviewing rebuttal testimony of M Priven.
12/21/2015	0.25	call with A Lewis regarding rebuttal testimony and appropriateness of use of hearsay evidence.
12/21/2015	0.68	Call with A Lewis, B Richard, and M Priven regarding rebuttal testimony and outstanding questions to be addressed
12/21/2015	3.54	reviewing revised rebuttal testimony
12/22/2015	0.17	Reviewing AM Best reports produced by SF
12/22/2015	0.21	call with A Lewis to discuss rebuttal testimony, and AM BEst reports produced by SF
12/22/2015	1.26	Reviewing final draft of rebuttal; email conference with team regarding same (.2)
12/24/2015	2.51	Reviewing State Farm Rebuttal testimony
12/28/2015	0.84	reviewing letter from Wells re rebuttal witnesses, reviewing SF rebuttal testimpny
12/28/2015	1.05	reviewing testimony of Karen Terry, researching structures burned in 2015
12/29/2015	0.23	Call with B Richard regarding Coverage A issues addressed by Terry and CalFire issues addressed by Watkins
12/29/2015	0.17	reviewing SF discovery production, emailing SF requesting produiction of Supplemental Ex14 cited in Watkins Exhibit 109
12/29/2015	0.18	call with Aaron Lewis regarding Motion to Strike
12/29/2015	0.20	call with N McKennedy re ITV and Terry testimony
12/30/2015	0.33	review of CFC MTS rebuttal testimony, and conversation with A Lewis about MTS (5 minutes)
12/31/2015	0.16	Reviewing SF MTS CFC testimony
12/31/2015	0.10	emailing with B Richard re rebuttal preparation
1/3/2016	0.51	Preparing for MTS hearing related to SF's motion to strike Priven testimony

1/3/2016	1.78	preparing examination questions for N Watkins
1/4/2016	0.71	calculation of 2014- 2016 trend among other aspects of Watkins rebuttal
1/4/2016	0.34	researching WUI and demographics changes related to wildfire risk
1/4/2016	2.33	preparing cross examination of N Watkins
1/4/2015	0.10	email conference with team re rebuttal preparation
1/5/2016	1.33	preparing for hearing
1/5/2016	7.50	experts to discuss motions to Strike, and other matters related to the hearing.)
1/5/2016	2.18	preparing cross examination of Watkins
1/6/2016	1.30	Preparing for Examination of witnesses and hearing
1/6/2016	7.45	Hearing (including 1.25 working lunch meeting with M Priven and B Richard)
1/6/2016	1.89	preparing cross exam day 2 of Watkins.
1/7/2016	8.50	Hearing, including a working lunch with Priven, Richard
1/8/2016	7.33	Hearing, including a working lunch with A lewis and M Priven
1/8/2016	1.00	Discussion with T Foreman regarding hearing, witnesses and other hearing related matters.
1/12/2016	0.58	preparing additional rebuttal questions for Mark Priven, Reviewing Hemphill testimony
1/12/2016	2.89	Hearing -morning
1/12/2016	3.78	Hearing - afternoon
1/12/2016	0.50	preparing additional oral rebuttal questions for M Priven
1/13/2016	8.13	Rebuttal hearing, including working lunch meeting.
1/15/2016	0.38	Reviewing ALJ order re confidentiality
1/19/2016	0.10	call with A Lewis regarding filing of template and joint exhibit list
1/25/2016	0.13	Call with B Richard, A Lewis regarding ALJ request for alternative templates.
1/27/2016	0.23	call with A Lewis regarding submission of template description and discussion of confidentiality issues
1/27/2016	0.29	Fires
1/28/2016	0.19	call with N McKennedy re Wells Declaration and proposed exhibits
1/28/2016	3.56	preparing for Status Conference (15 minutes); Status Conference with ALJ Larsen
1/28/2016	0.15	emailing with team re hearing and rate templates needed
1/29/2016	0.33	reviewing rebuttal hearing transcripts
1/29/2016	0.77	Call with A Lewis re Confidentiality brief and opening briefs
1/29/2016	0.18	call with A Lewis regarding objections to motion requesting official notice and motion regarding CFC exhibits.
2/1/2016	0.45	templates

2/2/2016	0.13	call with A Lewis regarding confidentiality motion and other procedural matters
2/2/2016	0.11	reviewing Bickmore weighting methodology
2/2/2016	0.10	emails with N McKennedy, BRichard re templates
2/3/2016	0.48	reviewing templates produced by Bickmore on order of ALJ
2/3/2016	0.46	Editing Joinder to CDI motion to Strike exhibits 204-206
2/4/2016	0.15	Call with Richard Holober regarding timeframe of hearing briefing for planning purposes
2/5/2016	0.21	reviewing confidentiality declaration of R Barlin.
2/10/2016	0.13	call with A Lewis regarding confidentiality reply brief
2/10/2016	0.46	reviewing parties' rate templates, responding to CDI question about our templates
2/11/2016	1.32	Reviewing Confidentiality reply brief
2/12/2016	0.33	call w/ A Lewis re condientiality reply brief
2/16/2016	0.26	call with N McKennedy about rate template calculations
2/17/2016	0.17	call with B Richard regarding revised rate templates for all parties
2/17/2016	0.20	templates
2/17/2016	0.58	parties explaining change as well as other matters concerning our templates.
2/18/2016	0.51	call with A Lewis re SF Memo for Judicial Estoppel and preparation for hearing tomorrow.
2/18/2016	0.67	reviewing confidentiality briefs in preparation for Friday hearing
2/18/2016	0.44	Reviewing tentative ruling on confidentiality
2/18/2016	0.16	Reviewing SF motion for leave to present sur-rebuttal...
2/19/2016	0.18	call with R Holober regarding SF plan to file ex parte relief
2/19/2016	1.70	Hearing re confidentiality (morning)
2/19/2016	0.47	call with CDI and CW regarding a stay on the ruling
2/19/2016	2.25	Hearing re confidentiality motion (afternoon)
2/19/2016	1.11	drafting post-hearing brief
2/26/2016	0.11	call with A Lewis regarding SF request for increased # of pages in briefing
3/3/2016	0.21	call with Aaron Lewis regarding drafting of brieging.
3/3/2016	0.45	Drafting post-hearing brief
3/4/2016	0.17	reviewing Watkins testimony transcripts
3/8/2016	1.48	drafting post-hearing briefs
3/8/2016	0.61	drafting post-hearing briefs
3/9/2016	0.94	drafting post-hearing briefs
3/11/2016	0.90	drafting post-hearing brief
3/15/2016	1.02	drafting post hearing brief
3/15/2016	0.13	call with B Richard about Cat to non-Cat vs. Cat to AIY
3/15/2016	1.26	drafting post hearing brief

3/17/2016	1.12	drafting post hearing brief
3/17/2016	0.97	drafting post hearing brief
3/18/2016	1.89	drafting post hearing brief
3/22/2016	1.91	drafting post-hearing opening brief
3/23/2016	0.95	darfting post-hearing brief
3/24/2016	0.15	Call with A Lewis regarding yield and leverage factor.
3/24/2016	3.61	drafting post-hearing brief
3/24/2016	0.07	drafting post-hearing briefs
3/24/2016	0.15	call with N McKennedy regarding catastrophe adjustment
3/25/2016	1.98	drafting post-hearing briefing
3/28/2016	1.35	drafting post-hearing briefing
3/28/2016	1.84	drafting post-hearing briefing
3/29/2016	1.50	drafting post-hearing brief
3/29/2016	1.34	drafting post-hearing brief
3/29/2016	0.41	calculation.
3/30/2016	0.44	discussion with Pam Pressley regarding briefs including questions related to July 15 date, cat load and other items.
3/30/2016	3.79	drafting post-hearing brief
3/31/2016	5.92	drafting post-hearing brief
4/1/2016	3.15	drafting post-hearing opening brief
4/1/2016	1.89	drafting post-hearing opening brief
4/2/2016	2.17	drafting post-hearing opening brief
4/4/2016	2.29	drafting post-hearing opening brief
4/4/2016	2.40	drafting post-hearing opening brief
4/4/2016	2.34	drafting post-hearing opening brief
4/5/2016	0.92	drafting post-hearing opening brief
4/5/2016	0.08	Call with N McKennedy regarding CAT load, Cal Fire, weighting
4/5/2016	2.35	Drafting post-hearing opening brief
4/5/2016	0.30	Call with A Lewis re opening brief
4/5/2016	1.27	drafting opening brief
4/5/2016	5.52	opening brief - drafting
4/6/2016	1.01	integrating comments from actuaries to catastrophe load section
4/6/2016	0.22	call with B Richard regarding cat load-related questions
4/6/2016	1.80	integrating comments from actuaries to catastrophe load section
4/6/2016	1.69	drafting opening brief
4/7/2016	0.16	call with A Lewis regarding SF request for Official notice items, yield issue for briefing
4/7/2016	0.25	brief
4/7/2016	0.51	reviewing Opening brief sections on Yield and leverage
4/7/2016	0.78	Call with Aaron Lewis and N McKennedy (for 11 minutes of call) regarding yield and leverage issues

4/7/2016	0.63	reviewing yiled and leverage sections
4/7/2016	1.00	reviewing B Richard's notes on Countrywide and CalFire sections
4/8/2016	0.34	Reviewing M PRiven's notes on cat section
4/8/2016	1.31	Call with B Richard and M Priven and A Lewis regarding cat load section
4/8/2016	4.69	incorporating comments and suggestions of B Richard and MPriven {including call with A Lewis 9 min and B Richard 12 min)
4/9/2016	4.02	reviewing brief, including sections on Priop 103 and effective date
4/10/2016	7.01	Editing brief
4/11/2016	0.28	call with A Lewis regarding final edits to the opening brief...
4/11/2016	2.95	Reviewing Final draft
4/11/2016	0.03	discussing final edits with Aaron Lewis
4/11/2016	1.23	discussing final edits with Aaron Lewis
4/13/2016	1.07	reviewing CDI Opening Brief
4/15/2016	2.86	reviewing state farm brief, taking notes; reviewing RON exhibits
4/15/2016	0.67	reviewing CW brief
4/18/2016	1.03	drafting reply brief
4/19/2016	0.23	call with Aaron Lewis re Reply Brief
4/19/2016	0.45	reviewing SF brief; taking notes in preparation for Reply brief;emailing Bickmore
4/20/2016	0.20	brief
4/21/2016	1.08	call with A Lewis, T Foreman, N McKennedy et al to discuss Reply Briefs and questions stemming from Opening Briefs
4/21/2016	0.39	reviewing Bickmore notes on State Farm brief and emailing additional questions to Bickmore
4/25/2016	0.88	reviewing Bickmore comments on SF brief and drafting reply brief
4/26/2016	0.48	drafting reply brief (notes on SF opening brief)
4/27/2016	0.47	Call with N McKennedy re SF Request for Official Notice, ALJ Official Notice, and Cat trend issues in SF Opening brief
4/28/2016	1.99	reply brief (+25 minute call with N McKennedy on issues of insurer vs. insurers)
5/2/2016	1.72	Reply Brief and reviewing ALJ's proposed items for Official Notice
5/3/2016	1.98	Reply Brief
5/3/2016	0.18	call with Becky Richard re exhibits 508, 514
5/3/2016	0.65	Reply Brief
5/3/2016	0.08	call with N McKennedy re ALJ Order
5/3/2016	0.10	emails with team re ALJ order's discussion of Catastrophe and reply brief
5/3/2016	0.35	Reviewing ALJ order, apprising CFC and Bickmore
5/4/2016	0.21	call with A Lewis regarding ALJ Order, reply brief and SF Request for Official Notice

5/5/2016	1.55	Drafting Reply Brief
5/5/2016	1.82	Drafting Reply Brief
5/6/2016	3.39	Drafting Reply Brief
5/9/2016	1.52	Drafting Reply Brief
5/10/2016	3.53	Drafting Reply Brief
5/11/2016	2.07	Drafting Reply Brief
5/12/2016	0.88	Drafting Reply Brief
5/12/2016	0.25	call with A Lewis re Reply brief, motion to strike and opposition to request for official notice
5/12/2016	0.33	CALL WITH N McKennedy regarding Cat trends and 2015 data in SF brief
5/12/2016	6.60	Drafting Reply Brief
5/13/2016	1.67	Drafting Reply Brief
5/13/2016	0.29	Incorporating Aaron Lewis's edits
5/13/2016	1.59	Reply brief final sections...
5/13/2016	0.35	call w/ N McKennedy re effective date; email with N McKennedy re same + other aspects of SF opening brief
5/13/2016	0.14	call with aaron lewis re motion to strike/oppo to RON
5/15/2016	0.69	Drafting Reply Brief
5/16/2016	0.33	Call with Becky Richard re SF's three part trend and CAT provision per AIY
5/16/2016	2.70	Bickmore
5/16/2016	0.11	reviewing Motion to Strike
5/16/2016	0.17	Call with A Lewis regarding motion to Strike
5/17/2016	1.60	making final edits to brief
5/24/2016	0.74	reviewing SF Reply brief
5/25/2016	0.93	reviewing CDI and CW briefs
6/1/2016	0.10	emailing B Richard re rate template calculations
6/1/2016	0.12	Reviewing ALJ orders re RON, MTS and request for additional evidence
6/1/2016	0.41	call with N McKennedy regarding rate templates
6/2/2016	0.10	clarification/reconsideration
6/3/2016	0.49	reviewing SF's templates in response to ALJ order
6/3/2016	0.25	call with N McKennedy regarding templates ordered by ALJ
6/3/2016	0.18	ALJ
6/3/2016	0.41	reviewing ALJ order re templates and preparing and sending email to all parties regarding CFC templates in response to order
6/3/2016	0.17	reviewing and responding to emails from VWells, T Foreman regarding joint stipulation of rate templates
6/3/2016	0.20	reviewing and responding to V Wells emails about SFG's selected trend and the templates

6/3/2016	0.20	call with N McKennedy regarding weighting methodology
6/6/2016	0.32	two calls with A Lewis re template calculations for joint stip
6/6/2016	0.25	call with N McKennedy regarding templates for joint stipulation
6/6/2016	0.55	reviewing emails, templates and drafts of stipulation re templates
6/29/2016	0.36	Reviewing pleadings in Mercury V Jones related to SF request for judicial notice of material from State Farm rate hearing
7/21/2016	0.42	Reviewing series of SF emails about redacted, public versions of declarations
8/8/2016	0.34	reviewing SF letter to Commissioner Jones (including 3 minute call with A Lewsi)
8/9/2016	0.33	conversation with T Foreman regarding Commissioner Decision
8/9/2016	0.19	call with A Lewis regarding briefing of interest rate issue
8/9/2016	0.10	call with A Lewis to coordinate briefing process
8/9/2016	1.90	reviewing ALJ decision
8/10/2016	0.43	call with R Holober regarding ALJ proposed decision, Jones non-adoption and next steps
8/11/2016	0.51	Call with CDI, CW and CFC to discuss ALJ order on investment briefing
8/11/2016	0.21	call with A Lewis re drafting of brief
8/11/2016	2.02	Researching interest rates and Drafting brief on interest rates
8/12/2016	0.17	REviewing ALJ 8/12/16 order regarding taking evidence
8/12/2016	0.14	evidence
8/12/2016	0.27	call with T Foreman re order regarding evidence
8/15/2016	0.11	call with A Lewis regarding Wells letter to ALJ regarding interest rate questions
8/16/2016	0.25	call with A Lewis regarding submission of evidence regarding interest rates.
8/16/2016	0.28	reviewing V Wells email regarding stipulations and responding to all parties with proposed Meet and Confer time
8/17/2016	0.55	researching consumer interest rates
8/17/2016	0.08	call with A Lewis regarding document exchange re interest rates
8/18/2016	0.38	reviewing documents on interest rate standard and revising cover letter for document exchange.
8/19/2016	0.39	reviewing parties submissions regarding interest rates
8/19/2016	0.12	call with A Lewis regarding meet and confer re interest rates
8/22/2016	1.09	Meet and Confer call with all parties re interest rates
8/22/2016	0.75	rates
8/22/2016	0.00	post meet and confer call with A Lewis regarding interest rates and possible stipulation.
8/22/2016	0.28	call with todd foreman re stipulation
8/24/2016	0.73	Call with parties - reconvened meet and confer call re interest rates

8/24/2016	0.13	stipulations
8/24/2016	0.08	call with A Lewis re interest rates brief
8/26/2016	0.93	researching consumer finance issues for interest rate brief (including 4 minute call with A Lewis on subject)
8/26/2016	0.54	editing interest rate brief
8/26/2016	0.12	call with A Lewis regarding final edits to interest rate briefs
8/30/2016	1.19	reviewing SF Brief and declarations on Interest rates
8/31/2016	0.08	call with A Lewis regarding hearing order re interest rates
8/31/2016	0.08	Call with T Foreman regarding heraing order re interest rates
8/31/2016	0.40	reviewing ALJ order re interest rate hearing, parties' emails re same, and exhibits cited in ALJ Order
8/31/2016	0.20	Drafting telephonic appearance request
8/31/2016	0.00	reviewing CDI and CWD briefs on interest rates
9/1/2016	0.27	conversation with A Lewis to prepare for interest rate hearing
9/1/2016	0.21	call with N McKennedy re interest hearing
9/2/2016	0.07	reviewing CDI motion to object to SF briefing
9/2/2016	2.12	Interest rate status conference and hearing on submission of evidence; joined by telephone
9/6/2016	0.08	call with A Lewis regarding whether or not CFC needs to file a reply brief
9/7/2016	0.17	call with R Holober regarding reply brief on interest rates
9/8/2016	0.11	call with A Lewis about legal research concerning interest rates for reply brief
9/8/2016	0.25	Call with A Lewis regarding ALJ order for conference on interest rate reply briefs.
9/8/2016	0.35	Call with N McKennedy re ALJ order on Monday conference
9/9/2016	0.43	call w N McKennedy and Todd Foreman (12 min) re interst rate timing issue
9/12/2016	0.08	Call with A Lewis to prepare for Conference on interest rate timing
9/12/2016	0.48	reviewing relevant CCR and 20th century/Calfarm for interest rate timing issues
9/12/2016	0.63	ALJ-ordered conference regarding additional questions about interest rate on refunds
9/12/2016	0.13	Call with A Lewis to debrief on ALJ's interest rate conference
9/13/2016	0.11	call with A Lewis regarding interest rate reply brief
9/13/2016	0.94	call with A Lewis regarding interest rate conference (with N McKennedy for 30 min)
9/14/2016	0.24	Reviewing Exhibit List
9/15/2016	0.39	call with N McKennedy about the interest rate reply briefs
9/15/2016	0.44	editing interest rate brief
9/16/2016	2.86	editing interest rate reply brief

9/16/2016	0.08	call with A Lewis regarding 103 refund and interest issues
9/16/2016	0.44	call with N McKennedy regarding interest rate reply briefs
9/19/2016	0.25	reviewing reply brief and 9 minute call with A Lewis regarding interest rate reply brief
9/20/2016	0.61	editing Reply Brief on interest rates
9/20/2016	0.47	initial review of SF reply briefs
9/21/2016	0.14	call with A Lewis regarding reply briefs
9/22/2016	0.33	reviewing Reply briefs in interest hearing
9/26/2016	0.22	call with A Lewis regarding calculation of savings for SF customers and ALJ order re closing hearing
10/4/2016	0.20	reviewing SF calculation of refund amount (Terry Declaration) and comparing with Bickmore calculations
10/4/2016	0.14	call with N McKennedy re calculation of refunds
10/5/2016	1.23	Call with Holober and A Lewis re prospects of SF request for reconsideration and also challenge to Commissioner decision
10/6/2016	0.65	Call with T Foreman about ensuring the correct refund calculation
11/1/2016	0.50	5 minute call with R Holober, 5 minutes with N McKennedy re same.
11/7/2016	1.60	Reviewing final decision
11/7/2016	0.50	steps
11/7/2016	0.15	Call with N McKennedy re final decision
11/8/2016	0.26	call with R Holober about decision and next steps
11/9/2016	0.80	Summarizing SF decision and impact on consumers for R Holober
11/14/2016	0.47	call with A Lewis regarding fee request
11/15/2016	0.57	Preparing Request for Compensation (drafting section on initial petition and pre-hearing negotiation)
11/17/2016	2.24	Preparing Request for Compensation (drafting sections on hearings)
11/18/2016	0.96	Preparing Request for Compensation
11/18/2016	1.69	Preparing request for compensation (drafting hearing section)
11/21/2016	0.22	call with A Lewis re ALJ decision and preparation of Request for compensation
11/21/2016	2.53	Preparing request for compensation
11/22/2016	0.67	Preparing request for compensation
11/22/2016	0.48	Editing A Lewis sections of request for compensation
11/22/2016	0.41	call with A Lewis re Request For Comp.
11/23/2016	3.67	Preparing request for compensation
11/25/2016	0.37	Preparing request for petition
11/28/2016	0.22	call with A Lewis regarding Request for compensation and drafting of declaration
11/28/2016	3.29	editing Request for Compensation summary of proceeding, drafting section IV

11/29/2016	0.70	Drafting section for A Lewis declaration
11/29/2016	0.50	Reviewing Timesheet records
11/29/2016	0.23	compensation
11/30/2016	0.97	reviewing A Lewis declaration; adding info pre-hearing phase, hearings, Heller bio
12/1/2016	0.58	Reviewing Bickmore timesheets; editing A Lewis declaration
12/1/2016	1.50	Reviewing declaration of A Lewis, Request for compensation
12/2/2016	0.25	Reviewing expenses
12/2/2016	1.19	Final review and editing of Request for Compensation, Declaration of A Lewis
TOTAL	**428.43**	

Hours for Richard Holober

Date	Work Performed	Hours	Fee
6/6/2015	call with Doug Heller regarding likelihood of hearing in SF challenge and strategy going forward	0.3	$ 73
6/11/2015	Call with Doug Heller concerning hearing variance requests	0.2	$ 50
6/18/2015	Call with Doug Heller and Bickmore to discuss hearing	0.2	$ 50
6/18/2015	call with team and Consumer Watchdog team to discuss coordinating State Farm hearing responsibilities	0.7	$ 175
7/29/2015	call with Doug Heller about hearing, possible stipulations, and key issues that may remain in dispute	0.4	$ 100
7/30/2015	call with Doug Heller and CFC staff regarding attorney and advocate responsibilities in hearing	0.5	$ 125
11/20/2015	Attend evidentiary hearing	2.6	$ 650
2/5/2016	Call with Doug Heller regarding hearing	0.1	$ 25
2/20/2016	call with Doug Heller re State Farm challenge	0.2	$ 50
8/11/2016	call with Doug Heller: ALJ and Jones decisions, next steps	0.4	$ 100
9/8/2016	call with Doug Heller regarding interest rates brief	0.2	$ 50
10/6/2016	Call with team to prepare for possible request for reconsideration, other actions by SF	1.2	$ 300
11/2/2016	Call with Doug Heller regarding timing of decision	0.1	$ 25
11/8/2016	Call with team: SF Decision and next steps	0.5	$ 125
11/9/2016	call with Doug Heller about decision	0.3	$ 75
11/10/2016	Call with Doug Heller to discuss SF decision	0.8	$ 200

8.7 $ 2,173

Hours for Aaron Lewis

Date	Work Performed	Hours	Fee
6/17/2015	Call with Heller, Pressley, Foreman, Schwartz, Richard, Priven on avoiding duplication	0.7	$ 221
6/18/2015	Review CFC filings	1.4	$ 441
6/18/2015	Call with Heller on issues in dispute	0.35	$ 110
7/2/2015	Call with Heller on status conference	0.1	$ 32
7/6/2015	Call with Heller on status conference and discovery	0.1	$ 32
7/7/2015	All parties call on discovery process	0.5	$ 158
7/8/2015	Status conference with all parties	0.9	$ 284
7/9/2015	Call with Heller on confidentiality	0.1	$ 32
7//9/2015	Draft notice of appearance	0.2	$ 63
7/10/2015	Call with Heller, Richard and priven on discovery request	0.3	$ 95
7/10/2015	Call with Heller on protective order	0.2	$ 63
7/13/2015	Call with Pressley, Foreman, Heller on discovery and protective order	0.5	$ 158
7/13/2015	Review State Farm discovery requests	0.6	$ 189
7/14/2015	Review draft protective order from CW	0.5	$ 158
7/14/2015	Call with Heller on extra time for State Farm discovery request	0.2	$ 63
7/17/2015	Call with Heller on State Farm notice of defense and discovery	0.8	$ 252
7/20/2015	Call with Richard, Priven, Heller on Discovery	0.9	$ 284
7/20/2015	Call with Heller on Status conf	0.35	$ 110
7/20/2015	Review State Farm edits to protective order	0.2	$ 63
7/20/2015	All-party call on schedule	0.9	$ 284
7/20/2015	Draft discovery request	0.9	$ 284
7/21/2015	Read and review emails re; protective order	0.1	$ 32
7/21/2015	Review stipulated protective order draft	0.3	$ 95
7/22/2015	Read and review emails re discovery draft	0.1	$ 32
7/22/2015	Draft discovery request	1.4	$ 441
7/23/2015	Call with Heller on discovery request	0.2	$ 63
7/23/2015	Read and review emails re: protective order drafts	0.1	$ 32
7/23/2015	Prepare and edit discovery request	1.6	$ 504
7/24/2015	Read and review emails on status conference stmnt	0.1	$ 32

7/24/2015	All-party call on protective order	1.2	$	378
7/24/2015	Telephone Status Conference	0.7	$	221
7/27/2015	Review further State Farm edits on protective order	0.3	$	95
7/27/2015	Read and review emails on revised State Farm data	0.1	$	32
7/28/2015	Read and review emails on protective order	0.2	$	63
7/29/2015	All-party call on protective order	0.9	$	284
7/29/2015	Call w/ Holober, Nussbaum and Heller on case status	0.5	$	158
7/29/2016	Review joint scheduling conf statement	0.3	$	95
7/30/2016	Review State Farm edits to joint scheduling conf statement	0.3	$	95
7/31/2015	Scheduling conference	1	$	315
8/3/2015	Call with Heller and Richards on discovery	0.55	$	173
8/3/2015	Call with Heller on discovery	0.5	$	158
8/3/2015	Draft and prepare discovery response to State Farm	2.6	$	819
8/4/2015	Draft and prepare discovery response to State Farm	1.1	$	347
8/4/2015	Call with C. Mammen on disc. production issue	0.1	$	32
8/5/2015	Review produced documents form State Farm	0.6	$	189
8/9/2015	Draft and edit discovery response to State Farm	0.6	$	189
8/10/2015	Draft and edit discovery response to State Farm	1.7	$	536
8/17/2015	Call with Heller, Priven, Richard on discovery review	0.6	$	189
8/17/2015	Call with Heller on witness designation	0.2	$	63
8/17/2015	Call with Heller on State Farm discovery production/format	0.4	$	126
8/18/2015	Meet and confer with State Farm counsel Stacy Hovan	0.2	$	63
8/21/2015	Review State Farm responses to CFC disc	0.6	$	189
8/27/2015	Call with Heller on meet and confer	0.2	$	63
8/31/2015	Meet and confer with Heller and Chris Mammen	0.75	$	236
9/2/2015	Call with Heller on State Farm load files	0.2	$	63
9/2/2015	Call with Heller, Foreman, Phenix on settlement discussion and nonduplication of work	0.7	$	221
9/3/2015	Call with Heller on discovery reference doc	0.1	$	32
9/3/2015	Call with Heller on State Farm discovery contentions	0.3	$	95
9/3/2015	Call with Heller and Richards on potential settled issues	0.7	$	221
9/3/2015	All parties call re: settlement	1.6	$	504
9/4/2015	Review for dicovery conference	0.4	$	126
9/4/2015	Call with heller, prep for discovery conference	0.1	$	32
9/4/2015	Discovery conference	1	$	315
9/4/2015	Review Mammen email re Exh 14	0.2	$	63
9/8/2015	Review motion to compel	0.6	$	189

9/8/2015	Review Mammen email re dicover responsive to CDI	0.3	$	95
9/8/2015	Review CW MTC	0.5	$	158
9/8/2015	Call with Heller on MTC	0.6	$	189
9/10/2015	Call with Heller on MTC	0.1	$	32
9/10/2015	Call with Heller and Chris Mammen on MTC	0.25	$	79
9/14/2015	Call with Heller discussing possible withdrawl of motion to compel	0.2	$	63
9/14/2015	Call with Heller and CM on discovery	0.2	$	63
9/14/2015	Draft notice of withdrawl	0.5	$	158
9/15/2015	Call with Heller on withdrawing motion to compel	0.2	$	63
9/15/2016	Review State Farm oppo to CW MTC	0.5	$	158
9/15/2015	Call with Heller on joint statement	0.1	$	32
9/21/2015	Call with Heller, Priven, and Richards on issues to raise in Priven prefiled direct testimony	0.5	$	158
9/22/2016	Review State Farm responses to CFC disc	0.6	$	189
9/23/2015	Draft and edits motion to strike	0.9	$	284
9/23/2015	Review State Farm pre-filed direct testimony	1.9	$	599
9/24/2015	Call with Heller, Priven, Richards, and Todd Foreman, Allan Schwartz on non-duplication	1	$	315
9/24/2015	Call with Heller on motion to strike	0.4	$	126
9/29/2015	hearing on Motions to Compel	4	$	1,260
10/1/2015	Call with heller on discovery docs	0.1	$	32
10/5/2015	Call with heller on Motion to strike	0.2	$	63
10/5/2015	Call with Heller and Chris Mammen on discovery	0.25	$	79
10/6/2015	Review statement of undisputed issues	0.4	$	126
10/7/2015	Call with heller on Motion to strike hearing	0.2	$	63
10/7/2015	Call with Heller and Mammen on cat loss data production	0.1	$	32
10/8/2015	Call with Heller on tentative decision	0.1	$	32
10/8/2015	Call with Heller on prep for motion to strike hearing	1	$	315
10/9/2015	Call with Heller on Hearing	0.15	$	47
10/9/2015	Motion to strike hearing	2.6	$	819
10/13/2015	Call with Heller on confidentiality	0.1	$	32
10/14/2015	Call with Heller, Priven, Richards on prefiled direct testimony	0.5	$	158
10/14/2015	Review Priven prefiled direct testimony	1.6	$	504
10/15/2015	Review and incorp Heller edits	1.1	$	347
10/15/2015	Call with Heller on exhibits	0.3	$	95
10/15/2015	review and incorporate Priven edits to prefiled direct testimony	0.7	$	221
10/15/2015	Review and edit prefiled direct testimony	0.6	$	189
10/16/2015	Edit prefiled direct testimony	1.9	$	599

10/16/2015	Call with Heller, Priven, and Richards on prefiled direct testimony edits	0.25	$	79
10/17/2015	Review filed prefiled direct testimony	1.7	$	536
10/20/2015	Review State Farm discovery repsonse	0.5	$	158
10/20/2015	Call with Heller on hearing prep	0.3	$	95
10/23/2015	Call with Heller, CDI and consumer watchdog on heairng	0.9	$	284
10/26/2015	Call with Heller, Richards, and Priven on State Farm motion	0.5	$	158
10/27/2015	Call with Richards on motion to strike	0.15	$	47
10/29/2015	Draft and edit opposition to motion to strike	1	$	315
10/29/2015	Call with Heller on motion to strike response	0.5	$	158
10/30/2015	Call with Heller on State Farm motion	0.15	$	47
11/2/2015	Call with Heller, Richards, Priven on State Farm testimony	0.9	$	284
11/4/2015	Call with Heller on hearing prep	0.45	$	142
11/6/2015	Review watkind and terry testimony	0.55	$	173
11/6/2015	Call with Heller on witness schedule	0.2	$	63
11/6/2015	Review and research cross q's for Terry	1.6	$	504
11/10/2015	Review CDI hemphill testimony	0.4	$	126
11/10/2015	Call with Heller on hearng prep	0.3	$	95
11/12/2015	Status conference with all parties	1	$	315
11/12/2015	Call with Richards on cross exam q's	0.7	$	221
11/12/2015	Call with Heller and Foreman on Watkins cross	0.6	$	189
11/13/2015	Review consumer watchdog exhibits	0.4	$	126
11/13/2015	Review all testimony for hearing	2	$	630
11/13/2015	Review watkins testimony	0.5	$	158
11/14/2015	Review all testimony for hearing	1.1	$	347
11/15/2015	Review for hearing incl Terry cross	1.2	$	378
11/15/2015	Review for Terry cross	0.7	$	221
11/16/2015	Prep for and attend evidentiary hearing	7.5	$	2,363
11/17/2015	Prep for and attend evidentiary hearing	7.3	$	2,300
11/18/2015	Prep for and attend evidentiary hearing	8.3	$	2,615
11/19/2015	Prep for and attend evidentiary hearing	8.2	$	2,583
11/20/2015	Prep for and attend evidentiary hearing	7.1	$	2,237
11/23/2015	Prep for and attend evidentiary hearing	6.5	$	2,048
11/24/2015	Call with Heller on Cal Fire Decl	0.2	$	63
12/1/2015	Call with Heller, Richards and Priven on testimony	0.65	$	205
12/7/2015	Review Richards possible rebuttal topics	0.5	$	158
12/9/2015	Call with Heller and Richards on testimony	0.65	$	205
12/15/2015	Call with Heller, Richards and Priven on testimony	0.4	$	126
12/16/2015	Draft and edit possible cal fire declaration	1.6	$	504

12/17/2015	Draft and edit potential cal fire decl	0.5	$	158
12/18/2015	Review rebuttal testimony draft	1	$	315
12/21/2015	Call with Heller on testimony	0.2	$	63
12/21/2015	Call with Heller, Richards and Priven on rebuttal testimony	0.65	$	205
12/21/2015	Review rebuttal draft	0.9	$	284
12/22/2015	Review rebuttal draft	0.5	$	158
12/22/2015	Call with Heller on rebuttal testimony	0.2	$	63
12/22/2015	Review rebuttal testimony	1.2	$	378
12/29/2015	Review rebuttal testimony	0.8	$	252
12/29/2015	Call with Heller on motion to strike	0.2	$	63
12/30/2015	Review and edit motion to strike	0.5	$	158
12/30/2015	Review exhib list	0.3	$	95
1/2/2016	Review testimony and prep for evidentiary heairng	1.7	$	536
1/4/2016	Review cross X q's and heairng prep	0.6	$	189
1/5/2016	Prep for and attend evidentiary hearing	7.5	$	2,363
1/5/2016	Review for hearing re: watkins cross q's	0.3	$	95
1/6/2016	Prep for and attend evidentiary hearing	7.7	$	2,426
1/7/2016	Prep for and attend evidentiary hearing	8.6	$	2,709
1/8/2016	Prep for and attend evidentiary hearing	7.9	$	2,489
1/10/2016	Prep for hearings, review of proceeding	1.2	$	378
1/11/2016	Prep for and attend evidentiary hearing	7.8	$	2,457
1/12/2016	Prep for and attend evidentiary hearing	8.5	$	2,678
1/19/2016	Call with Heller on templates and exhibit list	0.1	$	32
1/21/2016	All party call on exhibits	1.1	$	347
1/22/2016	Review revised exhibit list	0.3	$	95
1/25/2016	Call with Heller and Richards on template	0.1	$	32
1/27/2016	Call with Heller on template submission	0.2	$	63
1/28/2016	Status conference w/all parties	3.2	$	1,008
1/29/2016	Call with Heller on confidentiality motion	0.7	$	221
1/29/2016	Call with Heller on official notice objection	0.2	$	63
2/2/2016	Draft and edit joinder	0.8	$	252
2/2/2016	Call with Heller on confidentiality motion	0.1	$	32
2/10/2016	Call with Heller on confidentiality brief	0.1	$	32
2/12/2016	Call with Heller on confidentiality brief	0.3	$	95
2/17/2016	Read State Farm reply to objections	0.3	$	95
2/18/2016	Review tentative	0.3	$	95
2/19/2016	Hearing on confidentiality (morning and PM)	3.9	$	1,229
2/26/2016	Call with Heller on State Farm briefing request	0.2	$	63

3/8/2016	Review and edits joint exhibit list	0.3	$	95
3/9/2016	Review and edit re-filed Priven PRT	0.4	$	126
3/21/2016	Review and edit brief	1	$	315
3/29/2016	Review discovery documents for Heller	0.3	$	95
4/1/2016	Review and edit brief	0.8	$	252
4/5/2016	Call with Heller on brief	0.3	$	95
4/7/2016	Call with Heller on yield and leverage	0.7	$	221
4/7/2016	Call with Heller on request for official notice	0.15	$	47
4/8/2016	Draft and edit opening brief	1.1	$	347
4/8/2016	Call with Heller, Priven, and Richard on cat load portion of brief	1.3	$	410
4/8/2016	Edit opening brief	0.6	$	189
4/9/2016	Edit opening brief	0.7	$	221
4/10/2016	Review and edit draft of Brief	1.1	$	347
4/10/2016	Review and edit draft of Brief	1.8	$	567
4/11/2016	Review brief for final edits	0.7	$	221
4/11/2016	Call with heller on final edits	0.3	$	95
4/13/2016	Read filed briefs	0.8	$	252
4/14/2016	Read filed briefs	1	$	315
4/14/2016	Review brief for redaction	0.9	$	284
4/19/2016	Call with Heller on reply brief	0.3	$	95
4/21/2016	Call with heller, Foreman and McKennedy on reply brief	1.1	$	347
4/21/2016	Review briefs	1.2	$	378
4/26/2016	Research official notice for legislative hearings	0.2	$	63
5/2/2016	Draft and edit reply brief section	1.1	$	347
5/4/2016	Call with Heller on ALJ order re: reply briefs	0.18	$	57
5/5/2016	Draft and edit motion to strike	0.7	$	221
5/11/2016	Draft and edit motion to strike	1	$	315
5/12/2016	Call with Heller on reply brief and MTS	0.2	$	63
5/13/2016	Review Reply brief Draft	1	$	315
5/13/2016	Call with Heller on Reply Brief	0.15	$	47
5/13/2016	Review Reply brief Draft	0.5	$	158
5/15/2016	Call with Heller on reply brief	0.1	$	32
5/16/2016	Review and edit Reply Brief Draft	1.3	$	410
5/16/2016	Call with heller on motion to strike	0.2	$	63
5/16/2016	Review motion to strike	1.1	$	347
5/17/2016	Review and edit Reply Brief Draft	0.9	$	284
5/17/2016	Call with Heller on reply brief	0.1	$	32
5/18/2016	Edit Reply brief	0.7	$	221

5/18/2016	Citation check for brief	0.5	$	158
5/19/2016	Read and review reply briefs	1.9	$	599
5/19/2016	Read and review reply briefs	0.6	$	189
5/20/2016	Review Reply brief for redaction	0.8	$	252
5/23/2016	Discussion with Heller on timeline	0.1	$	32
6/1/2016	Review State Farm filings	0.6	$	189
6/2/2016	Discussion with Heller on State Farm filings	0.1	$	32
6/2/2016	Review State Farm letter	0.3	$	95
6/2/2016	Discussiong with Heller on response to State Farm filing	0.1	$	32
6/3/2016	Draft letter objecting to State Farm motion	0.3	$	95
6/3/2016	Review template correspondence	0.3	$	95
6/6/2016	call with Heller on templates	0.2	$	63
6/6/2016	All party call on templates	0.3	$	95
8/8/2016	Review State Farm ltr to Commisisoner	0.5	$	158
8/8/2016	Call with Heller on Ltr	0.1	$	32
8/9/2016	Call with Heller on briefing	0.1	$	32
8/9/2016	Call with Heller on ALJ order re: reply briefs	0.1	$	32
8/10/2016	Review refund portions of briefs	0.5	$	158
8/10/2016	Review Proposed Decision	0.4	$	126
8/11/2016	Call with CW and CDI on additional briefing	0.6	$	189
8/11/2016	Call with Heller on briefing	0.2	$	63
8/11/2016	Caselaw research on interest rates	1	$	315
8/12/2016	Draft interest rate brief	1.2	$	378
8/12/2016	Review new Order and discussion with Heller on Order	0.2	$	63
8/15/2016	Call with Heller	0.1	$	32
8/15/2016	Review Wells email re: M&C	0.2	$	63
8/16/2016	Call with Heller on consumer interest rate and M&C	0.25	$	79
8/17/2016	Research consumer interest rates	0.3	$	95
8/18/2016	Draft and edit brief on interest rates	1	$	315
8/19/2016	Call with heller on meet and confer for interest rates	0.2	$	63
8/22/2016	Meet and confer	1.1	$	347
8/22/2016	Call with Heller on M+C	0.15	$	47
8/23/2016	Review edits on brief	0.2	$	63
8/24/2016	Further M+C	0.7	$	221
8/26/2016	Call with Heller on consumer rate evidence	0.1	$	32
8/31/2016	Revie state farm interest rate submissions	0.5	$	158
9/1/2016	Call with Heller on status conference	0.2	$	63
9/2/2016	Prepare for and attend status conference	2.3	$	725

9/6/2016	Call with Heller on need for reply brief	0.1	$	32
9/7/2016	Research case law for treatment of consumer interest/refund standard across JXs	0.8	$	252
9/8/2016	Research case law and regs per new ALJ order	0.8	$	252
9/8/2016	Call with Heller on interest rate research	0.1	$	32
9/8/2016	Call with Heller on new ALJ order	0.2	$	63
9/12/2016	Review refund timing caselaw	1	$	315
9/12/2016	All parties status conference	0.7	$	221
9/12/2016	Call with Heller post conference	0.15	$	47
9/13/2016	Call with Heller on reply brief	0.1	$	32
9/13/2016	Call with Heller and N. McKennedy on Sept 12 conf	0.9	$	284
9/14/2016	Review exhibit list for errors	0.2	$	63
9/14/2016	Draft and edit reply brief	0.8	$	252
9/16/2016	Call with Heller on reply brief	0.1	$	32
9/16/2016	Draft and edit reply brief	0.7	$	221
9/21/2016	Call with Heller on reply briefs	0.1	$	32
9/21/2016	Review filed briefs	1	$	315
10/4/2016	Call with Heller on refund percentage rates	0.2	$	63
10/5/2016	Call with Heller and Holober on case status and potential mtn for reconsideration from State	1.2	$	378
10/10/2016	Review docket for purposes of compensation claim	0.5	$	158
10/11/2016	Prepare and draft compensation claim	1	$	315
11/14/2016	Call with heller on compensation claim	0.5	$	158
11/18/2016	Draft and edit compensation claim	2.3	$	725
11/21/2016	Draft and edit compensation claim	1.3	$	410
11/21/2016	Call with Heller on compensation claim	0.2	$	63
11/22/2016	Call with Heller on compensation claim	0.4	$	126
11/28/2016	Draft and edit Lewis Decl	0.9	$	284
11/29/2016	Draft and edit Lewis Decl	1.6	$	504
12/1/2016	Call with Heller on compensation claim	0.1	$	32
12/1/2016	Call with Heller on compensation claim	0.3	$	95
12/2/2016	Call with Heller on compensation claim	0.1	$	32
12/5/2016	Compile exhibits for ocmp cliam	0.9	$	284
12/5/2016	final edit of claim	1.1	$	347
		264.38	**$**	**83,280**

ATTACHMENT 2

Date	Category	Submitted by	Amount
9/10/2016	Postage	Lewis	$ 26.60
9/2/2016	Parking	Lewis	$ 33.00
9/12/2016	Parking	Lewis	$ 32.00
8/29/2016	Postage	Lewis	$ 22.67
5/18/2016	Postage	Lewis	$ 22.29
11/16/2015	Meals	Holober	$ 32.27
5/27/2016	Postage	Lewis	$ 58.77
6/3/2016	Postage	Lewis	$ 28.51
5/16/2016	Postage	Lewis	$ 28.22
3/10/2016	Postage	Lewis	$ 24.84
1/27/2016	Postage	Lewis	$ 22.61
2/19/2016	Parking	Lewis	$ 34.00
2/12/2016	Postage	Lewis	$ 18.59
1/5/2016	Parking	Lewis	$ 33.00
1/6/2016	Parking	Lewis	$ 32.00
1/7/2016	Parking	Lewis	$ 32.00
1/8/2016	Parking	Lewis	$ 32.00
1/11/2016	Parking	Lewis	$ 32.00
1/12/2016	Parking	Lewis	$ 32.00
1/13/2016	Parking	Lewis	$ 32.00
1/8/2016	Meals	Lewis	$ 4.89
1/5/2016	Meals	Lewis	$ 7.80
1/12/2016	Meals	Lewis	$ 10.75
1/7/2016	Meals	Lewis	$ 5.71
1/5/2016	Meals	Lewis	$ 3.80
1/12/2016	Meals	Lewis	$ 10.55
1/12/2016	Printing & Reproduction	Lewis	$ 14.94
1/12/2016	Printing & Reproduction	Lewis	$ 6.20
2/4/2016	Postage	Lewis	$ 22.35
1/4/2016	Airfare	Heller	$ 335.96
1/4/2016	Lodging	Heller	$ 988.20
1/4/2016	Meals	Heller	$ 16.11
1/4/2016	Ground transportation	Heller	$ 69.50
1/5/2016	Meals	Heller	$ 7.37
1/5/2016	Meals	Heller	$ 22.90
1/5/2016	Meals	Heller	$ 11.90
1/6/2016	Meals	Heller	$ 14.84
1/6/2016	Meals	Heller	$ 30.45
1/6/2016	Meals	Heller	$ 6.23
1/7/2016	Meals	Heller	$ 10.66
1/7/2016	Meals	Heller	$ 4.78
1/7/2016	Meals	Heller	$ 27.75
1/8/2016	Meals	Heller	$ 4.38
1/8/2016	Meals	Heller	$ 10.55
1/10/2016	Airfare	Heller	$ 228.98
1/12/2016	Meals	Heller	$ 10.94
1/12/2016	Meals	Heller	$ 16.41
1/12/2016	Lodging	Heller	$ 506.33
1/12/2016	Ground transportation	Heller	$ 10.20
1/12/2016	Meals	Heller	$ 11.17
1/13/2016	Airfare	Heller	$ 228.98
1/13/2016	Parking	Heller	$ 36.08
1/13/2016	Meals	Heller	$ 14.54

1/13/2016	Meals	Heller	$	16.41
1/13/2016	Meals	Heller	$	5.98
1/13/2016	Ground transportation	Heller	$	10.20
1/5/2016	Legal Expenses	Transcript	$	542.50
1/6/2016	Legal Expenses	Transcript	$	681.70
1/7/2016	Legal Expenses	Transcript	$	809.30
1/8/2016	Legal Expenses	Transcript	$	690.40
1/11/2016	Legal Expenses	Transcript	$	757.10
1/12/2016	Legal Expenses	Transcript	$	849.90
1/3/2016	Legal Expenses	Transcript	$	774.50
11/17/2015	Legal Expenses	Transcript	$	684.60
11/16/2015	Legal Expenses	Transcript	$	813.40
11/23/2015	Legal Expenses	Transcript	$	614.60
11/16/2015	Legal Expenses	Transcript	$	670.60
11/18/2015	Legal Expenses	Transcript	$	791.00
11/20/2015	Legal Expenses	Transcript	$	656.60
9/29/2015	Legal Expenses	Transcript	$	423.60
7/27/2015	Postage	Lewis	$	22.83
9/4/2015	Parking	Lewis	$	34.00
9/15/2015	Postage	Lewis	$	34.73
8/6/2015	Postage	Lewis	$	33.20
10/9/2015	Parking	Lewis	$	34.00
10/16/2015	Postage	Lewis	$	28.42
10/20/2015	Postage	Lewis	$	23.74
10/21/2015	Postage	Lewis	$	23.74
10/30/2015	Postage	Lewis	$	23.74
11/3/2015	Postage	Lewis	$	24.08
9/29/2015	Parking	Lewis	$	34.00
9/30/2015	Postage	Lewis	$	23.91
11/19/2015	Parking	Lewis	$	33.00
11/18/2015	Parking	Lewis	$	34.00
11/20/2015	Parking	Lewis	$	33.00
11/23/2015	Parking	Lewis	$	34.00
11/16/2015	Parking	Lewis	$	34.00
11/17/2015	Parking	Lewis	$	34.00
11/19/2015	Meals	Lewis	$	6.53
11/16/2015	Meals	Lewis	$	4.00
11/19/2015	Meals	Lewis	$	2.00
11/19/2016	Meals	Lewis	$	6.00
11/20/2016	Meals	Lewis	$	8.16
11/16/2016	Printing & Reproduction	Lewis	$	78.11
11/16/2016	Printing & Reproduction	Lewis	$	15.96
12/14/2015	Postage	Lewis	$	24.08
12/22/2015	Postage	Lewis	$	28.83
10/23/2015	Lodging	Heller	$	297.18
10/23/2015	Lodging	Heller	$	1,076.34
10/26/2015	Airfare	Heller	$	366.96
11/5/2015	Lodging	Heller	$	334.32
11/15/2015	Ground transportation	Heller	$	55.00
11/15/2015	Ground transportation	Heller	$	20.00
11/15/2015	Meals	Heller	$	16.76
11/16/2015	Meals	Heller	$	76.80
11/16/2015	Meals	Heller	$	2.81
11/17/2015	Meals	Heller	$	27.72
11/17/2015	Meals	Heller	$	9.67

11/17/2015	Meals	Heller	$	14.23
11/18/2015	Meals	Heller	$	10.66
11/19/2015	Meals	Heller	$	6.50
11/19/2015	Ground transportation	Heller	$	12.10
11/19/2015	Meals	Heller	$	8.06
11/19/2015	Meals	Heller	$	10.88
11/20/2015	Ground transportation	Heller	$	10.10
11/20/2015	Ground transportation	Heller	$	23.95
11/20/2015	Meals	Heller	$	13.59
11/20/2015	Meals	Heller	$	21.42
1/11/2016	Meals	Holober	$	3.24
1/13/2016	Meals	Holober	$	6.99
1/16/2016	Meals	Holober	$	6.99

ATTACHMENT 3

Name	Date	Qty	Notes
Becky Richard	1/3/2015	1.0	State Farm HO 14-8381 14-8381 filing review
Becky Richard	1/5/2015	0.4	Call with Doug Heller
Becky Richard	1/5/2015	3.6	State Farm HO 14-8381 14-8381 Filing Review,
Becky Richard	1/21/2015	0.2	Call with Doug Heller to dicuss State Farm HO 14-8381 14-831 filing intervention
Becky Richard	1/22/2015	3.7	State Farm HO 14-8381 14-8381 Filing Intervention memo
Becky Richard	1/22/2015	0.3	Call with Doug Heller to discuss petition evidence
Becky Richard	4/3/2015	0.3	Call with Doug Heller to discuss new data
Becky Richard	5/19/2015	4.9	Review State Farm HO 14-8381 Data Submissions and determining Bickmore State Farm Indication
Becky Richard	5/20/2015	4.0	Review State Farm HO 14-8381 Data Submissions and determining Bickmore State Farm Indication
Becky Richard	5/21/2015	3.8	Review State Farm HO 14-8381 Data Submissions and determining Bickmore State Farm Indication
Becky Richard	5/26/2015	0.2	Call with Doug Heller at CFC to discuss State Farm HO 14-8381 Indication memo
Becky Richard	5/27/2015	5.6	State Farm HO 14-8381 Indications and memo preparation
Becky Richard	5/27/2015	0.4	Calls with Doug Heller to discuss State Farm 14-8381 indication memo
Mark Priven	5/27/2015	1.5	Review indication memo regarding State Farm HO 14-8381 filing
Becky Richard	5/29/2015	0.5	Review CDI State Farm HO 14-8381 Indication
Becky Richard	6/1/2015	1.2	Pre-Call with Doug Heller for State Farm HO 14-8381
Becky Richard	6/17/2015	0.2	call with CFC to discuss State Farm HO 14-8381
Becky Richard	6/17/2015	0.9	call with CFC, CW to discuss State Farm Hearing
Mark Priven	6/17/2015	0.2	call with CFC to discuss State Farm HO 14-8381
Mark Priven	6/17/2015	0.9	call with CFC, CW to discuss State Farm Hearing

Becky Richard	7/10/2015	0.3	Call with CFC to discuss State Farm HO 14-8381 hearing discovery requests
Mark Priven	7/10/2015	0.3	Call with CFC to discuss State Farm HO 14-8381 hearing discovery requests
Becky Richard	7/13/2015	0.2	Call with Doug Heller to discuss discovery issues
Becky Richard	7/13/2015	4.8	Prepare State Farm HO 14-8381 Discovery Request
Becky Richard	7/14/2015	0.2	Call with Doug Heller to discuss discovery
Becky Richard	7/14/2015	6.5	Prepare State Farm HO 14-8381 Discovery Request
Becky Richard	7/15/2015	5.5	Prepare State Farm HO 14-8381 Discovery Request
Becky Richard	7/16/2015	6.0	Prepare State Farm HO 14-8381 Discovery Request
Mark Priven	7/16/2015	2.0	Review State Farm HO 14-8381 Discovery Request
Becky Richard	7/17/2015	2.5	Researching investment strategies for State Farm HO 14-
Becky Richard	7/20/2015	0.9	State Farm HO 14-8381 Hearing Discovery conference
Becky Richard	7/20/2015	6.1	Prepare State Farm HO 14-8381 Hearing Discovery
Mark Priven	7/20/2015	0.9	State Farm HO 14-8381 Hearing Discovery conference
Becky Richard	7/21/2015	7.9	Preparing State Farm HO 14-8381 Hearing Discovery
Becky Richard	7/22/2015	3.0	State Farm HO 14-8381 Hearing discovery request
Becky Richard	7/23/2015	0.5	State Farm HO 14-8381 Hearing Discovery Request
Becky Richard	7/26/2015	4.0	State Farm HO 14-8381 12/31/14 Revised template and exhibit analysis
Becky Richard	7/27/2015	6.7	State Farm HO 14-8381 12/31/14 Revised template and exhibit analysis
Becky Richard	7/28/2015	0.3	Call with Doug Heller to discuss new data
Becky Richard	8/3/2015	0.6	call with CFC to discuss submission and email proposal
Becky Richard	8/3/2015	3.4	Review State Farm's HO 14-8381 new data submission and proposal email from 7/31/15
Mark Priven	8/3/2015	1.0	Review State Farm HO 14-8381 new data submission and proposal email from 7/31/15
Becky Richard	8/4/2015	0.7	Call with CFC to discuss State Farm HO 14-8381 data submissions on disk and confidentiality concerns; completing protective order for Mark Priven and myself.

Mark Priven	8/4/2015	0.7	Call with CFC to discuss State Farm HO 14-8381 data submissions on disk and confidentiality concerns; completing protective order for Becky Richard and myself.
Becky Richard	8/10/2015	2.5	Review State Farm HO 14-8381 response to CW 2nd discovery request, Review State Farm HO 14-8381 data submission, particularly movement from 24 pt to 8 pt to 24 pt and new severity base
Mark Priven	8/10/2015	0.9	Review State Farm HO 14-8381 response to CW 2nd discovery request, Review State Farm HO 14-8381 data submission, particularly movement from 24 pt to 8 pt to 24 pt and new severity base
Becky Richard	8/11/2015	2.9	Working with IT to get software loaded onto system to download State Farm HO 14-8381 data from disk and actual downloading data and organizing it
Becky Richard	8/17/2015	0.6	Call with CFC to discuss strategy for tackling the massive State Farm HO 14-8381 data submission in regards to CDI discovery request
Mark Priven	8/17/2015	0.6	Call with CFC to discuss strategy for tackling the massive State Farm HO 14-8381 data submission in regards to CDI discovery request
Becky Richard	8/31/2015	2.0	Downloading State Farm HO 14-8381 response to CFC discovery request #1
Becky Richard	9/1/2015	0.5	State Farm HO 14-8381 Filing; Exhibit 14 review
Becky Richard	9/3/2015	0.7	Calls with CFC to discuss settlement call
Becky Richard	9/3/2015	0.3	Calls with CFC to discuss settlement call and Variance
Becky Richard	9/3/2015	1.6	Call with State Farm, CDI and CFC to discuss
Becky Richard	9/3/2015	0.4	Call with Doug Heller to discuss Exhibit 14
Becky Richard	9/3/2015	1.2	State Farm HO 14-8381: Summarize outstanding Issues; review FFE data and load, Exhibit 14
Becky Richard	9/10/2015	0.5	Review State Farm HO 14-8381 response to our request for Exhibit 14 data compared to Exhibit 9
Becky Richard	9/15/2015	1.5	Review State Farm HO 14-8381 DRAFT Joint Statement of Undisputed Facts and Disputed Issues
Becky Richard	9/15/2015	0.5	mail back the State Farm HO 14-8381 CDs at their

Becky Richard	9/18/2015	1.5	Downloading revised State Farm HO 14-8381 response to CFC request for discovery disks
Becky Richard	9/21/2015	0.5	Discuss with CFC Hearing strategy on CAT loads and efficiency standard
Becky Richard	9/21/2015	0.2	Review CDI Efficient Standard calculation and State Farm's 2013 calculated expenses factor
Mark Priven	9/21/2015	0.5	State Farm HO 14-8381: Call with CFC to discuss State Farm Hearing strategy on CAT loads and efficiency standard
Becky Richard	9/23/2015	3.0	Summarizing our discovery request to State Farm HO 14-8381 with the documents State Farm submitted in response to our discovery request
Becky Richard	9/24/2015	1.0	State Farm HO 14-8381 call re State Farm with CW
Becky Richard	9/24/2015	0.4	2 calls with Doug Heller to discuss State Farm
Becky Richard	9/24/2015	9.6	Efficience standard variance analysis, Review Nancy Watkins Testimony, Research R-Squared papers, ISO CAT calculations and ISO California CAT data, Review HO 14-8381 Mao and Karen Terry Testimony for "Motion to Strike"
Mark Priven	9/24/2015	1.0	State Farm HO 14-8381 call re State Farm with CW
Becky Richard	9/25/2015	0.1	Call with Doug Heller to discuss FFEQ, etc
Becky Richard	9/25/2015	8.9	State Farm HO 14-8381 California and Countrywide trends; ISO trends; credibility of trends
Becky Richard	9/28/2015	2.7	Download new State Farm documents and summarize by CFC discovery requests
Nina Gau	9/28/2015	3.0	State Farm intervention - analysis of cat. load trending procedure, review of expert witness testimony, review of related actuarial literature.
Becky Richard	9/29/2015	3.5	State Farm Mark Priven Testimony write-up on CAT adjustment.
Becky Richard	9/29/2015	0.5	Discussion of critical weaknesses of State Farm assumptions with Nina Gau
Nina Gau	9/29/2015	2.5	State Farm intervention - analysis of cat. load trending procedure. Calculation of alternative trending metHO 14-8381ds.

Nina Gau	9/29/2015	0.5	Discussion of State Farm assumptions with Becky Richard.
Becky Richard	9/30/2015	8.0	State Farm Mark Priven Testimony write-up on CAT adjustment
Becky Richard	10/1/2015	8.7	Separating our State Farm CAT data submission for remainder of data submission; summarizing what issues have been taken off the table for the hearing and what issues are still outstanding; researching credibility of trend papers; Mark Priven testimony write-up, HO 14-8381urs summary to date
Becky Richard	10/1/2015	0.2	Call with Doug Heller and Aaron Lewis to discuss discovery docments
Becky Richard	10/2/2015	8.5	Mark Priven testimony write-up
Becky Richard	10/3/2015	2.5	Mark Priven testimony write-up
Becky Richard	10/4/2015	2.9	Mark Priven testimony write-up
Becky Richard	10/5/2015	9.5	Mark Priven testimony write-up
Becky Richard	10/6/2015	0.2	Call with Doug Heller to discuss Var 2A
Becky Richard	10/6/2015	1.8	Mark Priven State Farm Testimony; NAII Fast Track ordering
Mark Priven	10/6/2015	9.0	work on written testimony re State Farm HO 14-8381 filing
Becky Richard	10/7/2015	0.3	Call with Doug Heller to discuss CAT loss data, etc/
Becky Richard	10/7/2015	4.7	Updating analysis with NISS data received and Meeting with Mark Priven to discuss State Farm Testimony
Mark Priven	10/7/2015	5.4	work on written testimony re State Farm HO 14-8381 filing
Becky Richard	10/8/2015	5.9	Made revisions to exhibits and testimony after meeting with Mark Priven to discuss State Farm Testimony
Mark Priven	10/8/2015	3.0	work on written testimony re State Farm HO 14-8381 filing
Becky Richard	10/9/2015	3.5	Made revisions to exhibits and testimony after meeting with Mark Priven to discuss State Farm Testimony
Mark Priven	10/9/2015	4.0	work on written testimony re State Farm HO 14-8381 filing

Becky Richard	10/12/2015	0.1	discussed testimony with Doug Heller
Becky Richard	10/12/2015	5.1	State Farm testimony - researching sources for Fast Track; contacting ISS and ISO; revising exhibits on new fast track data found
Becky Richard	10/13/2015	0.4	discuss testimony with Doug Heller and Mark Priven
Becky Richard	10/13/2015	6.6	revised testimony and exhibits on using 20 years of Fast Track data, Review/research CalFire data that Watkins used, Revise testimony based on feedback from Doug Heller and Mark Priven.
Mark Priven	10/13/2015	2.6	Review written testimony State Farm HO 14-8381 filing
Mark Priven	10/13/2015	0.4	Call with Doug Heller and Becky Richard regarding testimony
Becky Richard	10/14/2015	0.8	Call with Doug Heller, Aaron Lewis and Mark Priven to discuss testimony
Becky Richard	10/14/2015	0.3	Call with Mark Priven regarding changes
Becky Richard	10/14/2015	4.9	Revised testimony and exhibits on Doug Heller and Mark Priven's comments to Version #2 of testimony
Mark Priven	10/14/2015	0.8	Call with Doug Heller, Aaron Lewis and Becky Richard to discuss testimony
Mark Priven	10/14/2015	0.3	call with Becky Richard regarding changes
Mark Priven	10/14/2015	1.4	Reviewed written testimony and exhibits
Becky Richard	10/15/2015	0.2	Call with Mark Priven to discuss revisions to testimony
Becky Richard	10/15/2015	6.8	Revised testimony and exhibits on Doug Heller and Mark Priven's comments to Version #3 of testimony
Mark Priven	10/15/2015	4.3	Review written testimony State Farm HO 14-8381 filing
Mark Priven	10/15/2015	0.2	Call with Becky Richard regarding revisions
Becky Richard	10/16/2015	0.3	Call with Doug Heller to discuss State Farm trend
Becky Richard	10/16/2015	0.3	Call with Doug Heller, Aaron Lewis and Mark Priven regarding testimony changes
Becky Richard	10/16/2015	6.4	Final testimony and exhibits changes and review

Mark Priven	10/16/2015	0.3	Con Call with Doug Heller, Aaron Lewis and Becky Richard regarding testimony changes
Mark Priven	10/16/2015	1.7	Final testimony and exhibits review
Nina Gau	10/16/2015	3.0	Peer review of written testimony. Verification of Bickmore calculations and exhibits in support of our testimony. Produced alternative calculations to support our case. Research of Catastrophe Load trending techniques.
Becky Richard	10/19/2015	0.7	reviewing Mark Priven testimony exhibits
Becky Richard	10/20/2015	0.5	reviewing Mark Priven testimony exhibits with Aaron Lewis for confidentiality
Becky Richard	10/22/2015	2.0	reading through direct testimony of Allan Swartz
Becky Richard	10/26/2015	0.6	call with Doug Heller, Aaron Lewis and Mark Priven to discuss timing/structure of hearing week and process needed to review direct testimony in preparation for hearing
Becky Richard	10/26/2015	1.9	reviewing Nancy Watkins
Mark Priven	10/26/2015	0.6	Call with CFC, review & prepare questions regarding my testimony, review State Farm filings & documents
Mark Priven	10/26/2015	2.4	Prepare for oral testimony
Becky Richard	10/27/2015	3.5	Meeting with Mark Priven going over his testimony
Becky Richard	10/27/2015	2.9	Review Bickmore testimony for potential objections
Mark Priven	10/27/2015	4.0	Prepare for oral testimony: review State Farm rate filings, Bickmore written testimony, CAS Basic Ratemaking text
Becky Richard	10/28/2015	8.0	Review Bickmore testimony for potential objections and prepare responses

Becky Richard	10/29/2015	6.0	Review prepare responses to potential questions on direct testimony, Review Nancy Watkins testimony for hearing questions, Review response to State Farm Motion to Strike
Mark Priven	10/29/2015	6.0	Prepare for oral testimony: review Fast Track information, Actuarial Standards of Practice, Nancy Watkins written testimony
Becky Richard	10/30/2015	6.2	Review prepare responses to potential questions on direct testimony, Review Nancy Watkins testimony for hearing questions, Review response to State Farm Motion to Strike
Mark Priven	10/30/2015	7.0	Prepare for oral testimony: review initial CF intervenation, Bickmore written testimony, "Classical Partial Credibility with Application to Trend" (Venter), "A Statistical Note on Trend Factors: The Meaning of R-Squared" (Barclay), written testimony Karen Terry
Becky Richard	11/2/2015	0.9	Call with Consumer Federation
Becky Richard	11/2/2015	2.1	CDI Direct Testimony review
Mark Priven	11/2/2015	0.9	Call with Consumer Federation
Mark Priven	11/2/2015	2.1	Call with Consumer Federation, Review Testimony: Karen Terry, Review Fast Track filings
Becky Richard	11/3/2015	3.0	Karen Terry Direct Testimony review
Mark Priven	11/3/2015	4.0	Review testimony Rachel Hemphill, Isabel Spiker
Becky Richard	11/6/2015	1.5	Review missing page from CDI CAT tutorial
Mark Priven	11/9/2015	0.9	review "Basic Ratemaking" info related to testimony
Becky Richard	11/10/2015	2.0	Reviewed newly submitted State Farm Documents
Becky Richard	11/12/2015	0.7	State Farm Hearing prep of KarenTestimony questions with Aaron Lewis
Becky Richard	11/13/2015	0.7	Conference call with Aaron Lewis, Mark Priven regarding testimony

Becky Richard	11/13/2015	0.4	Call with Doug Heller to discuss Watkins testimony
Becky Richard	11/13/2015	2.9	Review testimony of Consumer Federation, Venter paper, State Farm filings, CDI "catastrophe and modeled losses" powerpoint
Mark Priven	11/13/2015	0.7	Conference call with Aaron Lewis, Becky Richard regarding testimonies
Mark Priven	11/13/2015	3.3	Review testimony of Consumer Federation, Venter paper, State Farm filings, CDI "catastrophe and modeled losses" powerpoint
Becky Richard	11/16/2015	8.0	6.0 State Farm HO 14-8381 Hearing, 2 hours prep
Becky Richard	11/16/2015	3.0	State Farm HO 14-8381 Hearing
Mark Priven	11/16/2015	8.0	state farm Homeowners, 4 hours court, 2 hours travel, 2 hours prep
Becky Richard	11/17/2015	7.0	State Farm HO 14-8381 Hearing. 3.0 hours travel
Mark Priven	11/17/2015	10.0	state farm Homeowners, 6 hours court, 2 hours travel, 2 hours prep
Becky Richard	11/18/2015	8.5	6.0 State Farm HO 14-8381 Hearing, 2.5 hours travel
Mark Priven	11/18/2015	11.0	state farm Homeowners, 6 hours court, 2 hours travel, 3 hours prep
Becky Richard	11/19/2015	9.0	6.0 State Farm HO 14-8381 Hearing, 3.0 additional prep for Mark Priven testimony
Mark Priven	11/19/2015	8.0	state farm HO 14-8381, 6 hours court, 2 hours travel
Becky Richard	11/20/2015	3.0	State Farm hearing
Mark Priven	11/20/2015	8.0	state farm HO 14-8381:6 hours court, 2 hours travel
Becky Richard	11/23/2015	8.0	State Farm hearing
Becky Richard	11/23/2015	6.0	State Farm hearing
Becky Richard	11/30/2015	2.0	1.5 Researching the Cal Fire data, 0.5 call with CalFire
Mark Priven	11/30/2015	0.5	State Farm HO 14-8381, Prepare written testimony for
Becky Richard	12/1/2015	0.7	call with CFC to discuss rebuttal testimony process,
Becky Richard	12/1/2015	0.8	Reviewing and compiling billing for CFC budget update

Mark Priven	12/1/2015	0.7	Call regarding rebuttal testimony
Becky Richard	12/2/2015	1.5	researching R-Squared reliability and writing up rebuttal
Becky Richard	12/3/2015	8.0	Mark Priven rebuttal testimony
Becky Richard	12/4/2015	8.0	Mark Priven rebuttal testimony
Becky Richard	12/7/2015	8.0	Mark Priven rebuttal testimony
Becky Richard	12/8/2015	2.5	Mark Priven rebuttal testimony; researching r-square
Becky Richard	12/9/2015	0.2	call with Mark Priven to discuss rebuttal testimony,
Becky Richard	12/9/2015	0.7	Conference call to discuss rebuttal testimony with CFC
Becky Richard	12/9/2015	0.6	rebuttal testimony revisions
Mark Priven	12/9/2015	0.2	Call with Becky Richard to discuss rebuttal testimony
Mark Priven	12/14/2015	4.0	Prepare rebuttal written testimony
Becky Richard	12/15/2015	0.4	conference call regarding rebuttal written testimony
Mark Priven	12/15/2015	0.4	conference call regarding rebuttal written testimony
Mark Priven	12/15/2015	5.6	Prepare rebuttal written testimony
Becky Richard	12/16/2015	8.0	Mark Priven Rebuttal Testimony
Mark Priven	12/16/2015	2.0	Prepare rebuttal written testimony
Becky Richard	12/17/2015	0.4	Call with Doug Heller to discuss rebuttal testimony
Becky Richard	12/17/2015	7.6	Mark Priven Rebuttal Testimony
Mark Priven	12/17/2015	5.0	Prepare rebuttal written testimony
Becky Richard	12/18/2015	0.1	Call with Doug Heller to discuss Fast Track data
Becky Richard	12/18/2015	9.4	Mark Priven Rebuttal Testimony
Mark Priven	12/18/2015	5.0	Prepare rebuttal written testimony
Becky Richard	12/21/2015	0.7	Call with CFC to discuss testimony
Becky Richard	12/21/2015	11.3	Mark Priven rebuttal testimony
Mark Priven	12/21/2015	0.7	Call with CFC regarding testimony
Mark Priven	12/21/2015	6.8	Prepare written rebuttal: State Farm HO 14-
Becky Richard	12/22/2015	10.0	Mark Priven Rebuttal Testimony
Mark Priven	12/22/2015	7.0	Prepare written rebuttal: State Farm HO 14-
Becky Richard	12/27/2015	1.5	Review Watkins Rebuttal testimony
Becky Richard	12/28/2015	4.0	Review Watkins Rebuttal Testimony
Mark Priven	12/28/2015	2.0	review rebuttal testimony of Watkins, Terry, Appel, Hemphill
Becky Richard	12/29/2015	0.2	Call with Doug Heller to discuss Terry and Watkins rebuttals
Becky Richard	12/29/2015	8.8	Review rebuttal testimony of Watkins, Terry, Appel, Hemphill

Mark Priven	12/29/2015	6.0	review rebuttal testimony of Watkins, Terry, Appel, Hemphill
Becky Richard	12/30/2015	8.0	Review rebuttal testimony of Watkins, Terry, Appel, Hemphill
Mark Priven	12/30/2015	8.0	review rebuttal testimony of Watkins, Terry, Appel, Hemphill
Becky Richard	12/31/2015	5.0	review rebuttal testimony of Watkins, Terry, Appel, Hemphill. Prepare questions for rebuttal
Becky Richard	12/31/2015	3.5	Prepare for Mark Priven rebuttal oral testimony, Review Watkins rebuttal testimony, Review Terry rebuttal testimony
Mark Priven	12/31/2015	8.0	review rebuttal testimony of Watkins, Terry, Appel, Hemphill. Prepare questions for rebuttal
Becky Richard	1/4/2016	0.7	Calls with Doug Heller to discuss Watkins rebuttal
Becky Richard	1/4/2016	3.3	Watkins Rebuttal exhibits and testimony review
Mark Priven	1/4/2016	8.0	State Farm HO 14-8381meowners prep rate hearing
Becky Richard	1/5/2016	8.0	State Farm Rate Hearing
Becky Richard	1/5/2016	3.5	State Farm Rate Hearing
Mark Priven	1/5/2016	8.0	State Farm Homeowners rate hearing & Prep
Becky Richard	1/6/2016	8.0	State Farm Rate Hearing
Mark Priven	1/6/2016	10.0	State Farm Homeowners rate hearing & Prep
Becky Richard	1/7/2016	8.0	State Farm Homeowners rate hearing & Prep
Mark Priven	1/7/2016	10.0	State Farm Homeowners rate hearing & Prep
Becky Richard	1/8/2016	5.0	State Farm Rate Hearing
Becky Richard	1/8/2016	3.5	State Farm Rate Hearing
Mark Priven	1/8/2016	8.0	State Farm Homeowners rate hearing & Prep
Mark Priven	1/9/2016	4.0	State Farm Homeowners rate hearing prep
Mark Priven	1/10/2016	4.0	State Farm Homeowners rate hearing prep
Mark Priven	1/11/2016	11.0	State Farm Homeowners rate hearing & Prep
Becky Richard	1/12/2016	8.0	State Farm Hearing
Becky Richard	1/12/2016	3.5	State Farm Hearing
Mark Priven	1/12/2016	11.0	State Farm Homeowners rate hearing & Prep
Becky Richard	1/13/2016	7.0	State Farm Hearing
Becky Richard	1/13/2016	3.5	State Farm Hearing
Mark Priven	1/13/2016	7.0	State Farm Homeowners rate hearing

Becky Richard	1/19/2016	0.9	Preparing updated State Farm HO 14-8381 templates for
Becky Richard	1/20/2016	0.5	Preparing updated State Farm HO 14-8381 templates for
Becky Richard	1/25/2016	0.1	Call with CFC to discuss potential alternative
Becky Richard	1/29/2016	0.5	SF ALJ template indications
Becky Richard	2/2/2016	2.0	ALJ indications
Becky Richard	2/3/2016	5.0	ALJ Indications
Mark Priven	2/3/2016	0.5	Review options for ALJ
Becky Richard	2/9/2016	1.5	ALJ template calculations
Becky Richard	2/10/2016	1.5	ALJ template calculations; review other party templates
Becky Richard	2/17/2016	0.2	Call with Doug Heller to discuss revised templates
Becky Richard	2/26/2016	0.7	State Farm Revised Billing Estimate
Becky Richard	3/15/2016	0.1	Call with Doug Heller to discuss exposure bases
Becky Richard	3/15/2016	1.3	SF HO summary questions answered for Doug Heller
Becky Richard	3/18/2016	1.5	Review SF HO summary for Doug Heller
Becky Richard	4/4/2016	8.0	Review of State Farm HO brief
Becky Richard	4/6/2016	0.2	Call with Doug Heller to discuss Cat Load
Becky Richard	4/6/2016	0.8	SF opening brief review
Becky Richard	4/7/2016	0.3	Call with Doug Heller to discuss rate calculation
Becky Richard	4/7/2016	2.7	SF HO opening Brief Review
Mark Priven	4/7/2016	3.0	review of "opening brief"
Becky Richard	4/8/2016	1.3	Call with CFC to discuss Cat Load
Becky Richard	4/8/2016	1.2	Review SF HO Brief
Mark Priven	4/8/2016	1.3	Call with CFC regarding Cat Load
Mark Priven	4/8/2016	1.7	Review of "opening brief" and conference call
Becky Richard	4/11/2016	1.5	SF HO Brief review
Mark Priven	4/13/2016	2.0	review State Farm opening brief
Mark Priven	4/20/2016	3.0	review and comment on SF initial closing argument
Becky Richard	4/21/2016	6.0	SF HO Brief review
Becky Richard	5/3/2016	0.2	Call with Doug Heller to discuss exhibits for brief
Becky Richard	5/3/2016	0.3	SF HO Brief review
Becky Richard	5/13/2016	2.0	SF HO reply brief
Becky Richard	5/16/2016	0.3	Call with Doug Heller to discuss SF cat trend
Becky Richard	5/16/2016	3.7	reviewing SF reply brief
Mark Priven	5/16/2016	2.0	review of written reply brief
Becky Richard	6/1/2016	1.5	SF HO Revised Rate Indications
Becky Richard	6/3/2016	0.2	Call with Doug Heller to discuss templates
Becky Richard	6/3/2016	3.3	SF HO Revised Rate Indications

Becky Richard	6/6/2016	2.0	SF HO Revised Rate Indications
Becky Richard	9/26/2016	0.2	Calculating State Farm Decision Impact per CFC
Becky Richard	11/16/2016	0.5	Reviewing Hours

ATTACHMENT 4

Mark Priven, FCAS, MAAA

President, Regulatory & Alternative Risk Consulting

As President, Regulatory & Alternative Risk Consulting, Mark Priven is responsible for managing and promoting the development and expansion of this service area, while continuing to perform actuarial and risk financing studies for his current clients. Mark is an actuary with extensive experience serving both public and private agencies and pools over the last 15 years. Active in the risk management industry, he currently serves on the California Workers' Compensation Insurance Rating Bureau Actuarial Committee, the Associate Member Council of the International Association of Industrial Accident Boards and Commissions (IAIABC), is a Member of the National Academy of Social Insurance, and is Past President of Casualty Actuaries of the Bay Area (CABA).

Mark is a frequent speaker at industry conferences, such as RIMS, Institutional Investor, PARMA, CAJPA, and ASSE. He has presented on a variety of topics, including the following Enterprise Risk Management, insurance regulation, impact of workers' compensation reform, total cost of risk, actuarial reserving, insurance versus gambling, benchmarking, and measuring the effectiveness of risk control.

Mark also taught a class for several years to actuaries on retrospective rating, pricing individual accounts, excess loss pricing, and risk classification.

EXPERIENCE

Prior to joining Bickmore, for five years Mark was Vice President supporting retail brokerage clients at one of the largest international brokerage firms. He provided risk managers and brokers with loss forecasts, reserve studies, cost allocation plans, program comparisons, risk retentions analyses, benchmarking, and price negotiations, and assisted in program design and feasibility studies for finite risk, captives, and self-insurance.

As a Senior Reserving Analyst for one of California's largest insurance companies, Mark was responsible for special studies of $1 billion in workers' compensation reserves and claims handling costs. He also served as lead actuary supporting captives and franchise/association accounts.

EDUCATION

Bachelor of Arts, Philosophy & Mathematics – University of Pennsylvania
Junior Year of Undergraduate Studies – University of Bristol

PUBLICATIONS

Claims Liabilities and Liability Reporting, IAIABC Journal, Fall, 2009
Actuarial Issues in Mergers and Acquisitions, Co-author, 1999
An Introduction to Capitation and Healthcare Provider Excess Insurance, Co-author, 1997 – Winner of CAS Michelbacher Prize
Bringing Actuarial Science to the Risk Management Process, Co-author, 1995

PROFESSIONAL AFFILIATIONS

Fellow of the Casualty Actuarial Society (FCAS)
Member of the American Academy of Actuaries (MAAA)

HONORS

Selected by *Workers' Comp Executive* as one of the "Most Influential People in Workers' Comp for 2010"

Becky Richard, ACAS, MAAA

Senior Actuarial Analyst, Property & Casualty Actuarial Services

Becky Richard provides actuarial and risk management consulting services to public entity pools and self-insured organizations. She has several years of experience in the property/casualty insurance industry, specializing in ratemaking and reserving.

EXPERIENCE

Prior to joining Bickmore in 2010, Becky was a Commercial Lines Pricing Actuary for Cal Farm Insurance. She was primarily responsible for developing competitive rates for new business auto programs. Becky's previous experience also includes working at California Casualty Management Company as a Loss Reserve Analyst where she performed semi-annual reviews of case and bulk reserves.

EDUCATION

Bachelor of Science, Mathematics – California State University, Chico

PROFESSIONAL AFFILIATIONS

Associate of the Casualty Actuarial Society (ACAS)
Member of the American Academy of Actuaries (MAAA)

Nina Gau, FCAS, MAAA

Director, Property & Casualty Actuarial Services

Nina Gau provides actuarial and risk management consulting services to public entity pools and self-insured organizations. She joined Bickmore in 2008 and brings over 15 years of experience in the actuarial field, including ratemaking, reserving, financial modeling, and predictive modeling. Nina has also served on the Examination Committee of the Casualty Actuarial Society.

EXPERIENCE

Prior to joining Bickmore, Nina worked for Nationwide Insurance Company as a Pricing Director. Throughout her career at Nationwide, she worked in different capacities in Commercial Lines pricing, Corporate Reserving and Planning and Forecasting departments. In her most recent role she managed a research and development unit for Commercial Lines Pricing and carried primary responsibility for the Pricing Segmentation initiative.

From August of 1999 through July 2000, Nina worked as Management Analyst for the CSAC Excess Insurance Authority. Her responsibilities included policy control and statistical data reporting. She also served as a primary liaison between member counties and excess insurance brokers.

Nina served as an Actuarial Analyst for CalFarm Insurance Company from August 1996 to August of 1999. Her primary responsibilities there included rate reviews for the Personal Auto and Homeowners lines of business. She also performed various ad-hoc analyses for Personal Lines profitability and planning studies, as well as assisted in the development of a Personal Lines data warehouse.

EDUCATION

Master of Science, Applied Mathematics – Moscow State University, Moscow, Russia

PROFESSIONAL AFFILIATIONS

Fellow of the Casualty Actuarial Society (FCAS)
Member of the American Academy of Actuaries (MAAA)

ATTACHMENT 5

Project Name	User Name	Expense Code	Incurred Date	Amount
Consumer Federation - P&C				
	Priven, Mark	Meals	11/17/2015	$6.25
	Priven, Mark	Meals	1/7/2016	$8.32
	Priven, Mark	Meals	1/8/2016	$6.80
	Priven, Mark	Meals	1/11/2016	$21.19
	Priven, Mark	Personal Car Mileage	2/9/2016	$82.08
	Priven, Mark Total			**$124.64**
	Richard, Becky	Meals	11/16/2015	$14.13
	Richard, Becky	Travel-Taxi/Train/Tips/Etc	11/16/2015	$20.00
	Richard, Becky	Meals	11/17/2015	$21.34
	Richard, Becky	Travel-Taxi/Train/Tips/Etc	11/17/2015	$15.00
	Richard, Becky	Meals	11/18/2015	$66.29
	Richard, Becky	Meals	11/19/2015	$82.23
	Richard, Becky	Hotel	11/20/2015	$1,800.32
	Richard, Becky	Personal Car Mileage	11/20/2015	$218.88
	Richard, Becky	Travel-Taxi/Train/Tips/Etc	11/20/2015	$17.00
	Richard, Becky	Meals	11/23/2015	$16.35
	Richard, Becky	Personal Car Mileage	11/23/2015	$103.74
	Richard, Becky	Travel-Taxi/Train/Tips/Etc	11/23/2015	$13.30
	Richard, Becky	Meals	1/5/2016	$22.89
	Richard, Becky	Personal Car Mileage	1/5/2016	$102.60
	Richard, Becky	Meals	1/6/2016	$63.79
	Richard, Becky	Meals	1/7/2016	$77.59
	Richard, Becky	Hotel	1/8/2016	$763.51
	Richard, Becky	Meals	1/8/2016	$5.40
	Richard, Becky	Travel-Taxi/Train/Tips/Etc	1/8/2016	$23.40
	Richard, Becky	Meals	1/12/2016	$28.04
	Richard, Becky	Personal Car Mileage	1/12/2016	$103.68
	Richard, Becky	Travel-Taxi/Train/Tips/Etc	1/12/2016	$17.20
	Richard, Becky	Hotel	1/13/2016	$338.47
	Richard, Becky	Meals	1/13/2016	$16.47
	Richard, Becky	Travel-Taxi/Train/Tips/Etc	1/13/2016	$5.00
	Richard, Becky Total			**$3,956.62**
	Grand Total			**$4,081.26**

EXHIBIT 3

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Request for Award of Compensation of Consumer Watchdog, Intervenor.	File No. IP-2015-00003 AMENDED DECISION AWARDING COMPENSATION TO CONSUMER WATCHDOG *In the Matter of the Rate Application of State Farm General Insurance Company* Rate Application No.14-8381 (homeowners) Prior Approval File No. PA-2015-00004

1. SUMMARY

State Farm General Insurance Company ("State Farm") filed a rate application with the California Insurance Commissioner. The Insurer requested a 6.9%% rate increase for their homeowners line of insurance. A consumer advocacy group, Consumer Watchdog ("CW"), petitioned to intervene. The Department granted the petition. CW contended that the rate application violated the Insurance Code.

Following discussions among the parties and a rate hearing before an Administrative Law Judge, the Commissioner ordered State Farm to lower their rates by -7.0%.

CW requested compensation of $1,952,149.06 in advocate, attorney and expert fees for its participation and contribution to the decision. CW supported the application with a declaration by Pamela Pressley, an attorney for CW.

The Insurer objected to CW's fee request.

The Commissioner concludes: (1) CW made a "substantial contribution" to the rate decision (Ins. Code § 1861.10(b)), (2) the contribution was "separate and distinct" from that of

the Department (10 CCR § 2661.1(k)), (3) CW charged appropriate market rates (*id.* § 2661.1(c)), and (4) except for the fees listed in Section 6.C. of this Decision, the requested fees are reasonable (Ins. Code § 1861.10(b)).

Accordingly, the Commissioner approves CW's fee request in the reduced amount of $1,928,469.52. The Insurer shall pay the award. Ins. Code § 1861.10(b).

2. CONSUMER WATCHDOG'S PARTICIPATION IN THE PROCEEDING

A. CW's Petition to Intervene

On December 4, 2014, State Farm filed a prior approval rate application seeking to increase the premiums for their homeowners line of insurance by 6.9% - the maximum rate increase allowed by law without automatically triggering a rate hearing. The public was duly notified of State Farm's filing of said rate application on December 19, 2014.

On January 26, 2015, CW filed a Petition to for Hearing, to Intervene and Notice of Intent to Seek Compensation. CW stated as grounds for the Petition, numerous issues it found with State Farm's rate application, including large underwriting profits and income from previous years which may suggest that the proposed rate increase would result in excessive rates, excessive and unsupported provision for fire following an earthquake, improper and unsupported catastrophe adjustment, failure to support or provide data for its loss and premium trends, unsupported values for excluded expenses, failure to properly calculate the projected yield, improper request for a variance from the efficiency standard, and unsupported request for a variance from the leverage factor. In light of these issues that CW in consultation with their actuarial experts found with the rate application, they determined that the 6.9% rate increase sought by State Farm would violate provisions of the Insurance Code, the Insurance Code's implementing regulations, and the statutes implemented by the passage of Proposition 103.

On February 2, 2015, State Farm filed an objection to CW's Petition. State Farm generally denied the allegations in CW's Petition and objected to the fact that another consumer advocate had also found issues in State Farm's rate application and thus also sought to intervene. The Commissioner found that CW raised important issues pertinent to the prior approval rate process and granted CW's Petition to Intervene only, on February 10, 2015. CW's Petition for a

Hearing would be considered at a later date.

Another consumer advocacy group, Consumer Federation of California, also Petition to Intervene in the same rate application. Consumer Federation of California's Petition to Intervene was also granted.

B. CW's Participation in the Pre-Hearing Process

CW began review of State Farms rate application before the filing of their Petition to Intervene. CW's consulting actuarial experts identified serious issues with State Farm's rate application and issues why it should not be approved.

During the pre-hearing process, CW provided all of the parties with a detailed written analysis of the issues they found in State Farm's rate application. The written analysis was prepared by CW's consulting actuarial expert.

On June 1, 2015, CW's advocate and actuarial expert participated in an all-parties conference call where CW presented their argument supported by actuarial analysis regarding issues they identified in the rate application.

C. CW's Contribution to the Administrative Hearing

The parties were unable to resolve the issues identified in State Farm's rate application using the pre-hearing process. On June 22, 2015, the Commissioner ordered that an administrative hearing be held to resolve the issues. A Notice of Hearing was served on the parties on that date.

During the pre-hearing process, CW propounded its own discovery on State Farm and defended the discovery requests. CW's discovery requests lead to the production of thousands of pages of additional data and documents that were not previously provided by State Farm.

The actuarial experts retained by CW submitted pre-filed direct expert testimony to be considered by the Administrative Law Judge. CW also analyzed and moved to strike portions of State Farm's experts' pre-filed direct testimony. CW also defended its own expert pre-filed direct testimony against motions to strike portions of it from State Farm.

At the administrative hearing that began on November 16, 2015, CW actively participated throughout the multi-day, multi-part hearing. CW presented direct evidence through its actuarial

expert on pertinent issues before the Administrative Law Judge and cross-examined State Farm's expert witnesses.

After the conclusion of the administrative hearing CW provided expert pre-filed rebuttal testimony, moved to strike portions of State Farm's expert pre-filed rebuttal testimony and defended its own experts pre-filed rebuttal testimony.

CW actively participated in the rebuttal hearing which began on January 5, 2016. During the rebuttal hearing CW's experts provided rebuttal testimony and examined State Farm's rebuttal witnesses.

CW also submitted post hearing briefs that provided unique actuarial analysis of the issues that were argued before the Administrative Law Judge.

Throughout the hearing process CW actively participated and contributed to the rate process by providing expert testimony and actuarial analysis on pertinent issues before the Administrative Law Judge such as the catastrophe trend.

D. The Commissioner's Decision

On October 6, 2016, the Commissioner's adopted the Administrative Law Judge's Revised Proposed Decision which ordered an overall decrease of -7.0% effective July 15, 2015, with retroactive excessive premium refunds for policyholders beginning from that date.

3. STANDARDS FOR INTERVENOR COMPENSATION

Intervenors that have been granted a Finding of Eligibility to Seek Compensation are entitled to submit a request for compensation for their intervention in property and casualty insurance rate making matters before the Commissioner. 10 CCR § 2662.3(a).

Intervenors may seek compensation for time, additional fees and costs spent and or incurred after submitting an initial fee request. 10 CCR § 2662.4.

Intervenors who make a showing in their request of an award for compensation that they made a substantial contribution to the rate making decision of the Commissioner (10 CCR § 2662.5(a)(1)) and represented the interests of consumers (*id.* § 2662.5(a)(2)) are entitled to reasonable advocacy and witness fees. Ins. Code § 1861.10(b).

Intervenors must show substantial contribution by contributing as a whole to the decision of the commissioner resulting in more relevant, credible, and non-frivolous information being available for the Commissioner to make a decision than would have been available had the intervenor not participated. 10 CRR § 2661.1(k).

Intervenor compensation can be reduced to the extent that the intervenor's substantial contribution duplicates the substantial contribution of another party. 10 CCR § 2662.5(b). In determining whether there was duplication, the Commissioner considers whether the intervenor presented relevant issues, evidence or arguments which were separate and distinct from those presented by another party. *Id.* §§ 2661.1(k) and 2662.5(b).

The request for compensation must be verified (10 CCR § 2662.3(b)) and include detailed descriptions of the services and expenditures (*id.* § 2662.3(b)(1)), legible time and billing records (*id.* § 2662.3(b)(2)), and a description of the intervenor's substantial contribution (*id.* § 2662.3(b)(3)).

4. STATE FARM'S OBJECTION TO CW'S FEE REQUEST

On December 22, 2016, State Farm filed an Opposition to CW's Request for Compensation. State Farm argued that some of CW's did not make a substantial contribution, CW's work was duplicative of the efforts of CDI, CW's fee request is excessive, CW's actuarial expert charged hourly rates that were beyond his true market rate, and that CW should wait until the conclusion of State Farm's civil court appeal/court actions before seeking compensation for their over two years of work and participation in thirteen days of trial at the administrative level.

5. CW's REPLY IN-SUPPORT OF THEIR FEE REQUEST

On January 10, 2017, CW filed a Reply In-Support of their fee request. CW's stated reasons why they meet the standards for substantial contribution, and defended the reasonableness of their rates and the rates of their outside experts.

CW also filed a supplemental fee request to include the time and additional expenses incurred in responding to State Farm's Objection to the fee request. 10 Cal. Code Regs. § 2662.4.

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6. CW MEETS THE REQUIREMENTS FOR COMPENSATION

A. CW Represents the Interests of Consumers and Is Eligible to Seek Compensation

The Commissioner previously approved a finding of eligibility for CW. Finding of Consumer Federation of California's Eligibility to Seek Compensation, effective May 1, 2016-April 30, 2018. That finding determined that CW "represents the interests of consumers" (Ins. Code § 1861.10(b) & 10 CCR § 2661.1(j)) and may seek compensation.

B. CW Made a Substantial Contribution to the Commissioner's Decision

CW provided written analysis of relevant issues presented in the rate application and data provided by the Insurers. CW engaged in discussions regarding the rate application with the Insurers and the Department during the pendency of the rate application. CW's allegations led the Insurers to provide additional data.

During the pre-hearing phase of the proceeding, CW propounded and defended discovery, which led to the provision of additional data.

During the hearing CW provided expert actuarial testimony, cross examined State Farm's experts and actively participated in the proceedings.

After the conclusion of the hearing, CW continued to provide written analysis of issues discussed during the rebuttal phase. At the rebuttal hearing CW again provided expert testimony, cross examined witnesses and actively participated in the proceedings.

CW's active participation during all phases of the proceeding led to more relevant information being made available for consideration by the Administrative Law Judge in rendering a proposed decision that was ultimately adopted by the Commissioner as his own decision after revisions.

C. CW's Contribution Was Separate and Distinct from That of the Department

CW's contribution and participation in the proceedings was separate and distinct from that of the Department. CW provided an unique perspective and original actuarial analysis of the data that was provided by State Farm before, during and after the hearing. While CW and the Department worked on the same set of data that was being considered by the Administrative Law

Judge, CW provided an analysis of the data which resulted in a different conclusion and led to provide to the court arguments and analysis on important issues before the court that were entirely different from that of the Department.

Just one example of which was CW's original analysis of the data in calculating the projected yield. CW's analysis of this particular issue led to an original conclusion, wholly different from that of the Department. CW's analysis of this one exemplary issue was directly considered by the ALJ in the rendering of the proposed decision which was ultimately adopted by the Commissioner.

CW's active participation through all phases of the proceeding that spanned almost two years, and thirteen days of trial provided unique analysis and overall the provisioning of additional data for the ALJ's consideration and rendering of a proposed decision that was ultimately adopted as the Commissioner's own decision. CW satisfied the requirement of making a separate and distinct contribution.

D. CW'S Fee Request is Timely

Intervenors may seek compensation within 30 days after the service of the order of the Commissioner in the proceeding for which an intervenor is intervening. 10 CCR § 2662.3. There is no requirement that intervenors wait until the conclusion of any civil court appeals or actions before a fee request may be submitted after an order of the Commissioner has been served in the proceeding the intervenor is intervening in.

E. State Farm Did Not Disclose Its Fees and Expenses as Required by Regulation

State Farm opposes the fee request submitted by CW and questioned both the amount and reasonableness of the fees sought by CW. Any party questioning the reasonableness of any amount set forth in a fee request shall provide a statement setting forth the fees, rates and costs it expects to expend in the proceeding. 10 Cal. Code Regs. § 2662.3(g).

State Farm did not disclose any of its fees, rates or costs in their opposition to CW's fee request.

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7. AWARD

A. CW's Hourly Rates Are Reasonable

The Commissioner finds that the hourly rates requested for the attorney, advocates and experts who worked on this matter are within the reasonable market range that attorneys, advocates and experts with similar skills and experience in San Francisco and Los Angeles charged in 2016.

Intervenors are allowed to bill for attorney and advocate time at prevailing market rates at the time of the submission of the Request for Compensation for attorneys and advocates providing similar services in the private sector in the Los Angeles and San Francisco areas. 10 Cal. Code Regs. § 2661.1(c).

CW bills for its attorney's and outside legal counsels time from $300 per hour for an attorney with over 1 year of professional experience to $675 per hour for an attorney with over 30 years of professional experience.

CW's outside expert consultants billed from $150 per hour for an individual with over 30 years of experience in insurance regulation to $695 per hour for an actuary with over 30 years of actuarial experience.

CW's requested hourly rates are within the range of rates previously approved by the Department for attorneys, and experts of similar professional background and experience in recent, similar matters.

The Commissioner grants CW its requested hourly rates for its attorney, advocates and experts.

B. The Total Hours CW Spent on This Matter Were Almost All Reasonable

The Commissioner finds that CW's attorney's and experts' time charges were reasonable. CW billed contemporaneously and only for activities directly related to their intervention in this rate matter. None of the time charges recorded in the billing statements was excessive for the type, quality and nature of the work completed.

C. CW's Outside Legal Counsel Submitted Inappropriate Billing Entries

On numerous occasions CW's outside legal counsel billed for travel time; time spent—

traveling to and from the hearing, separate from actual travel costs. The regulations specifically allow for billing and compensation for actual travel costs, but not for travel time. CW's in-house legal counsel and CW's actuarial expert witness did not bill for travel time. Billing at an attorney's market rate for time spent solely on travel is not a reasonable expense.

CW's legal counsel also billed for miscellaneous reading material identified as a mass circulation newspaper and for subscriptions to Westlaw (a general topic legal research/library service). These expenses cannot be identified as being specific to the work conducted on this particular rate application and thus are not reasonable expenses.

CW's legal counsels' compensation is reduced by 2.5%.

D. CW Is Entitled to a reduced Award of $1,928,469.51

Accordingly, CW is awarded the following fees and expenses:

	Hours	Hourly Rate	Amount
Pamela Pressley, Esq., CW	302.6	$575	$173,995.00
Harvey Rosenfeld, Esq., CW	183.2	$675	$123,660.00
Jonathan Phenix, Esq., CW	443.40	$300	$133,020.00
Jonathan Phenix, Law Clerk, CW	169.1	$150	$25,365.00
Expenses for CW			$13,034.83
TOTAL FOR CW			**$469,074.83**
Daniel Zohar, Esq., Zohar Firm	506.3	$600	$303,780.00
Todd Foreman, Esq., Zohar Firm	1,240.3	$500	$620,150.00
Expenses for Zohar Firm			$23,251.65
SUB-TOTAL FOR ZOHAR FIRM			*$947,181.65*
2.5% REDUCTION			*-$23,679.54*
TOTAL FOR ZOHAR FIRM			**$923,502.11**
Allen Schwartz, Actuary, AIS	665.4	$695	$462,453.00
Katherine Tollar, Actuary, AIS	166.4	$320	$53,248.00
Maryanne Dwyer, Actuary, AIS	19.1	$290	$5,539.00
Expenses for AIS			$10,602.58
TOTAL FOR AIS			**$531,842.58**
Raymond K. Conover, Insurance Consultant	27.0	$150	$4,050.00
TOTAL FOR RAYMOND CONOVER			**$4,050.00**
Total Fees Compensated			**$1,928,469.52**

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8. FINDINGS AND CONCLUSIONS

The Commissioner finds and determines that Consumer Watchdog made a substantial contribution to the Commissioner's decision to approve the applications; that Consumer Watchdog's contribution was separate and distinct from that of the CDI; and that Consumer Watchdog's participation resulted in more relevant, credible, and non-frivolous information being available to the Commissioner than would otherwise have been available.

Consumer Watchdog is hereby awarded $1,928,469.52 in reasonable advocacy, legal counsel and expert fees[1].

The Insurers shall pay the award. Ins. Code § 1861.10(b).

Applicants shall make payment no later than 30 days from the date of this Decision and shall notify the CDI's Office of the Public Advisor[2] when they have made the payment.

Date: June 22, 2017

DAVE JONES
Insurance Commissioner

By: _____
Susan Stapp
Deputy General Counsel

[1] Consumer Watchdog, 2701 Ocean Park Blvd. #112, Santa Monica, CA 90405

[2] Edward Wu, 300 South Spring Street, 12th Floor, Suite 12700, Los Angeles, CA 90013 or edward.wu@insurance.ca.gov.

PROOF OF SERVICE
In the Matter of the Request for Award of Compensation of CONSUMER WATCHDOG, Intervenor
Case No. IP-2015-00003

I am over the age of eighteen years and am not a party to the within action. I am an employee of the Department of Insurance, State of California, employed at 45 Fremont Street, 19th Floor, San Francisco, California 94105. On June 22, 2017, I served the following document(s):

AMENDED DECISION AWARDING COMPENSATION TO CONSUMER WATCHDOG *In the Matter of the Rate Application of State Farm General Insurance Company* - Rate Application No. 14 -8381 (homeowners) - Prior Approval File No. PA-2015-00004

on all persons named on the attached Service List, by the method of service indicated, as follows:

If **U.S. MAIL** is indicated, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items to be sent by mail, pursuant to Code of Civil Procedure Section 1013. I am familiar with this office's practice of collecting and processing documents placed for mailing by U.S. Mail. Under that practice, outgoing items are deposited, in the ordinary course of business, with the U.S. Postal Service on that same day, with postage fully prepaid, in the city and county of San Francisco, California.

If **OVERNIGHT SERVICE** is indicated, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items for overnight delivery, pursuant to Code of Civil Procedure Section 1013. I am familiar with this office's practice of collecting and processing documents placed for overnight delivery. Under that practice, outgoing items are deposited, in the ordinary course of business, with an authorized courier or a facility regularly maintained by one of the following overnight services in the city and county of San Francisco, California: Express Mail, UPS, Federal Express, or Golden State overnight service, with an active account number shown for payment.

If **FAX SERVICE** is indicated, by facsimile transmission this date to fax number stated for the person(s) so marked.

If **PERSONAL SERVICE** is indicated, by hand delivery this date.

If **INTRA-AGENCY MAIL** is indicated, by placing this date in a place designated for collection for delivery by Department of Insurance intra-agency mail.

If **EMAIL** is indicated, by electronic mail transmission this date to the email address(es) listed.

Executed this date at San Francisco, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Christine Warren

SERVICE LIST
In the Matter of the Request for Award of Compensation of
CONSUMER WATCHDOG, Intervenor
Case No. IP-2015-00003

Name/Address	Phone/Fax Numbers	Method of Service
Vanessa Wells Victoria Brown HOGAN LOVELLS US LLP 4085 Campbell Avenue, Suite 100 Menlo Park, CA 94025 vanessa.wells@hoganlovells.com victoria.brown@hoganlovells.com	Tel: (650) 463-4000 Fax: (650) 463-4199	EMAIL
Michael J. Shepard Christian E. Mammen HOGAN LOVELLS US LLP 3 Embarcadero Center, Suite 1500 San Francisco, CA 94111-4038 michael.sheppard@hoganlovells.com chris.mammen@hoganlovells.com	Tel: (415) 374-2300 Fax: (415) 374-2499	EMAIL
Harvey Rosenfield Pamela Pressley Jonathan Phenix CONSUMER WATCHDOG 2701 Ocean Park Blvd., Suite 112 Santa Monica, CA 90405 harvey@consumerwatchdog.org pam@consumerwatchdog.org jon@consumerwatchdog.org	Tel: (310) 392-0522 Fax: (310) 392-8874	EMAIL
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SERVICE LIST
Continued

Name/Address	Phone/Fax Numbers	Method of Service
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Nikki S. McKennedy Summer Volkmer Daniel Goodell CALIFORNIA DEPARTMENT OF INSURANCE 45 Fremont Street, 21st Floor San Francisco, CA 94105 nikki.mckennedy@insurance.ca.gov summer.volkmer@insurance.ca.gov daniel.goodell@insurance.ca.gov	Tel: (415) 538-4500 Fax: (415) 904-5490	EMAIL

EXHIBIT 4

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Requests for Compensation of **CONSUMER WATCHDOG,** Intervenor.	FILE NO. RFC-2023-006 *In the Matter of the Rate Application of Farmers Exchange, Fore Insurance, and Mid-Century Insurance Company* *PA-2022-00007*

DECISION AWARDING COMPENSATION

In this Request for Compensation (RFC) Consumer Watchdog (CW or Petitioner) seeks $82,814.50 in compensation for its intervention in a Rate Application (RA) filed by Farmers Exchange, Fore Insurance, and Mid-Century Insurance Company (Farmers or Applicant). The RA sought a 24.9 percent increase in its homeowners multiple peril insurance line of insurance, but was ultimately resolved by a stipulation, granting Farmers a 17.7% increase. Farmers did not oppose CW's Request for Compensation arising therefrom. For the reasons explained below, the Request for Compensation is GRANTED.

FINDINGS OF FACT

Farmers' Rate Application

On June 15, 2022, Farmers filed a Rate Application with the Department of Insurance (Department) seeking a 24.9 percent increase in its homeowners' multiple peril insurance line.[1]

[1] RFC, p. 3.

The Department assigned the RA to Darjen Kuo for investigation.[2] On July 8, 2022, Farmers' RA was made public.[3] Several events occurred on August 22, 2022. The Department requested that Applicant waive the deemer period,[4] Applicant responded by waiving both the 60-day and the 180-day deemer periods,[5] and CW filed a Petition for Hearing, Petition to Intervene, and Notice of Intent to Seek Compensation (collectively, "Petition").[6]

In its Petition, CW raised a number of concerns, which may be briefly described as Farmers': (a) failure to demonstrate that its proposal to non-renew 10,000 policies will not create excessive and/or unfairly discriminatory rates;[7] (b) use of only one model for Fire Following Earthquake (FFEQ);[8] (c) use of quarterly rather than annual paid loss development;[9] (d) failure to demonstrate that the use of incurred rather than paid loss development is the most actuarially sound method;[10] (e) failure to demonstrate that the selected trend factors and trend data period used were the most actuarially sound, and how the non-renewal of policies would likely impact the trend;[11] (f) failure to demonstrate that all institutional advertising expenses were accounted for;[12] (g) failure to justify for the loss trend factors proposed in the Variance 7B request;[13] (h) failure to justify the loss trend factors proposed in the variance 8B request;[14] and (i)

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[2] Rate Applications may be found online at https://interactive.web.insurance.ca.gov/apex_extprd/f?p=186:1:13936543914997. An administrative agency may take official notice of its own records, (See Evid. Code, § 452, subd. (d).) Official Notice is hereby taken of the Rate Application number 22-1617, as well as the related Rate Applications numbered 22-1617-A, and 22-1617-B. Citations in this decision to a Rate Application ("RA") utilize the State Tracking number. Although Rate Applications do not contain continuous internal pagination, page numbers are referenced according to their order of appearance in the .pdf.

[3] RFC, p. 3.

[4] RA #22-1617, p. 17.

[5] RA #22-1617, p. 38.

[6] Exh. 3, attached to Powell Decl., RFC, p. 4.

[7] Petition, ¶ 8.a.

[8] Petition, ¶ 8.b.

[9] Petition, ¶ 8.c.

[10] Petition, ¶ 8.d.

[11] Petition, ¶ 8.e.

[12] Petition, ¶ 8.f.

[13] Petition, ¶ 8.g.

[14] Petition, ¶ 8.h.

failure to comply with filing instructions and submission of exhibits in searchable Excel and PDF format.[15]

On September 6, 2022, the Commissioner granted CW's Petition to Intervene.[16] The Commissioner found that CW complied with the procedural requirements in the Insurance Regulations, and that the issues it sought to address were relevant to the ratemaking process.[17] The decision withheld a ruling on the Petition for Hearing.[18]

On October 4, 2022, the Department issued an Objection Letter asking Farmers to respond to eight concerns. In brief, the concerns raised by the Department seek the following information: (1) how the decision to non-renew 10,000 policies due to wildfire risk will affect the proposed rate and premium; (2) a justification for the use of only one model to calculate FFEQ; (3) a justification for the use of quarterly time rather than annual in calculating catastrophe adjustment; (4) an explanation for why using incurred losses to develop ultimate losses is the most actuarially sound selection; (5) a justification for the use of 12-point for premium trends and 12-point with closed Frequency and Total Paid Severity; (6) a standard exhibit 7 for Smart Plan Home data only; (7) given annual losses and exposures, a correction to the assigned 0% credibility for Smart Plan Home's experiences in calculating the loss trends and loss development factors; and (8) the resubmission of multiple exhibits in Excel and PDF formats according to specifications.[19] Six of the eight Objections raised by the Department had already been raised or partially raised by CW in its August 22 Petition.

On October 11, 2022, Farmers responded to the Department's inquiries by resubmitting

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[15] Petition, ¶ 8.i.
[16] RFC, p. 6.
[17] Exh. 4, attached to Powell Decl.
[18] *Ibid.*
[19] RA #22-1617, p. 16.

exhibits in Excel and PDF formats.[20] In its response, Farmers rescinded the non-renewal plan and declared that it was not moving forward with any "wildfires non-renewals."[21] In explanation for its use of only one model to calculate FFEQ, Farmers argued that use of only one model was the commonly accepted practice among its competitors. It referenced other rate applications by various competitors where only one model was used and argued that the RMS model complies with "actuarial statutory standards."[22] Farmers' explanation for calculating quarterly, rather than annual, catastrophe ratios, was because the main contributor to catastrophe losses in California—wildfires—occur more frequently in the 4th quarter of the fiscal year. According to Farmers, "this causes the total to [*sic*] non-CAT factor to be inflated in years experiencing extreme Q4 event[s] and extraordinary CAT losses," as was the case in years 2003, 2007, 2018, and 2020.[23] To explain its use of incurred losses, Farmers argued that, paid losses are driven by smaller damage claims, while incurred losses more accurately reflect rising inflation and other repair costs and ALE expenses.[24] As explanation for its use of 12-point, rather than 20-point, loss experience, Farmers explained that the shorter period gave greater weight to the pandemic and recent inflation, which it believed would be more suited to prospective rate making.[25] In response to the Department's request for a standard Exhibit 7 for Smart Plan Home data only, Farmers provided it in an electronic attachment.[26] Farmers did not provide corrected loss trends and loss development factors in response to the Department's concerns about its use of 0% credibility for Smart Plan Home's experiences. It did, however, provide a reasoned explanation for its failure to do so. Essentially, Farmers stated its willingness to make the requested changes,

[20] RA #22-1617, p. 33; see also Exh. C, attached to Powell Decl.
[21] Exh. C, attached to Powell Decl.
[22] *Ibid.*
[23] *Ibid.*
[24] *Ibid.*
[25] *Ibid.*
[26] *Ibid.*

as soon as sufficient data became available.[27] Finally, Farmers provided Excel files for each exhibit requested by the Department.[28]

On November 21, 2022, CW made a request for information, seeking the following additional information from Farmers: (1) A new table showing competitors' filings where more than one model was used for FFEQ; (2) support for Applicant's claim that inflation has caused longer cycle time on repairs, higher lumber costs, higher material costs, and increasing ALE expenses, and support for the claim that paid losses are driven by smaller damage claims; (3) a complete description and explanation of the impact from the pandemic on California homeowners insurance costs; (4) a basis for the claim that the response to Item 5 was the most actuarially sound choice for frequency and severity analysis; (5) an annual distribution of modeled losses used to obtain the expected average annual losses for the RMS FFEQ model results; (6) which portion of the AAL is attributable to the use of Loss Amplification factors in the RMS FFEQ model results; (7) any analyses performed showing the underwriting and operating results of the Applicants for Homeowners Insurance in California covering 2019 to the present; (8) a description of any changes in operations related to California homeowners insurance that has occurred from 2019 to the present, as well as any such changes anticipated for the future; and (9) a list of the actions taken or expected to be taken by Farmers regarding homeowners insurance in California.[29]

On November 18, 2022, the Department issued an Objection Letter in which it asserted that Farmers, through subsidiaries, was applying the Supergroup Exemption and Multi-policy Discount at the same time.[30] To correct for this error, the Department ordered Farmers to revise

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[27] *Ibid.*
[28] *Ibid.*
[29] Powell Decl., ¶ 42; Exh. D, attached to RFC.
[30] RA # 22-1617, p. 15.

its manuals to indicate which companies the multi-policy discounts could be applied to. On November 23, 2022 Farmers responded to the Department's Objections by disputing the Department's apparent contention that the Super Group Exemption applies to all Farmers programs, including Homeowners programs.

On November 26, 2022. the Department issued an Objection Letter, demanding that Farmers provide premiums, losses, and loss ratios information for each peril in Excel format to justify the proposed base rate change by peril, for each policy form.

On November 28, 2022, Farmers responded to the November 26 Objection Letter, stating, "Current base rates used to develop proposed base rates already reflect the latest loss experience by peril; therefore, no further adjustments at the peril level were needed and applied in this filing. As a result, base rates were revised uniformly for each peril to achieve overall rate proposal for each form." In short, Farmers made no changes to its Application, and provided no additional documents.

On December 6, 2022, the Department issued an Objection Letter following up on Farmers' October 11 response. In particular, the Department sought further explanation for: (1) why incurred ultimate loss is the most actuarially sound selection, given that there had been a drastic increase of Average Case Reserve on Open Claims for each of the perils in the three most recent accident years; (2) "why the closed frequencies for 'All Other' peril are so high ranging from 17.9% to 76.98% for Smart Plan Renter, and from 3.9% to 32.92% for Next Generation form. What perils are included in 'All Other' Peril?"; (3) proof that all institutional advertising expenses had been reflected in the excluded expense provision.[31]

On December 7, 2022, Farmers provided a response to CW's November 21 inquiry. In brief, Farmers responded: (1) with a list of other companies using a single model to develop

[31] RA #22-1617, p.12.

FFEQ losses, and a list of their SERFF filing numbers; (2) documentation supporting trends toward higher prices for lumber and other repair materials, as well as shortages in those materials resulting in smaller damage claims dominating paid losses, making accurate future predictions more difficult; (3) supply chain issues, increased cost of goods, and a strong demand for building materials in the California market have increased materials costs, as well as putting pressure on labor costs; (4) the basis for this claim is that this approach provides the closest match in terms of timing of when a claim is counted as fully paid and the total dollar amount associated with that claim; (5) Farmers identified the exhibit that shows annual aggregate losses by policy form for various return periods underlying the expected average annual losses; (6) Farmers provided a graph with breakdown of the percentage of total AAL attributable to the demand surge for each policy form; (7) Farmers provided a table showing the results for its most recent five year history; (8) a statement affirming that there have been no significant changes in operations since 2019, and no future changes are planned; and (9) a statement affirming that all major actions have been filed with the Department, with a supporting list of filings/tracking numbers.

On January 19, 2023, the parties participated in a teleconference.[32] In late January and early February 2023, CW and Farmers engaged in a series of communications both seeking and providing additional information and explanation regarding the Rate Application.[33]

On January 31, 2023, CW made two Requests for Information. It sought a list of payments to affiliates for the period 2019-2021, with supporting documentation, and requested a discussion of the loss reserving methods used to derive the values for homeowners insurance reserves contained in the Annual and Quarterly financial statements submitted to the

[32] Powell Decl., ¶ 44.
[33] Powell Decl., ¶ 45; Exh. F, attached to Powell Decl.

Department.[34] On February 1, 2023, Farmers partially responded to the January 31 request for information, but also disputed, to some degree, CW's asserted need for the information.[35] CW provided a justification for the requested information on February 3, 2023, followed by its actuarial analysis of the Rate Application on February 6.[36] On February 8, the parties participated in another teleconference, which resulted in Farmers providing additional information regarding its trend selections, loss development method, and management fees.[37] On February 9, 2023, CW sought more data directly arising from the February 8 response by Farmers.[38] Farmers provided the data the same day.[39]

On March 10, 2023, the parties reached a Settlement Stipulation.[40] In it, the parties agreed that a 17.7 percent increase was "supportable" and should be implemented with an effective date of June 17, 2023.[41] In return, CW agreed to withdraw its Petition for Hearing upon the Commissioner's approval of the Settlement Agreement.[42]

On March 14, 2023, the Commissioner gave his approval of the Settlement Stipulation and, accordingly, CW withdrew its Petition for Hearing, effective March 24, 2023.[43]

This Request for Compensation was filed on April 11, 2023. In total, CW seeks $42,425.50 in fees for its employees' time, and $40,389 in expert witness fees.[44]

CW's Request for Compensation

CW is a non-profit, public interest organization that conducts its education and advocacy

[34] Powell Decl., ¶ 45.
[35] Powell Decl., ¶46; Exh. G, attached to RFC.
[36] Powell Decl., ¶ 47, Exh. H, attached to RFC.
[37] RFC, p. 8.
[38] RFC, pp. 8-9.
[39] RFC, p. 9; Exh. K, attached to RFC.
[40] Exh. 5, attached to Powell Decl.
[41] *Ibid.*
[42] *Ibid.*
[43] Exh. 6, attached to Powell Decl.
[44] Exh. A, attached to RFC.

efforts as a public interest service.[45] As a result of its intervention in Farmers' RA, CW's attorneys and paralegal incurred 80.6 hours of labor in the proceeding.[46] Attached to Benjamin Powell's Declaration as Exhibit 1.a. are detailed billing records for CW's attorneys Pamela Pressley, Harvey Rosenfield, and Benjamin Powell, as well as for CW Paralegal, Kaitlyn Gentile.[47]

In total, Pressley performed 51.6 hours of work on this matter, for which she billed $595 per hour.[48] Pressley has over 26 years' experience as a consumer advocate.[49] In that role, she has litigated a number of matters of first impression involving the implementation and enforcement of Proposition 103.[50] She has also participated in a number of rulemaking proceedings involving implementation of Proposition 103's rating factor requirements.[51] Pressley's hourly rate is within the range of rates charged by similarly-qualified attorneys in the Los Angeles area.[52]

CW's attorney Benjamin Powell performed 15.4 hours of work on this matter, at an hourly rate of $350.[53] Powell began working at CW before he was admitted to the California State Bar in 2016. His employment at CW has included work on civil litigation maters as well as on matters relating to Proposition 103.[54] Powell's hourly rate of $350 is within the range of rates charged by similarly-qualified attorneys in Los Angeles and the San Francisco Bay Area.[55]

CW's attorney Harvey Rosenfield is an attorney with over 40 years of experience in

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[45] Powell Decl., ¶ 4.
[46] Powell Decl., ¶ 6.
[47] Exh. 1.a., attached to Powell Decl.
[48] *Ibid.*
[49] Powell Decl., ¶ 13.
[50] *Ibid.*
[51] *Ibid.*
[52] Exh. 2, attached to Powell Decl.
[53] Exh. 1.a., attached to Powell Decl.
[54] Powell Decl., ¶ 16.
[55] Powell Decl., ¶ 19; Exh. 2, attached to Powell Decl.

insurance regulatory and litigation matters.[56] He is the founder of CW and author to Proposition 103. As such, he has participated in numerous lawsuits involving the interpretation an enforcement of Proposition 103.[57] He has also participated in numerous rulemaking proceedings implementing Proposition 103.[58] Rosenfield spent 7.3 hours working on this matter, for which he billed his hourly rate of $695.[59] Rosenfield's hourly rate is within the range of hourly rates charged by similarly-qualified attorneys in Los Angeles and the San Francisco Bay Area.[60]

Finally, CW's paralegal, Kaitlyn Gentile, has over 14 years of professional experience.[61] Gentile worked 6.3 hours on this matter, for which she billed $200 per hour.[62] Gentile's hourly rate is within the range of hourly rates charged by paralegals in Los Angeles and the San Francisco Bay Area.[63]

In addition to seeking fees for work performed by its own staff, CW seeks fees for 56.6 hours performed by its expert witnesses, AIS Risk Consultants, in the amount of $40,389.[64] Allan I. Schwarz is an actuary with over 40 year of consulting actuarial experience.[65] He performed 34.3 hours of work on this matter at his rate of $915 per hour. Data regarding consulting actuarial rates are typically not made public.[66] However, Schwarz's prior approved rates are known. For example, in 2021 and 2022, Schwarz's hourly rate was $835 and $870, respectively.[67] In a 2023 request for compensation, Schwarz's hourly rate of $870 was deemed

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[56] Powell Decl., ¶ 9.
[57] *Ibid.*
[58] Powell Decl., ¶ 10.
[59] Powell Decl., p. 19.
[60] Exh. 2, attached to Powell Decl.
[61] Powell Decl., ¶ 20.
[62] Powell Decl., p. 19.
[63] Exh. 2, attached to Powell Decl.
[64] Exh. 8, attached to Schwarz Decl.
[65] Schwarz Decl., ¶ 1.
[66] Schwarz Decl., ¶ 2.
[67] Schwarz Decl., ¶¶ 2-3.

reasonable for work performed in 2022.[68] His current rate of $915 represents a 5.2% increase over his 2022 billing rate. This increase is lower than the rate of inflation in the U.S. for the same period.[69]

Katherine Tollar is an Actuarial Assistant with over 30 years of professional experience.[70] Tollar worked for 17.3 hours on this matter, for which she billed $415 per hour.[71]

Marianne Dwyer is an Actuarial Assistant with over 30 years of professional experience.[72] She spent 5 hours on this matter, for which she billed $365 per hour.[73]

DISCUSSION

I. Prior Approval Framework and Public Participation

The 1988 approval of Proposition 103 by California's voters added Article 10, "Reduction and Control of Insurance Rates" to Division 1, Part 2, Chapter 9 of the Insurance Code. Proposition 103 establishes a system of "prior approval" for changes to insurance rates in automobile, home, and other property-casualty policies.[74] The application for rate change and any hearings arising therefrom are subject to public notice and scrutiny.[75] Thus, as of November 8, 1989, "insurance rates . . . must be approved by the Commissioner prior to their use."[76]

Insurance Code section 1861.05(a) prohibits the Commissioner from approving any rate that is "excessive, inadequate, unfairly discriminatory, or otherwise in violation of this chapter," or from allowing such rates to remain in effect. The primary consideration in the

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[68] Schwarz Decl., ¶ 8.
[69] Schwarz Decl., fn. 5.
[70] Exh. 6, attached to Schwarz Decl.
[71] Exh. 8, attached to Schwarz Decl.
[72] Exh. 7, attached to Schwarz Decl.
[73] Exh. 8, attached to Schwarz Decl.
[74] Cal. Code Regs., tit. 10, § 1861.05, subd. (b).
[75] Cal. Code Regs., tit. 10, § 1861.05, subd. (c), and §§ 1861.06 – 1861.07.
[76] Cal. Code Regs., tit. 10, § 1861.01, subd. (c).

Commissioner's determination must be "whether the rate mathematically reflects the insurance company's investment income."[77]

In order to encourage consumer participation, Section 1861.10 of the Insurance Code authorizes any person to initiate a proceeding to enforce any provision of Proposition 103.[78] To that end, the Commissioner has promulgated regulations setting forth the substantive and procedural requirements for those seeking compensation under the code.[79] Given the statute's purpose to encourage public participation, the regulations should be liberally construed in favor of compensation.[80] The statute and regulations set forth both procedural and substantive requirements for an award of compensation.

Intervenors who represent the interests of consumers and make a substantial contribution to the adoption of any order, regulation, or decision by the Commissioner are to be compensated for reasonable advocacy and witness fees.[81]

A. CW Met the Procedural Prerequisites to Compensation for Public Participation

Before an intervenor may file a request for compensation, they must first obtain a finding from the Commissioner's Public Advisor that they are eligible to seek compensation—i.e., that they represent the interests of the consumer.[82] An intervenor is found to represent the interests of the consumer if it represents the interests of individual insurance consumer(s), or the intervenor is a group organized for the purpose of consumer protection as demonstrated by, but is not limited to, a history of representing consumers in administrative, legislative or judicial

[77] Ins. Code, § 1861.05, subd. (a).
[78] Ins. Code, § 1861.10, and *State Farm Insurance Co. v. Lara* (2021) 71 Cal.App.5th 197
[79] Cal. Code Regs., tit. 10, §§ 2661.3 – 2661.4.
[80] *State Farm Insurance Co. v. Lara, supra,* 71 Cal.App.5th 197.
[81] Ins. Code, § 1861.10, and Cal. Code Regs., tit. 10, § 2662.5.
[82] Cal. Code Regs., tit. 10, § 2662.3.

proceedings.[83]

Once granted, a Finding of Eligibility to Seek Compensation is valid in any proceeding in which the intervenor's participation commences within two years of the finding of eligibility, provided the intervenor still meets all the requirements in the initial request.[84]

In addition to establishing that it represents the interests of the consumer the intervenor must also submit a request for an award of compensation within 30 days after the Commissioner's decision or action in the proceeding for which intervention was sought, or within 30 days after conclusion of the entire proceeding.[85] A "proceeding" is any action conducted pursuant to Proposition 103, including a proceeding other than a rate proceeding.[86]

Failing to comply with the procedural as well as substantive requirements may be fatal to a Request for Compensation. For example, where the Commissioner failed to grant permission to intervene in a particular matter, a later request for compensation by the putative intervenor was denied.[87]

1. CW Represents the Interests of Consumers

On July 26, 2022, the Commissioner issued CW its most recent Finding of Eligibility, effective for two years from July 12, 2022.[88] The Commissioner's finding of eligibility to seek compensation under Insurance Regulation 2662.2 is conclusive on this matter.

2. CW Made a Timely Request for Compensation

CW filed the present RFC on April 11, 2023, less than 30 days from the Commissioner's March 14 approval of the Settlement Stipulation. Accordingly, CW has made a timely Request

[83] Cal. Code Regs., tit. 10, § 2661.1, subd. (j).
[84] Cal. Code Regs., tit. 10, § 2662.2
[85] Cal. Code Regs., tit. 10, § 2662.3, subd. (a).
[86] Cal. Code Regs., tit. 10, § 2661.2, subd. (f).
[87] RFC-2021-002.
[88] RFC, p. 2, fn. 3.

for Compensation, per Insurance Regulation section 2662.3, subdivision (a).

B. CW Met the Substantive Requirements for Compensation

Once the intervenor has established that it is eligible to seek compensation, and has made a timely request for compensation, it must then establish that it has made a "substantial contribution" to the proceedings.

An intervenor's contribution is substantial when, viewed as a whole, their contribution results in more relevant, credible, and non-frivolous information being available than would otherwise have been available to the Commissioner to make a decision.[89] In the context of an application for a rate change, a substantial contribution may be found whether a petition for hearing is granted or denied.[90] Moreover, the intervenor need not be a prevailing party in order to be deemed to have made a substantial contribution.[91]

1. CW Made a Substantial Contribution to the Commissioner's Decision

In its RFC, CW describes its asserted "substantial contribution" as: initiating the proceeding and raising issues through its Petition; identifying issues regarding Farmers' payments of management fees and the proper accounting therefor; eliciting Farmers' responses to its requests for information; teleconferences; and participation discussions leading to the Settlement Stipulation.

Of particular importance to the determination whether CW's contribution was relevant, were the requests for information that prompted Farmers' response thereto. In particular, Farmers' December 7 response to CW's November 21 request for information resulted in more relevant, credible, and non-frivolous information being available to the commissioner.

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[89] Cal. Code Regs., tit. 10, § 2661.1, subd. (k).
[90] *Ibid.*
[91] *State Farm Insurance Co. v. Lara, supra*, 71 Cal.App.5th 197.

Specifically, this data came in the form of lists of other companies utilizing similar models for FFEQ losses, documentation of economic factors affecting damages claims, as well as graphic breakdowns and tables justifying the requested increase. Accordingly, CW has made a substantial contribution to these proceedings.

C. An Intervenor is Entitled to Reasonable Fees and Expenses

Reasonable advocacy and witness fees are determined according to 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.[92] This standard is applied to attorney advocates, non-attorney advocates, and experts with similar experience, skill and ability. Reasonable, actual out of pocket costs may also be compensated.[93] Billing rates shall not exceed the market rate.[94]

The requirement that fees be reasonable preserves the Commissioner's discretion to reduce fees for unnecessary, excessive, or duplicative work.[95] For example, when an intervenor seeks contributions for efforts that were not authorized in the ruling on the Petition to Intervene, and when those efforts duplicate the contribution of another party, the request for compensation may be reduced accordingly.[96] An intervenor may not reopen matters that were decided prior to their petition being granted.[97] The intervenor is required to file a "detailed description of services and expenditures," "legible time and/or billing records," and citations to the record of the proceedings.[98]

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[92] Cal. Code Regs., tit. 10, § 2661.1, subd. (c).
[93] Cal. Code Regs., tit. 10, § 2661.1, subds. (b) and (d).
[94] *Ibid.*
[95] *State Farm Insurance Co. v. Lara, supra*, 71 Cal.App.5th 197.
[96] Cal. Code Regs., tit. 10, § 2662.5, subd. (b).
[97] Cal. Code Regs., tit. 10, § 2661.3, subd. (h).
[98] Cal. Code Regs., tit. 10, § 2662.3, subd. (b).

1. Petitioner's Requested Fees are Reasonable.

CW has provided detailed billing records for the staff and expert witnesses who worked on this matter. Moreover, it has established through the Declarations of Richard M. Pearl and Allan I. Schwarz that the hourly rates charged by its staff and expert witnesses were reasonable and/or comparable to services in the private sector in the Los Angeles and San Francisco Bay Area at the time they were incurred. Accordingly, CW's fees are reasonable.

CONCLUSIONS

CW is entitled to advocacy and witness fees in the amount of $82,814.50 for its substantial contribution to the *Matter of the Rate Application of Farmers Exchange, Fore Insurance, and Mid-Century Insurance Company*, PA-2022-00007. The award shall be paid by Respondent.

ORDER

1. Consumer Watchdog is hereby awarded $82,814.50 in advocacy fees in connection with the *Matter of the Rate Application of Farmers Exchange, Fore Insurance, and Mid-Century Insurance Company*, PA-2022-00007.

2. Respondent shall pay the award no later than thirty (30) days after the date of this Decision and shall notify the Department's Office of the Public Advisor[99] upon making payment.

Date: July 12, 2023

RICARDO LARA
Insurance Commissioner

By: _____
Alicia A. Clement
Administrative Law Judge

[99] Jamie Katz, 1901 Harrison Street, 4th Floor, Oakland, California 94612 or jamie.katz@insurance.ca.gov.

PROOF OF SERVICE

Case Name/Number: In the Matter of the Request for Compensation of
CONSUMER WATCHDOG
File No. **RFC-2023-006**

I, Camille E. Johnson, declare that:

I am employed by the California Department of Insurance, Administrative Hearing Bureau, in the City of Oakland and County of Alameda. I am over the age of eighteen (18) years and not a party to this action. My business address is 1901 Harrison Street, 3rd Floor, Oakland, CA 94612.

I am readily familiar with the business practices of the California Department of Insurance for collecting and processing correspondence for mailing, electronic filing and electronic mail. On July 12, 2023, I served the **DECISION AWARDING COMPENSATION** regarding in the **Matter of the Request for Compensation of CONSUMER WATCHDOG.**

X **(By U.S. Mail)** on those identified parties in said action, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items to be sent by mail, pursuant to Code of Civil Procedure Section 1013.

X **(By Intra-Agency Mail)** on those identified parties in said action, by placing this correspondence in a place designated for collection for delivery by Department of Insurance intra-agency mail.

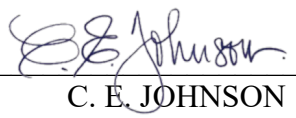
_____ **(By Facsimile transmission)** on those identified parties in said action, by transmitting said document(s) from our office by facsimile machine to facsimile machine number(s) shown below. Following the transmission, I received a "Transmission Report" from our fax machine indicating that the transmission had been transmitted without error.

X **(By Email)** on those identified parties in said action, in accordance with Code of Civil Procedure §1013, by emailing true copies thereof at the address set forth below.

SEE ATTACHED PARTY SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Oakland, California, on July 12, 2023.

July 12, 2023
DATE



C. E. JOHNSON

PARTY SERVICE LIST

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BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Requests for Compensation of **CONSUMER WATCHDOG,** Intervenor.	FILE NO. RFC-2023-011 **DECISION AWARDING COMPENSATION** *In the Matter of the Rate Application of CSAA Insurance Exchange* *PA-2023-00004*

INTRODUCTION

Consumer Watchdog ("CW" or Petitioner), files this Request for Compensation (RFC) in the amount of $77,693.50, for its intervention in proceedings initiated by a Rate Application (RA) filed by CSAA Insurance Exchange (CSAA or Applicant). CSAA did not oppose the RFC. Upon consideration of all the facts and evidence in this case, and for the reasons explained below, the Request for Compensation is GRANTED.

FINDINGS OF FACT[1]

On February 1, 2023, CSAA filed a Rate Application[2] with the Department, seeking a 25 percent increase in its Auto Liability and Physical Damage lines. Over the course of the ensuing investigation, the Department issued five objection letters.[3] CSAA responded to each of the Objection Letters in a timely fashion.[4] On April 10, 2023, CW filed a Petition for Hearing, Petition to Intervene, and Notice of Intent to Seek Compensation.[5] In its Request for Hearing, CW provided a non-exhaustive list of issues related to the Rate Application that it intended to explore, along with a list of evidence it intended to produce.[6] On April 14, 2023, CSAA filed an Answer to the Request for Hearing, refuting CW's claims that the RA was actuarially unsound.[7] On April 24, 2023, the Department granted CW's Petition to Intervene.[8] In it, the Department found that CW "has raised and seeks to address issues that are relevant to the ratemaking process."[9]

On May 2, 2023, CW submitted a Request for Information to CSAA that sought responses to 24 separate inquiries.[10]

On May 3, 2023, CSAA submitted a "Response to Consumer Watchdog's Petition to

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[1] All findings of fact in this matter are derived from the Petitioner's filings and attachments, and from the Department's official files. Neither CSAA nor the Department filed a response to the RFC.
[2] Rate applications may be found online at https://interactive.web.insurance.ca.gov/apex_extprd/f?p=186:1:13936543914997. An administrative agency may take official notice of its own records, such as the Rate Application filed with the Department of Insurance on February 1, 2023, and assigned State Tracking Number 23-385. (See Evid. Code, § 452, subd. (d).) Official Notice is hereby taken of the Rate Application number 23-385. Citations in this decision to the Rate Application ("RA") utilize the State Tracking # 23-385. Although the document does not contain continuous internal pagination, page numbers are referenced according to their order of appearance in the .pdf.
[3] RA #23-385, p. 4.
[4] *Ibid.*
[5] Exh. 3 attached to Declaration of Daniel L. Sternberg.
[6] Request for Hearing, ¶ ¶ 7-9.
[7] Answer to Request for Hearing.
[8] Ruling Granting Consumer Watchdog's Petition to Intervene.
[9] Ruling Granting Consumer Watchdog's Petition to Intervene, ¶ 5.
[10] Exh. B, attached to RFC.

Intervene."[11] In its response, CSAA included argument and "a detailed explanation for how [it] derived the selected trends for the four largest coverages...."[12] It also provided excerpts of financial statements from 2020 and 2021 to support its variance for loss development.[13]

On May 4, 2023, CSAA provided an extensive "Response to Consumer Watchdog's Requests for Information." In its point-by-point response to CW's information request, CSAA included, among other things, additional annual statements from 2019 through 2022, additional consolidated annual statements from 2019 through 2022, corrected tables of data (upon discovery of an error), and comparison data between the trends filed in the RA compared against the actuarial reserve report for 2022.[14]

On May 16, 2023, CW submitted a "Second Set of Requests for Information" to CSAA.[15]

On May 17, 2023, CSAA provided a detailed "Response to Consumer Watchdog's Second Set of Requests for Information."[16] In CSAA's response to the second set of information requests, CSAA defined its newly-coined phrase, "*reverse* catastrophe" as "a rare phenomenon (once in a century) that led to *fewer* than expected losses."[17] CSAA also provided additional data justifying its application of annual trends to trend historical losses to 2022 levels.[18]

On May 23, 2023, the parties and the Department participated in the first of two teleconferences.[19]

On June 20, 2023, in advance of a second teleconference scheduled for June 23, CSAA

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[11] Exh. C, attached to RFC.
[12] *Ibid.*
[13] *Ibid.*
[14] Exh. D, attached to RFC.
[15] Exh. E, attached to RFC.
[16] Exh. F, attached to RFC.
[17] *Ibid*, emphasis added.
[18] *Ibid.*
[19] Sternberg Decl., ¶ 43.

provided CW with advance copies of its yet-to-be filed updated rate templates.[20] CSAA prefaced its e-mail to which these updated rate templates were attached, with the statement, "These differ from the filing in selected trends, which we'll be prepared to fully discuss on Friday."[21] A second teleconference was convened on June 23, 2023.

On July 17, 2023, the parties entered into a settlement stipulation that includes a rate change of 16.7 percent, rather than the 25 percent increase sought in the RA.[22]

The Commissioner approved the Stipulated Settlement on July 20, 2023.[23]

In keeping with the terms of the Stipulated Settlement, CW subsequently withdrew its Petition for Hearing on July 28, 2023.[24]

At various times during their intervention, the attorneys for CW engaged in the following tasks: conferred regarding overall strategy and positions; drafted, reviewed, and edited CW's filed documents; reviewed CSAA's RA and updated filings; prepared the requests for information; exchanged correspondence regarding and participated in the two conference calls; consulted with CW's actuary; negotiated the stipulated settlement; and drafted the Request for Compensation, including supporting declarations and exhibits.[25] In addition to this generalized list, CW includes detailed records of how each attorney, paralegal, and expert witness spent their time on this matter.

An extensive survey of hourly rates charged by attorneys in the Los Angeles area in 2022, correlated to their relative level of experience demonstrates that the rates CW charged in 2022 were comparable and competitive at that time.[26] In April 2023 the Department approved of

[20] Exh. G, attached to RFC.
[21] *Ibid.*
[22] RFC, pp.1, 8.
[23] RFC, p. 8.
[24] *Ibid.*
[25] Decl. of Sternberg, ¶ 8.
[26] Exh. 2, attached to Sternberg Decl.

CW's current hourly rates in its Ruling Granting Consumer Watchdog's Petition to Intervene in the Application of CSAA Insurance Exchange, application number 23-385.[27]

Pamela Pressley is an attorney with over 26 years of experience in consumer advocacy. She has spent 16 years as an attorney with CW, focusing primarily on insurance regulatory and litigation matters before the Department.[28] Detailed time records of Pressley's work demonstrate that she was heavily involved in this matter from its inception and continuing until the RFC was filed, from April through August 2023.[29] Pressley spent a total of 33.9 hours on this matter. At her hourly rate of $595.00, she billed a total of $20,170.50.[30]

Harvey Rosenfield is an attorney with over 40 years of experience in insurance regulatory and litigation matters.[31] As the author of Proposition 103, he has participated in a number of major lawsuits interpreting and enforcing the statute.[32] Detailed time records of Rosenfeld's work tend to demonstrate that he provided oversight ("review") of CSAA's RA from April through June 2023.[33] Rosenfield spent a total of 2.3 hours on this matter. At his hourly rate of $695.00, his bill for services amounts to $1,598.50.[34]

Daniel L. Sternberg is an attorney with seven years of professional experience in litigation and advocacy.[35] He has been with CW for less than a year, but has spent the majority of that time litigating matters before the Department.[36] Detailed records of Sternberg's work reveal that his involvement in this matter was concentrated on reviewing CW's correspondence with CSAA as well as CW's internal work product, including e-mails, requests for information,

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[27] Exh. 5, attached to Sternberg Decl.
[28] Sternberg Decl., ¶13.
[29] Exh. 1a, attached to Sternberg Decl.
[30] Sternberg Decl., ¶ 7; Exh. 1a, attached to Sternberg Decl.
[31] Sternberg Decl., ¶ 9.
[32] *Ibid.*
[33] Exh. 1a, attached to Sternberg Decl.
[34] Sternberg Decl., ¶ 7; Exh. 1a, attached to Sternberg Decl.
[35] Sternberg Decl., ¶ 16.
[36] *Ibid.*

and settlement offers.[37] Sternberg spent a total of 36.2 hours on this matter. At his hourly rate of $350.00 his bill for services amounts to $12,670.00.[38]

Ryan Mellino was admitted to the California State Bar in 2022.[39] His professional experience includes work with the Legal Aid Foundation of Los Angeles, the ACLU, and the Los Angeles Homeless Services Authority, as well as CW.[40] Detailed records of Mellino's work show that he was only involved in this matter during May 2023 with regard to requests for information.[41] Mellino spent a total of 2.1 hours on this matter. At his hourly rate of $250.00, his bill for services totals $525.00.[42]

Kaitlyn Gentile is a paralegal at CW with over fourteen years of professional experience in litigation support. Gentile worked a total of 7.1 hours on this matter. Detailed time records of Gentile's work demonstrate that she was primarily engaged in preparing and finalizing the RFC during the month of August 2023.[43] At her hourly rate of $200.00, her bill for services totals 1,420.00.[44]

Allan I. Schwartz is the President of AIS Risk Consultants, Inc., and is an actuary with over 40 years consulting actuarial experience.[45] He provided consulting actuarial services to CW on this matter, as he has in numerous Proposition 103 matters.[46] Detailed time records of Schwartz's work demonstrate that he spent larger blocks of time reviewing CSAA's initial filings, as well as its responses to CW's information requests in April and May 2023.[47] Schwartz

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[37] Exh. 1a, attached to Sternberg Decl.
[38] Sternberg Decl., ¶ 7; Exh. 1a, attached to Sternberg Decl.
[39] Sternberg Decl., ¶ 20.
[40] *Ibid.*
[41] Exh. 1a, attached to Sternberg Decl.
[42] Sternberg Decl., ¶ 7; Exh. 1a, attached to Sternberg Decl.
[43] Exh. 1a, attached to Sternberg Decl.
[44] Sternberg Decl., ¶ 7; Exh. 1a, attached to Sternberg Decl.
[45] Schwartz Decl., ¶ 1.
[46] Schwartz Dec., ¶ 2.
[47] Exh. 8, attached to Schwartz Decl.

worked 41.7 hours on this matter.[48] At his hourly rate of $915.00,[49] his bill for services totals $38,155.50.[50]

Katherine Tollar is an Actuarial Assistant at AIS Risk Consultants, Inc., with over 20 years of professional actuarial experience.[51] Detailed records of Tollar's work demonstrate that the majority of her time was spent on "trend and indication," work, which was primarily performed during May and June 2023.[52] Tollar worked a total of 7.6 hours on this matter at her hourly rate of $415.00, for which she billed $3,154.00.[53]

In total, CW has established that its hourly rates, and the hours billed for services rendered in this matter are reasonable.

DISCUSSION

I. Prior Approval Framework and Public Participation

In California, insurance rates for automobile, home, and other property-casualty policies must be approved by the Commissioner prior to their use."[54] Insurance Code section 1861.05, subdivision (a), prohibits the Commissioner from approving any rate that is "excessive, inadequate, unfairly discriminatory, or otherwise in violation of this chapter," or from allowing such rates to remain in effect. The primary consideration in the Commissioner's determination must be "whether the rate mathematically reflects the insurance company's investment income."[55]

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[48] Exh. 8, attached to Schwartz Decl.
[49] Schwartz Decl., ¶ 6.
[50] Exh. 8, attached to Schwartz Decl.
[51] Exh. 6, attached to Schwartz Decl.
[52] Exh. 8, attached to Schwartz Decl.
[53] Exh. 8, attached to Schwartz Decl.
[54] Ins. Code, § 1861.01, subd. (c).
[55] Ins. Code, § 1861.05, subd. (a).

In order to foster "consumer participation in the rate-setting process,"[56] section 1861.10 of the Insurance Code authorizes any person to initiate a proceeding to enforce any provision of Proposition 103.[57] Intervenors who represent the interests of consumers and make a substantial contribution to the adoption of any order, regulation, or decision by the Commissioner are to be compensated for reasonable advocacy and witness fees.[58] To that end, the Commissioner has promulgated regulations setting forth the substantive and procedural requirements for those seeking compensation under the code.[59] These regulations are binding on the AHB and have the force of statute.[60] Given the statute's purpose to encourage public participation, the regulations should be liberally construed in favor of compensation.[61]

A. The Procedural Prerequisites for Compensation are Met

Before an intervenor may file a request for compensation, they must first obtain a finding from the Commissioner's Public Advisor that they are eligible to seek compensation—i.e., that they represent the interests of the consumer.[62] Once granted, a Finding of Eligibility to Seek Compensation is valid in any proceeding in which the intervenor's participation commences within two years of the finding of eligibility, provided the intervenor still meets all the requirements in the initial request.[63] There is no dispute that CW is eligible to seek compensation in this case.

In addition to establishing that it represents the interests of the consumer the intervenor must also submit a request for an award of compensation within 30 days after the

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[56] See *State Farm General Ins. Co. v. Lara* (2021) 71 Cal.App.5th 197, 215, citing *State Farm Mutual Automobile Ins. Co. v. Garamendi, supra*, 32 Cal.4th 1029.
[57] Ins. Code, § 1861.10, and *State Farm Insurance Co. v. Lara* (2021) 71 Cal.App.5th 197
[58] Ins. Code, § 1861.10, and Cal. Code Regs., tit. 10, § 2662.5.
[59] Cal. Code Regs., tit. 10, §§ 2661.3 – 2661.4.
[60] *Agriculture Labor Relations Board v. Superior Court* (1976)16 Cal.3d 392.
[61] *State Farm Insurance Co. v. Lara, supra*, 71 Cal.App.5th 197.
[62] Cal. Code Regs., tit. 10, § 2662.3.
[63] Cal. Code Regs., tit. 10, § 2662.2

Commissioner's decision or action in the proceeding for which intervention was sought, or within 30 days after conclusion of the entire proceeding.[64] CW's RFC was filed on August 18, 2023, less than 30 days after the Commissioner approved the Stipulated Settlement on July 20, 2023. Accordingly, the RFC was timely filed.

B. The Substantive Requirements for Compensation are Met

Once the intervenor has established that it is eligible to seek compensation, and has made a timely request for compensation, as CW has done here, it must then establish that it has made a "substantial contribution" to the proceedings.[65] The only *statutory requirements* for compensation are set out subdivision (b) of Insurance Code section 1861.10.[66] But the statutory language does not encapsulate the whole of the intervenor's obligation. The regulations adopted by the Insurance Commissioner fill in the details not specified by Proposition 103.[67] The regulations state that a "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 relevant, credible, and non-frivolous information being available for the Commissioner to make the Commissioner's decision than would have been available to the Commissioner had the intervenor not participated. A substantial contribution may be demonstrated without regard to whether a petition for hearing is granted or denied."[68]

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[64] Cal. Code Regs., tit. 10, § 2662.3, subd. (a).
[65] Ins. Code, §1861.10, subd. (b); Cal. Code Regs., tit. 10, §§ 2661.2, subd. (k), and 2662.3, subd. (b)(3).
[66] *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029, 1047-1048.
[67] *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029, 1050.
[68] Cal. Code Regs., tit. 10, § 2661.2(k).

What constitutes a substantial contribution requires a fact-intensive analysis by the tribunal in which the matter originated.[69] And, while the intervenor's substantial contribution may be shown with documents,[70] it is incumbent on the intervenor to provide specific citations to its services and expenditures.[71] There is no question in this case that CW participated in the rate proceedings.

As a direct result of CW's participation in this case, CSAA produced additional analysis and data concerning the Trend Selection for Bodily Injury Property Damage, Comprehensive and Collision;[72] CSAA also provided several years' worth of Annual Statements and Consolidated Annual Statements;[73] and in connection with CW's inquiries, CSAA discovered and corrected several data errors.[74] Accordingly, CW has established that its intervention in this case made a substantial contribution to the Commissioner's ultimate approval of the stipulated settlement by providing more relevant credible, and non-frivolous information than would have been available had the intervenor not participated. Additionally, through detailed time records, rate surveys, and prior findings by the Department, CW has established that it charged market rates, as that phrase is defined by regulation.[75]

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[69] *Economic Empowerment Foundation v. Quackenbush* (1997) 57 Cal.App.4th 677.
[70] *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029, 1040.
[71] *Economic Empowerment Foundation v. Quackenbush, supra*, 57 Cal.App.4th 677, 681; Cal.Code Regs., tit. 10, § 2662.5, subd. (a)(1).
[72] Exh. C, attached to RFC.
[73] Exh. D, attached to RFC.
[74] Exh. D, attached to RFC.
[75] Cal. Code Regs., tit. 10, § 2661.1, subd. (c).

CONCLUSION

For the foregoing reasons, CSAA is entitled to expenses and advocacy fees *in the Matter of the Rate Application of CSAA Insurance Exchange*, Prior Approval File No. PA-2023-00004, in the amount of $77,693.50.

ORDER

1. Consumer Watchdog is hereby awarded $77,693.50 in advocacy and expert witness fees in connection with CSAA's Rate Application (Prior Approval File No. *PA-2023-00004*).
2. CSAA shall pay the award no later than 30 days after the date of this Decision and shall notify the Department's Office of the Public Advisor[76] upon making payment.

Date: November 8, 2023

RICARDO LARA
Insurance Commissioner

By: 
Alicia A. Clement
Administrative Law Judge

[76] Jon Phenix, Public Advisor, 1901 Harrison Street, 4th Floor, Oakland, CA 94612, or jon.phenix@insurance.ca.gov.

PROOF OF SERVICE

Case Name/Number: In the Matter of the Request for Compensation of
CONSUMER WATCHDOG
File No. **RFC-2023-011**

I, Florinda Cristobal, declare that:

I am employed by the California Department of Insurance, Administrative Hearing Bureau, in the City of Oakland and County of Alameda. I am over the age of eighteen (18) years and not a party to this action. My business address is 1901 Harrison Street, 3rd Floor, Oakland, CA 94612.

I am readily familiar with the business practices of the California Department of Insurance for collecting and processing correspondence for mailing, electronic filing and electronic mail. On August 18, 2023, I served **DECISION AWARDING COMPENSATION** regarding **In the Matter of the Request for Compensation of Consumer Watchdog.**

__X__ **(By U.S. Mail)** on those identified parties in said action, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items to be sent by mail, pursuant to Code of Civil Procedure Section 1013.

__X__ **(By Intra-Agency Mail)** on those identified parties in said action, by placing this correspondence in a place designated for collection for delivery by Department of Insurance intra-agency mail.

_____ **(By facsimile transmission)** on those identified parties in said action, by transmitting said document(s) from our office by facsimile machine Fax Number to facsimile machine number(s) shown below. Following the transmission, I received a "Transmission Report" from our fax machine indicating that the transmission had been transmitted without error.

__X__ **(By Email)** on those identified parties in said action, in accordance with Code of Civil Procedure §1013, by emailing true copies thereof at the address set forth below.

SEE ATTACHED PARTY SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Oakland, California, on August 18, 2023

November 8, 2023
(Date)

F. CRISTOBAL

PARTY SERVICE LIST

Name/Address	Method of Service
Harvey Rosenfield, SBN 123082 Pamela Pressley, SBN 180362 Daniel L. Sternberg, SBN 329799 **Ryan Mellino, SBN 342497** **CONSUMER WATCHDOG** 6330 San Vicente Boulevard, Suite 250 Los Angeles, CA 90048 Tel No.: (310) 392-0522 Fax No.: (310) 392-8874 harvey@consumerwatchdog.org pam@consumerwatchdog.org danny@consumerwatchdog.org ryan.m@consumerwatchdog.org	via Email & U. S. mail
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BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Request for Compensation of	) FILE NO. RFC-2022-001
CONSUMER WATCHDOG,	) **DECISION AWARDING COMPENSATION**
Intervenor.	)
	) *In the Matter of the Rate Application of Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company*
	) Rate Applications No. 21-1731, 21-1731-A and 21-1731-B
	) Prior Approval File No PA-2021-00007

Consumer Watchdog, a consumer advocacy group, intervened in a proceeding concerning Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company's (Farmers) applications for an overall rate increase to its Dwelling Fire Program, including base rate revisions to its Fire, Allied Lines, and Other Liabilities coverages. At the conclusion of the proceeding, Consumer Watchdog filed a request for compensation seeking advocacy and expert witness fees and expenses for its participation. For the reasons discussed below, Consumer Watchdog's request for compensation is granted.

PROCEDURAL AND FACTUAL BACKGROUND

I. Application Proceedings

On June 11, 2021, Farmers filed Applications No. 21-1731, 21-1731-A, and 21-1731-B (Applications) with the California Department of Insurance (CDI or Department), seeking an overall rate of increase of +6% for its Dwelling Fire Program. On July 2, 2021, the Department

notified the public of Farmers Applications.

On August 16, 2021, Consumer Watchdog filed a Petition for Hearing, Petition to Intervene, and Notice of Intent to Seek Compensation (Petition), regarding Farmers Applications. The Petition asserted that the Applications resulted in rates that were excessive and/or unfairly discriminatory in violation of Insurance Code section 1861.05, subdivision (a).[1] Specifically, Consumer Watchdog alleged Farmers used a single model for its Fire Following Earthquake provision, which, it contended, was unreasonably high. Additionally, Consumer Watchdog alleged Farmers failed to provide the required formulas for Catastrophe Adjustment; failed to explain large differences between paid and incurred loss development; overstated the projected losses in its excessive net trend, resulting in an inflated rate indication; calculated the excluded expense factor and the projected yield using outdated financial statement data only through 2019; failed to disclose or provide any support or justification for its FireLine Score factors applied to its fire premiums or its Special Hazard Interface Area (SHIA) scoring system used to determine eligibility for new business, potentially resulting in unfairly discriminatory rates and premiums; and used outdated financial statement data in the Reconciliation, Program Detail, and Statutory sheets of the Applications.[2]

On September 27, 2021, the Commissioner granted Consumer Watchdog's Petition to Intervene, finding that Consumer Watchdog "has raised and seeks to address issues that are relevant to the ratemaking process."[3] The Ruling specifically reserved for a later date any findings on the Petition for Hearing.

On October 1, 2021, the Department raised each of the concerns outlined by Consumer Watchdog in an Objection Letter, seeking responses and additional information from Farmers by

[1] Petition, pp.4-6.
[2] Request for Compensation, pp. 3-4.
[3] Ruling Granting Consumer Watchdog's Petition to Intervene, p. 4.

October 22, 2021.[4]

On January 27, 2022, Consumer Watchdog's Actuary, Allan I. Schwartz, submitted a written analysis of Farmers' Applications' Loss Trend, Loss Development, and Modeled Catastrophe Losses, finding them improper or unsupported. According to Schwartz's analysis, Farmers deviated from the commonly accepted practice of considering the results from more than one catastrophe model in a rate calculation by utilizing only a single model to estimate the losses used in the catastrophe provision for the fire coverage. Schwartz's analysis resulted in different rate indications in all categories.

On January 31, February 3, and February 15, 2022, the parties and the Department met by teleconference in order to discuss outstanding issues and exchange additional information. On February 18 and 25, 2022, the parties met to discuss settlement.

On March 3, 2022, the parties reached an agreement, to wit, that Farmers would adopt an overall rate increase of 2.3%. This agreement was memorialized in a final settlement stipulation on March 17, 2022

On April 12, 2022, the Commissioner approved the filing via SERFF. In accordance with the Stipulation, on April 22, 2022, Consumer Watchdog withdrew its Petition.

On May 11, 2022, Consumer Watchdog filed a Request for Compensation for advocacy and witness fees for work performed by Consumer Watchdog employees and consultants for a total of $65,615.00. Consumer Watchdog supported the Request for Compensation with a declaration by Pamela Pressley, and Allan I. Schwartz. The hours billed are limited to time spent on Farmers Applications, including preparation of the Request for Compensation.[5]

[4] Request for Compensation, Exh. B.
[5] Pressley Decl. at ¶¶ 20-22.

Pressley is a Senior Staff attorney for Consumer Watchdog.[6] She has been Consumer Watchdog's Litigation Director for 16 years, with a focus primarily on matters before the California Department of Insurance, particularly on the enforcement and implementation of Proposition 103.[7] Benjamin Powell is Staff Attorney for Consumer Watchdog with six years of professional experience in litigation and advocacy.[8] Kaitlyn Gentile is a Paralegal for Consumer Watchdog with over fourteen years of professional experience in litigation matters, including drafting pleadings and motions.[9] The Request for Compensation seeks compensation for Legal fees in the amount of 33.4 hours of Pressley's time at the rate of $595 per hour, 10.9 hours of Powell's time at the rate of $350 per hour, 10.0 hours of Gentile's time at $200 per hour;

Schwartz is an actuary with over 40 years of experience in consulting actuarial experience, including numerous Proposition 103 proceedings.[10] Schwartz founded and is currently employed by and President of AIS Risk Consultants, Inc, a New Jersey consulting firm.[11] Katherine Tollar is an Actuarial Assistant with over 20 years of actuarial experience.[12] Marianne Dwyer is an Actuarial Assistant with over 20 years of actuarial experience.[13] The Request for Compensation seeks compensation for expert witness fees in the amount of 33.1 hours of Schwartz's time at the rate of $870 per hour, 21.0 hours of Tollar's time at the rate of $395 per hour, and 8.1 hours of Dwyer's time at the rate of $350 per hour.[14]

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[6] Pressley Decl. at ¶ 1.
[7] Pressley Decl. at ¶ 9.
[8] Pressley Decl. at ¶ 12.
[9] Pressley Decl. at ¶ 16, Exh 1b.
[10] Schwartz Decl. Exh. 5.
[11] Schwartz Decl. at ¶ 1.
[12] Schwartz Decl. at ¶ 10, Exh. 6.
[13] Schwartz Decl. at ¶ 10, Exh. 7.
[14] Pressley Decl. at ¶ 8; Schwartz Decl. ¶ 14, Exhibit 8.

APPLICABLE LAW

I. Prior Approval Framework

In 1988, California's voters approved Proposition 103, which added Article 10 "Reduction and Control of Insurance Rates"[15] (Article 10) to Division 1, Part 2, Chapter 9 of the Insurance Code. Article 10 governs automobile, home, and other property-casualty insurance rates. It requires that the Commissioner approve the rates insurers charge prior to use, so as to prevent "excessive, inadequate, [or] unfairly discriminatory" rates.[16] Insurers wishing to change their rates must file complete rate applications with the Commissioner.[17] All application information must be available for public inspection.[18] Public hearings may be held on the applications.[19]

II. Compensation for Public Participation

To promote enforcement of the rate control laws, Insurance Code section 1861.10, subdivision (a) authorizes consumers and their representatives to initiate and intervene in rate proceedings and to enforce Article 10's provisions. The Insurance Code and the intervenor regulations (Regulations)[20] provide that intervenors must be compensated for their participation if various substantive and procedural requirements are met.

A. Substantive Requirements

Insurance Code section 1861.10, subdivision (b) provides that the Commissioner "shall award reasonable advocacy and witness fees and expenses" to persons demonstrating that (1) they "represent the interests of consumers," and (2) they have "made a substantial contribution to

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[15] Ins. Code, § 1861.01 et seq.
[16] Ins. Code, §§ 1861.01, subd. (c), 1861.05, subd. (a).
[17] Ins. Code, §1861.05(b).
[18] Ins. Code, § 1861.07.
[19] Ins. Code, §1861.05, subd. (c).
[20] Cal. Code Regs., tit. 10, §§ 2662.1—2662.8

the adoption of any order, regulation, or decision by the commissioner[.]" The Regulations contain substantially identical requirements.[21]

An intervenor "represents the interests of consumers" if it "represents the interests of individual insurance consumer[s], or the intervenor is a group organized for the purpose of consumer protection as demonstrated by, but is not limited to, a history of representing consumers in administrative, legislative or judicial proceedings."[22]

An intervenor makes a "substantial contribution" if 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 relevant, 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. A substantial contribution may be demonstrated without regard to whether a petition for hearing is granted or denied."[23]

B. Procedural Requirements

The Regulations set forth various procedural requirements for claiming intervenor compensation. The intervenor must obtain the Commissioner's approval of a petition to intervene.[24] The intervenor must be found eligible to seek compensation by the Commissioner's Public Advisor.[25] And the intervenor must submit a request for an award of compensation within 30 days after the Commissioner's decision or action in the proceeding for which intervention was

[21] Cal. Code Regs., tit. 10, § 2662.5, subd. (a).
[22] Cal. Code Regs., tit. 10, § 2661.1, subd. (j).
[23] Cal. Code Regs., tit. 10, § 2661.1, subd. (k).
[24] Cal. Code Regs., tit. 10, § 2662.3.
[25] *Ibid.*

sought, or within 30 days after conclusion of the entire proceeding.[26] The request for compensation must be verified and include detailed descriptions of the services and expenditures, legible time and billing records, and a description of the intervenor's substantial contribution.[27]

C. Payment and Amount of Compensation Award

Where an intervenor's advocacy occurs in response to an insurer's rate application, the insurer must pay the intervenor's reasonable advocacy fees, witness fees and expenses.[28] Time spent preparing the intervenor's request for compensation may be included in those amounts.[29]

The intervenor's advocacy and witness fees must not exceed "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 for attorney advocates, non-attorney advocates, or experts with similar experience, skill and ability."[30]

DISCUSSION

I. Consumer Watchdog Satisfied the Requirements for Compensation

Consumer Watchdog's Request for Compensation satisfies both the statutory and regulatory substantive and procedural requirements for intervenor compensation. In addition, Consumer Watchdog's advocacy and expert witness fees are reasonable. Accordingly, the Request for Compensation must be granted.

A. Consumer Watchdog Represented the Interests of Consumers and Made a Substantial Contribution to the Commissioner's Decision

Consumer Watchdog satisfied the requirements of Insurance Code section 1861.10,

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[26] *Ibid.*
[27] *Ibid.*
[28] Ins. Code, § 1861.10, subd. (b).
[29] Cal. Code Regs., tit. 10, § 2661.1(d).
[30] Cal. Code Regs., tit. 10, § 2661.1(c).

subdivision (b) and Regulations section 2662.5 to "represent[] the interests of consumers" and to make "a substantial contribution" to the Commissioner's decision or action in connection with Farmers' Applications. Consumer Watchdog has a long history of participation in Department proceedings. In addition, on August 25, 2020, the Commissioner issued Consumer Watchdog a Finding of Eligibility stating "Consumer Watchdog represents the interests of consumers, and on those grounds, the Commissioner hereby finds Consumer Watchdog eligible to seek compensation in Department proceedings pursuant to [Insurance Code section] 1861.02 *et seq.*"[31]

As to substantial contribution, Consumer Watchdog's Petition initiated the proceeding and raised a number of issues with the Applications, including (1) Farmers' use of just one model for its Fire Following Earthquake provision; (2) Farmers' failure to provide the required formulae for Catastrophe Adjustment; (3) Farmers' failure to explain large differences between the paid and incurred loss development; (4) Farmers' excessive net trend's overstatement of the projected loss, resulting in an inflated rate indication; (5) Farmers' use of outdated financial statement data only through 2019 in the calculation of the excluded expense factor and the projected yield; (6) Farmers' failure to disclose or provide any support or justification for its FireLine Score factors applied to its fire premiums or its Special Hazard interface Area (SHIA) scoring system used to determine eligibility for new business, potentially resulting in unfairly discriminatory rates and premiums in violation of Insurance Code section 1861.05; and (7) Farmers' use of outdated financial statement data in the Reconciliation, Program Detail, and Statutory sheets of the Applications.[32] On September 27, 2021, the Department found that Consumer Watchdog "has raised and seeks to address issues that are relevant to the ratemaking

[31] Finding of Consumer Watchdog's of Eligibility to Seek Compensation, dated Aug. 25, 2020, File No. IE-2020-0002, p. 4. Consumer Watchdog's eligibility is effective until July 2022.
[32] Request for Compensation at p. 9; Pressley Decl. at ¶ 32.

process.[33]

Consumer Watchdog's actuary submitted written analyses to Farmers and the Department's actuaries and rate regulation team on January 27 and February 15, 2022. This, in turn, caused Farmers to file additional justification for its decisions regarding liability trend, loss development, and model usage.[34]

Consumer Watchdog's presentation of relevant issues, evidence and arguments which were separate and distinct from those emphasized by the Department of Insurance staff or any other party, resulted in more relevant, credible information being available for these proceedings. As such, Consumer Watchdog made a substantial contribution to the Commissioner's ultimate decision.[35]

B. Consumer Watchdog Met the Procedural Requirements for Compensation

The Commissioner approved Consumer Watchdog's Petition to Intervene on September 27, 2021, and the Public Advisor found Consumer Watchdog eligible to seek compensation.[36] Consumer Watchdog submitted a timely request for compensation and the request was verified.[37] It included detailed descriptions of the services and expenditures, legible time and billing records, and a description of Consumer Watchdog's substantial contribution.[38] Accordingly, Consumer Watchdog met the procedural requirements for compensation.

C. Consumer Watchdog's Requested Fees Are Reasonable

Consumer Watchdog billed 33.4 hours at the hourly rate of $595 for Pressley, an attorney with over 25 years of consumer advocacy experience; 10.9 hours at the hourly rate of $350 for

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[33] Pressley Decl. at ¶ 27, quoting Ruling Granting Consumer Watchdog's Petition to Intervene, Sept. 27, 2021, at 4:7-8.
[34] Pressley Decl. at ¶ 26.
[35] Cal. Code Regs, tit. 10, § 2661.1(k).
[36] Finding of Consumer Watchdog's of Eligibility to Seek Compensation, Aug. 25, 2020, File No. IE-2020-0002.
[37] Cal. Code Regs., tit. 10, § 2662.3(a).
[38] Request for Compensation at pp. 9-13; Pressley Decl., Exh. 1a.

Powell, at attorney with six years' experience, and 10.0 hours at the hourly rate of $200 for Gentile, a paralegal with over 14 years of litigation experience.[39] These rates are consistent with the current prevailing private sector rates for advocates in Los Angeles with similar experience, skill and ability.[40]

In addition, Consumer Watchdog billed 33.1 hours at the hourly rate of $870 for Schwartz, an actuary with over 40 years' experience; 21.0 hours at the rate of $395 per hour for Tollar, an actuarial assistant with over 20 years' experience, and 8.1 hours at $350 per hour for Dwyer, an actuarial assistant with over 20 years' experience.[41]

That time is reasonable for the work Consumer Watchdog performed reviewing the Applications, preparing the Petition and their detailed Responses, preparing the Compensation Request, and engaging in related conferences, calls, correspondence and negotiations over several months. None of Consumer Watchdog's advocacy or witness fees were excessive for the nature and quality of work performed. Nor did that work duplicate the Department's participation, since Consumer Watchdog first raised the issues and arguments regarding Farmers' underwriting changes. As such, Consumer Watchdog's advocacy and witness fees are reasonable.[42]

II. Conclusions

For the foregoing reasons, the Commissioner concludes and determines that Consumer Watchdog is entitled to advocacy and witness fees in the amount of $65,615.00, pursuant to Insurance Code section 1861.10, subdivision (b) and the regulations thereunder. Because Consumer Watchdog's advocacy was in response to Farmers' Applications, Farmers must pay

[39] Pressley Decl. at. pp. 3-12.
[40] See Pressley Decl., Exh. 2 [fee expert declaration].
[41] Schwartz Decl. at ¶ 10, Exhibits 5-7.
[42] Cal. Code Regs, tit. 10, § 2661.1(a) and (l).

the award.[43]

ORDER

1. Consumer Watchdog is hereby awarded $65,615.00 in advocacy and expert witness fees in connection with Farmers' rule and form change Application (Prior Approval File No. PA-2021-00007).

2. Farmers shall pay the award no later than 30 days after the date of this Decision and shall notify the Department's Office of the Public Advisor[44] upon making payment.

Date: June 29, 2022

RICARDO LARA
Insurance Commissioner

By: _____
ALICIA A. CLEMENT
Administrative Law Judge

[43] Ins. Code, § 1861.10, subd. (b).
[44] Edward Wu, 300 South Spring Street, 12th Floor, Suite 12700, Los Angeles, CA 90013 or edward.wu@insurance.ca.gov.

PROOF OF SERVICE

Case Name/Number: In the Matter of the Request for Compensation of
CONSUMER WATCHDOG
File No. **RFC-2022-001**

I, Florinda Cristobal, declare that:

I am employed by the California Department of Insurance, Administrative Hearing Bureau, in the City of Oakland and County of Alameda. I am over the age of eighteen (18) years and not a party to this action. My business address is 1901 Harrison Street, 3rd Floor, Oakland, CA 94612.

I am readily familiar with the business practices of the California Department of Insurance for collecting and processing correspondence for mailing, electronic filing and electronic mail. On June 29, 2022, I served **DECISION AWARDING COMPENSATION** regarding the **Matter of the Request for Compensation of CONSUMER WATCHDOG.**

X **(By U.S. Mail)** on those identified parties in said action, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items to be sent by mail, pursuant to Code of Civil Procedure Section 1013.

_____ **(By Intra-Agency Mail)** on those identified parties in said action, by placing this correspondence in a place designated for collection for delivery by Department of Insurance intra-agency mail.

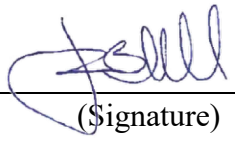
_____ **(By facsimile transmission)** on those identified parties in said action, by transmitting said document(s) from our office by facsimile machine Fax Number to facsimile machine number(s) shown below. Following the transmission, I received a "Transmission Report" from our fax machine indicating that the transmission had been transmitted without error.

X **(By Email)** on those identified parties in said action, in accordance with Code of Civil Procedure §1013, by emailing true copies thereof at the address set forth below.

SEE ATTACHED PARTY SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Oakland, California, on June 29, 2022.

FLORINDA CRISTOBAL
(Print Name)


(Signature)

PARTY SERVICE LIST

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BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Requests for Compensation of **CONSUMER WATCHDOG,** Intervenor.	FILE NO. RFC-2022-004 *In the Matter of the Rulemaking Hearing Re:* Mitigation in Rating Plans and Wildfire Risk Models REG-2020-00015 REG-2020-00016

DECISION AWARDING COMPENSATION

Passed by voters in 1988, Proposition 103, gives the Insurance Commissioner authority to regulate insurance rates by requiring insurers to obtain prior approval from the Insurance Commissioner before changing their rates. As enacted, Proposition 103 did not establish a detailed method of processing and deciding rate applications, and it was left to the Commissioner to adopt rules and regulations to promote the policies of Proposition 103. In response to growing concerns that insurers in California were unfairly raising insurance rates for homeowners in fire-prone areas of California without consideration for the policy-holders' risk mitigation, and that insurers were doing so in a manner that was calculated to avoid public scrutiny and comment upon such practices, the Insurance Commissioner began soliciting the public's input on new proposed regulations to address and curtail this practice.

California Code of Regulations, title 10, section 2644.9 was approved on October 14,

2022, and became operative on the same day. The process of drafting the new regulation took place over the course of approximately 24 months, throughout which, Consumer Watchdog (CW) was a constant participant. CW now seeks compensation for its efforts.

PROCEDURAL HISTORY

On September 16, 2020, the California Department of Insurance (CDI or Department) issued a public "Invitation to Investigatory Hearing on Homeowners' Insurance and Affordability" to be held on October 19, 2020.

On November 5, 2020, the Commissioner issued a public "Invitation to Virtual Meeting regarding Home Hardening Standards and Wildfire Catastrophe Modeling" for December 10, 2020.

On February 23, 2021, CDI issued a public "Invitation to Prenotice Public Discussions on Mitigation in Rating Plans and Wildfire Risk Models and Draft Text of Regulation."

On October 11, 2021, CDI issued a public "Invitation to Prenotice Public Discussions on Mitigation in Rating Plans and Wildfire Risk Models," to be held on November 10, 2021.

On February 25, 2022, CDI issued a public "Notice of Proposed Action and Notice of Public Hearing on Mitigation in Rating Plans and Wildfire Risk Models" to be held on April 13, 2022.

On June 15, 2022, CDI issued a public "Notice of Availability of Amended Text" of proposed regulations.

On July 26, 2022, CDI's Public Advisor renewed CW's Finding of Eligibility to seek compensation for their participation in Proposition 103 proceedings.[1]

On September 7, 2022, CDI submitted its final regulations to the Office of Administrative Law (OAL) for approval. OAL subsequently approved the regulations on

[1] CW's Request for Compensation, p. 2, fn. 1.

October 14, 2022.

On November 7, 2022, less than 30 days after OAL approved the new regulations, CW filed its Request for Compensation. Included with its request are Declarations from attorney Pamela Pressley, actuary Allan I. Schwartz, and itemized billing records for Pressley, Schwartz, and attorney Harvey Rosenfield.

FINDINGS OF FACT[2]

Consumer Watchdog is a nonprofit, tax-exempt consumer research, education, litigation, and advocacy organization. Consumer Watchdog advocates on behalf of consumers before regulatory agencies, the Legislature, and the courts.[3]

Pamela Pressley is a Senior Staff attorney for CW, with over 26 years of professional experience.[4] For the last 16 years, Pressley has worked for CW where her focus has been insurance regulatory and litigation matters before the California Department of Insurance and the courts, with an emphasis on enforcement and implementation of Proposition 103.[5]

Harvey Rosenfield is an attorney with over 40 years of professional experience in insurance regulatory and litigation matters.[6] He is the author and proponent of Proposition 103.[7] Rosenfield has been involved in multiple major lawsuits and administrative hearings to enforce Proposition 103.[8] He has also been involved in numerous rulemaking proceedings implementing Proposition 103.[9]

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[2] CW's Request was unopposed. The facts set forth in this Proposed Decision are derived from the public record and CW's filings, supported by declarations. Because CW's filings were unopposed and filed under penalty of perjury, they are accepted as true and correct. This recital of facts includes those facts essential to providing context to the findings herein, and may not include all the facts recited in the filings.
[3] Declaration of Pamela Pressley, ¶ 2.
[4] Declaration of Pamela Pressley, ¶¶ 1, 9.
[5] *Ibid.*
[6] Declaration of Pamela Pressley, ¶ 12.
[7] *Ibid.*
[8] Declaration of Pamela Pressley, ¶¶ 12-13.
[9] Declaration of Pamela Pressley, ¶ 13.

Allan Schwartz is an actuary who has provided actuarial consulting services to CW in this matter and numerous other matters involving Proposition 103.[10] Schwartz has over 40 years of consulting actuarial experience, and is the founder and President of AIS Risk Consultants, Inc. an actuarial consulting firm in Freehold, New Jersey.[11] He has also served as the Assistant Commissioner of the New Jersey Department of Insurance and as the Chief Actuary for the North Carolina Department of Insurance.[12]

In response to Commissioner Lara's September 16, 2020 invitation for public participation in the Investigatory Hearing on Homeowners' Insurance and Affordability, CW's attorneys began researching the topics for discussion listed in the invitation. Those topics include:

- Why are insurers declaring their own rates to be 'inadequate' and refusing to renew many homes in the wildland-urban interface, while at the same time these same insurers seek rate increases that are lower than California's law permits?
- Why are insurance companies reluctant to take homeowner wildfire mitigation efforts into account when pricing residential property insurance?
- How will climate change, including extreme heat events, continue to effect future homeowners' insurance rates, availability of insurance and financial health of our insurance market?
- How – if at all – would the use of catastrophe modeling in ratemaking help to make homeowners' insurance more affordable and more widely available to homeowners?
- What other rules should the Commissioner adopt to obligate insurers to spread risk and sell more policies to show homeowners in the wildland-urban interface who seek to purchase and maintain homeowners' insurance?[13]

In October 2020, insurance companies argued at the investigatory hearing that the Insurance Commissioner lacked authority to promulgate the proposed regulations. Rosenfield

[10] Declaration of Allan I. Schwartz.
[11] Declaration of Allan I. Schwartz, ¶ 1.
[12] Declaration of Allan I. Schwartz, ¶10.
[13] See Exhibit 3, attached to Declaration of Pamela Pressley.

participated in the Investigatory Hearing on October 19, 2020, by providing commentary, as well as rebuttal to the arguments by insurers.[14]

On November 5, 2020, Commissioner Lara issued an "Invitation to Virtual Meeting regarding Home Hardening Standards and Wildfire Catastrophe Modeling," to be held on December 10, 2020.[15] CDI staff sought input and participation in the upcoming meeting from CW's consulting actuary, Schwartz.[16] In the e-mail to CW, CDI staff suggested that Schwartz's presentation cover Catastrophe modeling, with a specific focus on how the actuarial standards of practice apply to the use of wildfire models.[17] Schwartz subsequently testified at the December 10, 2020 meeting, in accordance with CDI's suggestion.[18]

On January 21, 2021, Schwartz provided an additional 27 pages of written comments on the topics discussed at the December 10, 2020 meeting.[19] Schwartz's written statement addressed the use of catastrophe modeling in ratemaking, and the impact of wildfire mitigation measures to reduce the spread and risk of future wildfires. In brief, Schwartz's written statement explained that the use of wildfire mitigation credits in the insurance rating system can incentivize homeowners to implement home hardening measures that will, in turn, reduce the spread and risks of future wildfires.[20] Schwartz's written statement went on to explain that the use of wildfire mitigation credits in the rating system is actuarially sound. By Schwartz's estimation, the use of mitigation credits in setting wildfire premiums would "serve a useful societal purpose by decreasing the expected frequency and severity of wildfires."[21] Schwartz's written statement

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[14] Declaration of Pamela Pressley, at ¶ 20.
[15] Exhibit 4, attached to the Declaration of Pamela Pressley.
[16] Exhibit 4, attached to the Declaration of Pamela Pressley.
[17] Exhibit 4, attached to the Declaration of Pamela Pressley.
[18] CW's Request for Compensation, pp. 4-5.
[19] Declaration of Pamela Pressley at ¶ 23.
[20] Statement of Allan I. Schwartz in Connection with California Department of Insurance Virtual Meeting Regarding Home Hardening and Wildfire Catastrophe Modeling, pp. 1-2.
[21] Id., at p. 5.

then proposed a method for calculating wildfire credit values, using both complex catastrophe modeling (CCM) and historical insurance data. Schwartz recognized that the current preference for CCM in wildfires presents a number of challenges to the affordability and availability of wildfire insurance and concludes that use of CCM for wildfire ratemaking procedures should be "fully documented" and "transparent," and the burden of proof should be on the proponents of changes, to show that its use would constitute "an improvement."

On February 23, 2021, CDI issued an "Invitation to Prenotice Public Discussions on Mitigation in Rating Plans and Wildfire Risk Models," for a discussion scheduled on March 30, 2021. A draft text of the regulation was attached to the invitation.[22] The March 30 meeting was postponed and ultimately held in November 2021.

Meanwhile, on May 26, 2021, in response to the position taken by the insurance industry that the Commissioner has no legal authority to promulgate new wildfire regulations, CW published a legal memo refuting the insurers' position.[23] Among the topics covered by this memo are the lack of any countervailing case law; the authority under Proposition 103 to protect consumers against unjustified and unreasonable rates; Supreme Court affirmation of the Commissioner's broad regulatory authority under Proposition 103; and the prior adoption of similar regulations governing auto insurance premiums.[24]

The May 26, 2021 memo contains 16 pages of legal analysis with citations to California statute and case law. It also contains comments on and proposed edits to CDI's April 5 Draft Regulations.[25] Among the edits suggested by CW are the removal and replacement of ambiguous language; replacing permissive terms with mandatory terms; standardizing usage of

[22] Declaration of Pamela Pressley, ¶ 24.
[23] Exhibit 6 attached to the Declaration of Pamela Pressley.
[24] Declaration of Pamela Pressley, ¶25 and Exhibit 6, attached to the Declaration of Pamela Pressley.
[25] See Exhibit 7, attached to Declaration of Pamela Pressley.

terms and phrases; adding language to require disclosures of formulae used by insurers; and other suggestions based on historical contextual information.[26]

Based on CW's analysis of the law, it argued that the Insurance Commissioner has the legal authority to require insurance companies to consider homeowners' actual risk of loss when setting rates and premiums and to prevent insurance companies from arbitrarily withdrawing from specific neighborhoods and communities across the state.[27] CW argued that the Commissioner could accomplish this type of oversight by virtue of the statutory authority vested in the Commissioner to prevent unfair rate discrimination.[28]

On October 11, 2021, CDI issued an "Invitation to Prenotice Public Discussions on Mitigation in Rating Plans and Wildfire Risk Models," to be held on November 10, 2021.[29] A draft of the proposed regulations was attached.[30] Notably, several of the edits proposed by CW in May were incorporated in CDI's draft of regulation 2644.9.[31]

On November 10, 2021, CW provided additional written comments to the Draft Regulations.[32] In its written comments, CW raises six points: 1) mitigation discounts incentivize homeowners to make mitigation efforts thereby reducing overall wildfire damage; 2) regulations should require that wildfire risk scores that are generated from computer models be subject to the same eligibility guidelines that apply when an insurer performs a rate analysis, to ensure that the insured's eligibility has a substantial relationship to an insured's loss exposure; 3) public disclosure and transparency of all Wildfire Risk Models used in Rate Applications should be mandated; 4) Wildfire Risk Models should not be allowed for projecting losses under

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[26] *Ibid.*
[27] Exhibit 6 attached to the Declaration of Pamela Pressley.
[28] *Ibid.*
[29] Exhibit 7 attached to the Declaration of Pamela Pressley.
[30] Declaration of Pamela Pressley, ¶ 26.
[31] *Ibid.*
[32] Exhibit 8 attached to the Declaration of Pamela Pressley.

regulations 2644.4 and 2644.5; 5) Regulations should standardize use of or replace phrases like, "take into account," "reflect," "accord consideration," and "include consideration"; and 6) provisions regulating Wildfire Risk Scores and appeals thereof should be strengthened, giving consumers a meaningful process to understand and challenge their risk classification.[33] Pamela Pressley, who was one of the authors of CW's written comments, also made public statements at the meeting on November 10, 2021.[34]

CW's November 10 written comments were accompanied by a fresh round of proposed edits to the Draft Regulations.[35] A recurring theme in these proposed edits was CW's insistence that the proposed regulations should make clear that they do not allow use of catastrophe models for overall rates. Additional edits were recommended to enhance consumers' knowledge of and access to appellate review of an insurer's decision regarding risk scores and non/renewal decisions.

On February 25, 2022, CDI issued a "Notice of Proposed Action and Notice of Public Hearing on Mitigation in Rating Plans and Wildfire Risk Models" for April 13, 2022.[36] In response to CDI's Notice and Proposed Regulations, CW provided written comments urging additional measures by the Commissioner in addition to those already proposed. Primarily, CW urged CDI to refine its language in order to minimize ambiguity and strengthen enforcement.[37] Pressley also made comments at the April 13 meeting.[38] The 11 pages of written comment were accompanied by 23 pages of proposed edits to the Proposed Regulations.[39]

On June 15, 2022, CDI issued a "Notice of Availability of Amended Text." Two weeks

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[33] Declaration of Pamela Pressley, ¶ 27, and Exhibit 8 attached to Declaration of Pamela Pressley.
[34] Declaration of Pamela Pressley, ¶28.
[35] Exhibit 8 attached to Declaration of Pamela Pressley.
[36] Declaration of Pamela Pressley, ¶29.
[37] See Exhibit 10 attached to Declaration of Pamela Pressley.
[38] Declaration of Pamela Pressley, ¶31.
[39] Exhibit 9 attached to Declaration of Pamela Pressley.

later, CW submitted three pages of written comments and proposed edits in response.[40]

On July 12, 2020, CW's August 25, 2020 finding of eligibility to seek compensation in departmental proceedings was renewed through July 22, 2022.[41]

CDI's final version of Regulation section 2644.9 was filed with the Office of Administrative Law (OAL) on September 7, 2022, along with a summary of all public comments. In its final form, Regulation section 2644.9 states:

> (a) Applicability.
> (1) An insurer that applies or uses a rate that is developed with, determined by or relies upon, in whole or in part, a rating plan that segments, creates a rate differential, or surcharges the premium based upon a policyholder or applicant's wildfire risk shall comply with this Section 2644.9. If a rate that is developed with, determined by or relies upon a rating plan that complies with this section is approved, in whole or in part, and thereafter such rating plan is replaced, or modified in any manner, including but not limited to, the inclusion of new factors, or different criteria or algorithms, the insurer shall, prior to implementing the new or modified rating plan, file a new rate application, which shall include the new or modified rating plan. No such new or modified rating plan shall be used unless and until the new rate application is approved.
> (2) A rating plan shall satisfy the requirements of subdivision (d)(1) of this Section 2644.9 only if the rating plan taken as a whole, including the operation of any Wildfire Risk Models that may be incorporated into the rating plan, takes into account and reflects the factors described in subdivisions (d)(1)(A) and (d)(1)(B) of this section. Nothing in this section shall be construed to require the use of a Wildfire Risk Model.
> (b) Definitions.
> As used in this section, each of the following terms has the meaning set forth below:
> (1) Building Being Evaluated.
> The term "Building Being Evaluated" means the residential or commercial structure in question, and includes decks that are attached to or abut the structure.
> (2) Class-A Fire Rated Roof.
> The term "Class-A Fire Rated Roof" has the same meaning as in the Chapter 7A California Building Code (2019) as modified by

[40] Exhibit 11, attached to Declaration of Pamela Pressley.
[41] CW's Request for Compensation, p. 2, fn. 1.

the July 2021 supplement thereto, codified at Section 705A.1 of Part 2 of Title 24.
(3) Enclosed Eaves.
"Enclosed Eaves" are roof eaves that have either (1) boxed-in roof eave soffits with a horizontal underside or (2) an exterior covering applied to the underside of the rafter tails supporting the eaves, which covering is sloped corresponding to the slope of the rafter tails. Enclosed Eaves are thus distinguishable from open roof eaves, whose rafter tails are exposed.
(4) Fire-Resistant Vents.
The term "Fire-Resistant Vents" has the same meaning as in the Chapter 7A California Building Code (2019) as modified by the July 2021 supplement thereto, codified at Sections 706A.1 and 706A.2 of Part 2 of Title 24.
(5) Firewise USA Site in Good Standing.
A "Firewise USA Site in Good Standing" is a community that, at the time the Building Being Evaluated is rated, is recognized as such by the National Fire Protection Association, a Massachusetts 501(c)(3) corporation.
(6) Wildfire Risk Model.
(A) The term "Wildfire Risk Model" means any tool, instrumentality, means or product, including but not limited to a map-based tool, a computer-based tool or a simulation, that is used by an insurer, in whole or in part, to measure or assess the wildfire risk associated with a residential or commercial structure for purposes of:
1. Classifying individual structures according to their wildfire risk; or
2. Estimating losses corresponding to such wildfire risk classifications.
(B) The term "Wildfire Risk Model" does not include models used for purposes of projecting aggregate losses under Section 2644.4 or 2644.5.
(c) Wildfire Risk Models to be provided to the Commissioner.
Pursuant to Insurance Code section 1861.05, subdivision (b), any Wildfire Risk Model, as defined in subdivision (b)(6) of this section, that is used, in whole or in part, in an insurer's rating plan shall be provided to the Commissioner as part of an insurer's complete rate application.
(d) Mandatory factors.
(1) No insurer shall use a rating plan that does not take into account and reflect the following mandatory factors:
(A) Community-level mitigation designations: The rating plan shall reflect, and the rate offered to the applicant or insured shall be based in part on, the reduced wildfire risk associated with each and every community-level mitigation designation listed below in

this subdivision (d)(1)(A) that is applicable to the community in which the Building Being Evaluated is located. Community-level mitigation designations include:
1. Fire Risk Reduction Community listed by the Board of Forestry pursuant to Public Resources Code section 4290.1; and
2. Firewise USA Site in Good Standing.
(B) Property-level mitigation efforts.
The rating plan shall reflect, and the rate offered to the applicant or insured shall be based in part on, the reduced wildfire risk resulting from each and every property-level wildfire risk mitigation effort listed in subdivisions (d)(1)(B)1.a. through (d)(1)(B)1.e. and (d)(1)(B)2.a. through (d)(1)(B)2.e., below, that is undertaken with respect to an individual property being assessed for risk. Individual property-level wildfire risk mitigation efforts include:
1. Measures addressing the immediate surroundings of the Building Being Evaluated, including:
a. Clearing of vegetation and debris from under decks,
b. Clearing of vegetation, debris, mulch, stored combustible materials, and any and all movable combustible objects, from the area within five (5) feet of the Building Being Evaluated,
c. Incorporation of only noncombustible materials into that portion of any improvements to the property on which the Building Being Evaluated is located, including fences and gates, which is situated within five (5) feet of the Building Being Evaluated,
d. Removal or absence of combustible structures, including sheds and other outbuildings, from the area within thirty (30) feet of the Building Being Evaluated or, in the event that the applicant or insured does not control the entirety of the area extending thirty feet from the Building Being Evaluated, removal of combustible structures from as much of such area as is under the control of the applicant or policyholder, and
e. Whether the property upon which the Building Being Evaluated is situated complies with Section 4291 of the Public Resources Code, and any applicable local ordinances, governing defensible space; and
2. Building hardening measures, including provision of the following:
a. Class-A Fire Rated Roof,
b. Enclosed Eaves,
c. Fire-Resistant Vents,
d. Multipane windows, including dual pane windows, or functional shutters, which when closed, cover the entire window and do not have openings, and
e. At least six (6) inches of noncombustible vertical clearance at the bottom of the exterior surface of the building, measured from the ground up.

(2) No later than one hundred eighty (180) days following the date this section is filed with the Secretary of State, each insurer shall file a rate application that incorporates a rating plan that includes the factors described in subdivision (d)(1) of this section.

(e) Optional factors.

An insurer may use a rating plan which incorporates other factors that the insurer demonstrates are substantially related to risk of wildfire loss, and do not result in rates that are excessive, inadequate or unfairly discriminatory. These optional factors may include, but are not limited to:

(1) Fuel: This factor shall take into account the various types of combustible materials, and the density of those materials, in the vicinity of the Building Being Evaluated, including the location of trees, grass, brush, and other vegetation relative to the structure. The fuel factor shall take into account the fact that different fuels burn at different rates and intensities, resulting in different levels of wildfire risk. If used, this factor shall reflect the historic and estimated impact on losses related to fuel, as described in this subdivision (e)(1).

(2) Slope: This factor shall take into account the position of the Building Being Evaluated on a slope relative to potential sources of ignition, and the steepness of the slope between those potential sources of ignition and the structure. If used, this factor shall reflect the historic and estimated impact on losses related to slope, as described in this subdivision (e)(2).

(3) Access: Access reflects the ease or difficulty with which firefighting personnel and equipment can reach structures at risk of wildfire. The access factor shall include consideration of the presence of dead-end roads, road width, shoulders, and availability of multiple access points with respect to the Building Being Evaluated. If used, this factor shall reflect the historic and estimated impact on losses related to access, as described in this subdivision (e)(3).

(4) Aspect: The aspect factor shall reflect the direction the slope upon which the Building Being Evaluated is located faces. If used, this factor shall reflect the historic and estimated impact on losses related to aspect, as described in this subdivision (e)(4).

(5) Structural characteristics: The structural characteristics factor shall reflect the materials used in the construction, and may reflect such items as the design, of the Building Being Evaluated. The structural characteristics factor shall not reflect the construction materials or any other item the insurer is required to take into account pursuant to subdivision (d) of this section. If used, the structural characteristics factor shall reflect the historic and estimated impact on losses related to structural characteristics, as described in this subdivision (e)(5).

(6) Wind: The wind factor shall take into account the degree to which wind speed and direction in the vicinity of the Building Being Evaluated may impact a wildfire's progression. If used, the wind factor shall reflect the historic and estimated impact on losses related to wind, as described in this subdivision (e)(6).
(7) Other community-level or property-level mitigation efforts, or designations, not specified in subdivision (d) of this section as recommended by a state or local fire safety agency or organization as reducing wildfire risk.
(f) Availability for public inspection.
Any rating plan, or Wildfire Risk Model submitted to the Commissioner in connection with a complete rate application pursuant to subdivision (c) of this section, or any additional documentation relating to such rating plan or model as may be requested by the Commissioner during the review of any such application, including any records, data, algorithms, computer programs, or any other information used in connection with the rating plan or Wildfire Risk Model used by the insurer which is provided to the Commissioner, shall be available for public inspection pursuant to Insurance Code sections 1861.05, subdivision (b), and 1861.07, regardless of the source of such information, or whether the insurer or the developer of the rating plan or Wildfire Risk Model claims the rating plan or Wildfire Risk Model is confidential, proprietary, or trade secret. Pursuant to Insurance Code section 1855.5, subdivision (a), a Wildfire Risk Model as defined in subdivision (b)(6) of this section that is made available by an advisory organization to its members for use in California shall be filed with the Commissioner and made available for public inspection.
(g) Credible data.
Any rate application shall incorporate the insurer's own California wildfire loss data to the extent that it is credible to support each segment, rating differential, or surcharge being requested. To the extent the insurer's own California data is not fully credible, the insurer shall credibility-weight its data with an appropriate complement of credibility to support each segment, rating differential, or premium surcharge. If the Commissioner aggregates California premium-and-loss data by wildfire risk to create a fire and wildfire exposure risk manual pursuant to Insurance Code section 929.2, an insurer may rely on the then-current version of the manual as support for each segment, rating differential, or surcharge being requested in connection with a residential property rate application, either directly or as a complement of credibility to the insurer's own California wildfire loss data.
(h) Provision of wildfire risk score or other wildfire risk

classification to policyholder or applicant.
An insurer utilizing a Wildfire Risk Model, or rating factor, to segment, create a rate differential, or surcharge the premium based upon the policyholder or applicant's wildfire risk shall, within one hundred eighty (180) days after the date this section is filed with the Secretary of State, implement a written procedure to provide, in writing, to each such policyholder or applicant for property insurance the wildfire risk score or other wildfire risk classification used by the insurer to segment, create a rate differential, or surcharge the premium based upon the policyholder or applicant's wildfire risk. The insurer shall provide to the policyholder or applicant such wildfire risk score or classification at the following times:
(1) No later than fifteen (15) days following the submission to the insurer of the applicant's completed application;
(2) At least forty-five (45) days prior to each renewal;
(3) At least seventy-five (75) days prior to any nonrenewal; and
(4) In the event that the policyholder or applicant has completed a mitigation measure on the subject property since the time of the last application to or renewal by the insurer, no later than thirty (30) days following the submission to the insurer of the policyholder or applicant's request that the insurer provide a revised wildfire risk score or wildfire risk classification.
(i) Policyholder or applicant's right to appeal.
The procedure described in subdivision (h) of this section shall permit a policyholder under, or applicant for, a policy of property insurance who disagrees with the assignment of the wildfire risk score, or other wildfire risk classification, provided to the policyholder or applicant pursuant to that subdivision the right to appeal orally or in writing that assignment directly to the insurer. The insurer shall notify the policyholder or applicant in writing of this right to appeal the wildfire risk score or other wildfire risk classification whenever such score or classification is provided to the policyholder or applicant as set forth in subdivision (h) of this section. If the policyholder or applicant appeals the wildfire risk score or other wildfire risk classification, the insurer shall acknowledge receipt of the appeal in writing within ten (10) calendar days of receipt of the appeal. The insurer shall respond to the appeal in writing with a reconsideration and decision within thirty (30) calendar days after receiving the appeal. In the event that an appeal is denied, the insurer shall, upon request by the Department, forward a copy of the appeal, and the insurer's response, to the Department.
(j) Representation by broker or agent.
If the policyholder or applicant is represented by a broker, or the insurer is represented by an insurance agent with respect to the

policyholder's policy or the applicant's application, the policyholder or applicant may appeal orally or in writing to the agent or broker the assignment of wildfire risk score or other wildfire risk classification, who shall then forward that appeal to the insurer no later than five (5) calendar days after receiving the appeal from the policyholder or applicant. The insurer shall acknowledge receipt of the appeal in writing to the policyholder or applicant and the agent or broker no later than five (5) calendar days after receipt of the appeal from the broker or agent. The insurer shall respond to the appeal to the policyholder or applicant and the agent or broker with a written reconsideration and decision of the appeal within thirty (30) calendar days after receiving the appeal from the broker or agent. In the event that an appeal is denied, the insurer shall, upon request by the Department, forward a copy of the appeal, and the insurer's response, to the Department.

(k) Explanation of wildfire risk score or other wildfire risk classification.

Whenever a wildfire risk score, or other wildfire risk classification used by the insurer to segment, create a risk differential or surcharge the premium for a particular policyholder or applicant, is identified or provided to the policyholder or applicant pursuant to subdivision (h) of this section, the insurer shall also provide in writing:

(1) The range of such scores or classifications that could possibly be assigned to any policyholder or applicant;

(2) The relative position of the score or classification assigned to the policyholder or applicant in question within that range of possible scores or classifications, and the impact of the score or classification on the rate or premium; and

(3) A detailed written explanation of why the policyholder or applicant received the assigned score or classification; the explanation shall make specific reference to the features of the property in question that influenced the assignment of the score or classification.

The insurer shall provide, in addition, the following information:

(A) Which mitigation measure or measures can be taken by the policyholder or applicant to lower the wildfire risk score or classification; and

(B) The amount of premium reduction the policyholder or applicant would realize as a result of performing each such measure under the insurer's rating plan that is in effect at the time.

(*l*) Notification to policyholder or applicant of right to contact Department in connection with insurer's response to appeal.

When an insurer responds to the applicant or policyholder in connection with an appeal pursuant to subdivision (i) or (j) of this section, it shall also notify the policyholder or applicant in writing

> that the policyholder or applicant may contact the Department of Insurance for assistance if the policyholder or applicant disagrees with the insurer's written reconsideration and decision. In any event, the insurer shall provide the policyholder or applicant with the Department of Insurance toll-free consumer hotline and web address of the Department's Consumer Complaint Center.
> (m) No curtailment of applicant or policyholder's rights.
> Nothing in this section shall be construed to limit the right of an applicant or policyholder to complain directly to the Commissioner at any time or to pursue any other remedy or other action allowed under California or federal law.
> (n) Inapplicability to certain commercial policies.
> This section shall not apply to a commercial policy insuring multiple locations, none of whose wildfire risk is considered in rating the policy."[42]

As noted in its September 1, 2022 Final Statement of Reasons, some, but not all, of CW's comments and proposed edits were incorporated into the final draft.[43] For example, regulation section 2644.9, subdivision (b)(6)(B) states that "the term Wildfire Risk Model" does not include models used for purposes of projecting aggregate losses under Section 2644.4 or 2644.5." This language was recommended by CW in its October 11, 2021 comments to the written draft.

CW also specifically recommended public disclosure and transparency of all Wildfire Risk Models. Regulation section 2644.9, subdivision (c) states, "Pursuant to Insurance Code section 1861.05, subdivision (b), any Wildfire Risk Model, as defined in subdivision (b)(6) of this section, that is used, in whole or in part, in an insurer's rating plan shall be provided to the Commissioner as part of an insurer's complete rate application." And Regulation section 2644.9, subdivision (f) states, "Any rating plan, or Wildfire Risk Model submitted to the Commissioner . . . shall be available for public inspection pursuant to Insurance Code sections 1861.05, subdivision (b), and 1861.07…." In the comments included with the draft regulations, CDI states that sections 2644.9, subdivisions (c) and (f) work together to ensure that the models used

[42] Cal. Code Regs. tit. 10, § 2644.9
[43] See Exhibit 13, attached to the Declaration of Pamela Pressley.

by insurers are made public.

With its November 7, 2022 Request for Compensation, CW included bills for the work of Pressley, Rosenfield, and Schwartz in this matter. In total, CW is seeking $372,737.88 in fees and expenses.[44] Detailed breakdowns of the hours spent by each of these professionals is included.

Schwartz provides a breakdown of his billable hours in an attachment to his Declaration. In total, he spent 21.8 hours at his billable rate of $870 per hour. The largest concentrations of his time were spent in preparation for and attendance at the December 10, 2020 Virtual Hearing convened by CDI.[45]

Schwartz's rate of $870 per hour is an increase from the $835 per hour he charged in 2021.[46] His previous rates have been approved by CDI, going back to 2015-2016, when he was billing $695 per hour for his time.[47] His rates have increased at a rate of approximately 4 percent per year.[48] As Schwartz points out, comparison rates for actuaries are difficult to ascertain, as most actuaries' consulting rates are considered private and proprietary.[49] This is especially true in Schwartz's case because he has more experience and a deeper curriculum vitae than other consulting actuaries in the San Francisco and Los Angeles markets.[50]

Rosenfield spent a total of 217.7 hours on this matter, at his billable rate of $695 per hour.[51] Notably, some of the largest concentrations of billable time were spent on or near dates when CDI hosted hearings or meeting to gather testimony from CW and other members of the public. In particular, Rosenfield spent over eight hours on October 15, 2020 preparing testimony

[44] Exhibit A, attached to the Request for Compensation.
[45] Exhibit 8, attached to the Declaration of Allan I. Schwartz.
[46] Schwartz Declaration, ¶ 8.
[47] Schwartz Declaration, ¶¶ 5-6.
[48] Schwartz Declaration, ¶ 8.
[49] Schwartz Declaration, ¶ 5.
[50] Schwartz Declaration, ¶ 10.
[51] Exhibit 1a, attached to the Declaration of Pamela Pressley.

for the October 19, 2020 Investigatory Hearing. Rosenfield spent another 6 hours prepping for the October 19 hearing on October 18, followed by his October 19 attendance, for which he billed an additional 5.6 hours.[52] On January 21, 2021, Rosenfield billed seven hours of his time reviewing and editing Schwartz's January 21 written testimony. Rosenfield also appears to have spent several larger blocks of time on this matter in early April 2021.[53] The remainder of the entries on Rosenfield's time log are for smaller increments of time, peppered throughout the relevant period from September 2020 until October 2022.[54]

Rosenfield's rate of $695 per hour for an attorney with over 40 years' experience in insurance litigation and regulatory law is consistent with the current prevailing private sector rates for advocates in Los Angeles with similar experience, skill and ability.[55] For example, in 2019, a court found that an attorney with 33 years of experience was charging a reasonable rate of $750 per hour.[56] Indeed, Pressley provides numerous examples of attorneys with less experience charging more than Rosenfield.[57]

Pressley provided detailed records of her own 338.8 hours spent on this matter at her billable rate of $595 per hour.[58] As with Rosenfield's time log, Pressley appears to have spent larger concentrations of time immediately prior to her public appearances and/or written testimony.[59] For example, in early March 2021 there are entries for 3.5 and 4.5 hours, respectively.[60] There are also larger blocks of Pressley's time billed in the third week of April

[52] *Ibid.*
[53] *Ibid.*
[54] *Ibid.*
[55] Exhibit 1a attached to Declaration of Pamela Pressley, ¶ 7.
[56] *Ibid.*
[57] *Ibid.*
[58] Exhibit 1a attached to Declaration of Pamela Pressley, pp. 8-15.
[59] *Ibid.*
[60] Exhibit 1a attached to Declaration of Pamela Pressley, p. 9

2021, and in the first three weeks of May 2021.[61] These entries correlate to the meeting that was scheduled for March 30 but later postponed, as well as to Pressley's May 26, 2021 memo containing legal analysis and proposed edits to the latest draft regulations. Larger increments of billable hours are also seen on Pressley's log in late October and early November 2021, in the lead-up to the November 10, 2021 Prenotice Public Discussions.[62] Another concentration of time was spent by Pressley in the third week of October 2022 in preparation for the submission of the November 2022 Request for Compensation.[63] As with the entries for Rosenfield, additional smaller increments of Pressley's time are logged throughout the relevant period.

Pressley's rate of $595 per hour for an attorney with over 26 years of legal experience is also within the market rates charged by attorneys with similar experience level and skill. Pressley's data regarding comparable hourly rates for legal services is based on a related declaration filed by attorney Richard M. Pearl.[64]

Pressley also provides a breakdown of CW's expenses. It includes phone and internet charges, travel expenses for the April 2022 Rulemaking Hearing, and charges for photocopies.[65]

DISCUSSION

I. Prior Approval Framework and Public Participation

The 1988 approval of Proposition 103 by California's voters added Article 10, "Reduction and Control of Insurance Rates" to Division 1, Part 2, Chapter 9 of the Insurance Code. Proposition 103 establishes a system of "prior approval" for changes to insurance rates in automobile, home, and other property-casualty policies.[66] The application for rate change and

[61] Exhibit 1a attached to Declaration of Pamela Pressley, pp. 10-11
[62] Exhibit 1a attached to Declaration of Pamela Pressley, pp. 12-13.
[63] Exhibit 1a attached to Declaration of Pamela Pressley, pp.14-15.
[64] Exhibit 2, attached to Declaration of Pamela Pressley.
[65] Declaration of Pamela Pressley, ¶ 17.
[66] Cal. Code Regs., tit. 10, § 1861.05, subd. (b).

any hearings arising therefrom are subject to public notice and scrutiny.[67] Thus, as of November 8, 1989, "insurance rates . . . must be approved by the Commissioner prior to their use."[68]

Insurance Code section 1861.05(a) prohibits the Commissioner from approving any rate that is "excessive, inadequate, unfairly discriminatory, or otherwise in violation of this chapter." Section 1861.05(b) requires an insurer, at a minimum, to provide a complete rate application that includes specified data demonstrating that the requested rate change is justified and meets the requirements of this article. Once a complete rate change application has been filed, section 1861.05, subdivisions (c) and (d) provide the procedural mechanism used by the Commissioner to approve or disapprove of the application.

II. Compensation for Public Participation

In order to encourage consumer participation, Section 1861.10 of the Insurance Code authorizes any person to initiate a proceeding to enforce any provision of Proposition 103.[69] To that end, the Commissioner has promulgated regulations setting forth the substantive and procedural requirements for those seeking compensation under the code.[70] Given the statute's purpose to encourage public participation, the regulations should be liberally construed in favor of compensation.[71] Intervenors who represent the interests of consumers and make a substantial contribution to the adoption of any order, regulation, or decision by the Commissioner are to be compensated for reasonable advocacy and witness fees.[72]

The intervenor must submit a request for an award of compensation within 30 days after the Commissioner's decision or action in the proceeding for which intervention was sought, or

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[67] Cal. Code Regs., tit. 10, § 1861.05, subd. (c), and §§ 1861.06 – 1861.07.
[68] Cal. Code Regs., tit. 10, § 1861.01, subd. (c).
[69] Cal. Ins. Code, § 1861.10, and *State Farm Insurance Co. v. Lara* (2021) 71 Cal.App.5th 197
[70] Cal. Code Regs., tit. 10, §§ 2661.3 – 2661.4.
[71] *State Farm Insurance Co. v. Lara, supra*, 71 Cal.App.5th 197.
[72] Cal. Ins. Code, § 1861.10, and Cal. Code Regs., tit. 10, § 2662.5.

within 30 days after conclusion of the entire proceeding.[73] A "proceeding" is any action conducted pursuant to Proposition 103, including a rate proceeding established upon the submission of a petition for hearing pursuant to Insurance Code, section 1861.05 and section 2653.1 of Title 10 of the California Code of Regulations.

If the Commissioner determines that the intervenor has made a substantial contribution to the proceedings, a written decision will issue, specifying the amount of compensation to be paid, which shall be served on all parties.[74]

The primary concern that prompted the adoption of regulation 2644.9 was that insurers were charging different premiums to similarly situated homeowners in fire prone areas of California without consideration of risk mitigation measures, in violation of Insurance Code section 679.71.[75] CW represented the interests of consumers at the rulemaking hearings in this matter and, as discussed at greater length below, made a substantial contribution to the adoption of regulation 2644.9. As such, CW is eligible for compensation for its reasonable advocacy and fees.

A. CW Represents the Interests of Consumers

Before an intervenor may file a request for compensation, they must first obtain a finding from the Commissioner's Public Advisor that they are eligible to seek compensation—i.e., that they represent the interests of the consumer.[76] An intervenor is found to represent the interests of the consumer if it represents the interests of individual insurance consumer(s), or the intervenor is a group organized for the purpose of consumer protection as demonstrated by, but is not limited to, a history of representing consumers in administrative, legislative or judicial

[73] Cal. Code Regs., tit. 10, § 2662.3, subd. (a).
[74] Cal. Code Regs., tit. 10, § 2662.6.
[75]
[76] Cal. Code Regs., tit. 10, § 2662.3.

proceedings.[77]

Once granted, a Finding of Eligibility to Seek Compensation is valid in any proceeding in which the intervenor's participation commences within two years of the finding of eligibility, provided the intervenor still meets all the requirements in the initial request.[78]

CW satisfied the procedural requirements of Insurance Code section 1861.10, subdivision (b) and Regulations 2662.2, subdivision (a)(2) by showing that it represents the interests of consumers. As noted above, CDI's public advisor has continuously granted CW's requests for eligibility throughout the time period relevant to this case.[79] The findings of the Public Advisor are conclusive on this issue. Additionally, CW filed it request for compensation on November 7, 2022, within 30 days of the October 14, 2022 approval of Insurance Regulation section 2644.9.

B. CW Made a Substantial Contribution to the Adoption of Regulation 2644.9.

An intervenor's contribution is substantial when, viewed as a whole, their contribution results in more relevant, credible, and non-frivolous information being available than would otherwise have been available to the Commissioner to make a decision.[80] In the context of an application for a rate change, intervenors who present relevant issues, evidence, or arguments which were separate and distinct from those emphasized by other parties may be deemed to have contributed substantially, regardless of whether a petition for hearing is granted or denied.[81] Moreover, the intervenor need not be a prevailing party in order to be deemed to have made a substantial contribution.[82]

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[77] Cal. Code Regs., tit. 10, § 2661.1, subd. (j).
[78] Cal. Code Regs., tit. 10, § 2662.2
[79] CW's Request for Compensation, p. 2, fn. 1.
[80] Cal. Code Regs., tit. 10, § 2661.1, subd. (k).
[81] *Ibid.*
[82] *State Farm Insurance Co. v. Lara, supra*, 71 Cal.App.5th 197.

As noted above, CW's actuary made a presentation at CDI's public meeting on December 10, 2020 to explain catastrophe modeling and how the actuarial standards of practice apply to the use of wildfire models. This information was relevant to establishing both that wildfire mitigation credits are actuarially sound, as well as to establish that its use is socially beneficial by incentivizing home hardening efforts by policyholders, which in turn reduces the frequency and severity of wildfires.

In its May 26, 2021 memo, CW's attorneys also presented written counter-arguments to the insurance companies, who argued that CDI did not have authority to adopt a regulation requiring insurance companies to consider a homeowner's actual risk of loss from wildfire when setting rates and premiums. The issue of the Commissioner's authority to regulate insurance rates goes to the heart of the rulemaking process and is highly relevant and in no way frivolous.

Finally, CW not only advocated for CDI to adopt its proposed regulation to require insurers to consider homeowners' mitigation measures, but pushed CDI to adopt stronger language than originally proposed, in order to reduce ambiguities and strengthen enforcement, potentially increasing the efficacy of the regulation to achieve its stated goal. This factor is most evident in the May 26, 2021 memo, which includes 12 pages of additional proposed edits to CDI's April 5 draft of the regulation.

C. CW's Contribution was Separate and Distinct

Given that CDI staff expressly recognized CW's participation in this rulemaking process, specifically assigning topics to CW's consulting actuary for its December 10, 2020 meeting, there can be little doubt that CW's contribution was separate and distinct from the contributions made by CDI and others. Indeed, in response to CDI's invitation, CW provided CDI with both legal and actuarial justifications for the new regulation as well as specific recommendations as to

the proposed language of the regulation. But this is not the only evidence that CW's contribution differed from the contributions of others.

After arguing for the inclusion of homeowners' risk mitigation measures in the calculation of premiums, CW also argued that the models used in projecting aggregate losses under regulations 2644.4 and 2644.5 should be explicitly excluded from use by insurers in setting homeowners' rates.

D. CW's Advocacy, Witness Fees, and Other Expenses are Reasonable.

Reasonable advocacy and witness fees are determined according to 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.[83] This standard is applied to attorney advocates, non-attorney advocates, and experts with similar experience, skill and ability. Reasonable, actual out of pocket costs may also be compensated.[84] Billing rates shall not exceed the market rate.[85]

The requirement that fees be reasonable preserves the Commissioner's discretion to reduce fees for unnecessary, excessive, or duplicative work.[86] For example, when an intervenor seeks contributions for efforts that were not authorized in the ruling on the Petition to Intervene, and when those efforts duplicate the contribution of another party, the request for compensation may be reduced accordingly.[87] An intervenor may not reopen matters that were decided prior to their petition being granted.[88] The intervenor is required to file a "detailed description of

[83] Cal. Code Regs., tit. 10, § 2661.1, subd. (c).
[84] Cal. Code Regs., tit. 10, § 2661.1, subds. (b) and (d).
[85] *Ibid.*
[86] *State Farm Insurance Co. v. Lara, supra*, 71 Cal.App.5th 197.
[87] Cal. Code Regs., tit. 10, § 2662.5, subd. (b).
[88] Cal. Code Regs., tit. 10, § 2661.3, subd. (h).

services and expenditures," "legible time and/or billing records," and citations to the record of the proceedings.[89]

Based on the comparison records attached to Pressley's declaration, the rates charged by Rosenfield and Pressley are below that charged by many attorneys in similar markets with similar experience. A review of the detailed billing records provided for both Rosenfield and Pressley does not reveal any unauthorized or duplicative efforts. Finally, as noted above, the time records kept for both Rosenfield and Pressley correlate to the dates upon which public or written comment was made and/or filed in CDI proceedings.

Time records for Schwartz are similarly reliable as a source of accurate information regarding his fees and expenses. Like Pressley, Schwartz provides comparative data on other, similarly-situated professionals demonstrating that his rates are at least comparable in the market. There is no evidence that Schwartz's efforts were duplicated by any other party, indeed, CDI appears to have "assigned" Schwartz to provide analysis that likely would not have been provided otherwise. Finally, like Pressley and Rosenfield, allocations of Schwartz's time correlate to the dates upon which public or written comments were made and/or filed in CDI proceedings.

CONCLUSIONS

Consumer Watchdog is entitled to advocacy and witness fees and costs in the amount requested. Because this matter was initiated by the Insurance Commissioner, rather than in response to a Rate Application, the fees should be paid from the Proposition 103 Fund.

ORDER

1. Consumer Watchdog is hereby awarded $372,737.88 in advocacy and witness fees and expenses in connection with the Insurance Commissioner's Investigatory Hearing on

[89] Cal. Code Regs., tit. 10, § 2662.3, subd. (b).

Homeowners' Insurance Availability and Affordability.

2. The award shall be paid from the Proposition 103 Fund.

Date: March 8, 2023

RICARDO LARA
Insurance Commissioner

By: _____
Alicia A. Clement
Administrative Law Judge

PROOF OF SERVICE

Case Name/Number: In the Matter of the Request for Compensation of
CONSUMER WATCHDOG
File No. **RFC-2022-004**

I, Florinda Cristobal, declare that:

I am employed by the California Department of Insurance, Administrative Hearing Bureau, in the City of Oakland and County of Alameda. I am over the age of eighteen (18) years and not a party to this action. My business address is 1901 Harrison Street, 3rd Floor, Oakland, CA 94612.

I am readily familiar with the business practices of the California Department of Insurance for collecting and processing correspondence for mailing, electronic filing and electronic mail. On March 9, 2023, I served **DECISION AWARDING COMPENSATION** regarding In the **Matter of the Request for Compensation of CONSUMER WATCHDOG.**

_____ **(By U.S. Mail)** on those identified parties in said action, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items to be sent by mail, pursuant to Code of Civil Procedure Section 1013.

_____ **(By Intra-Agency Mail)** on those identified parties in said action, by placing this correspondence in a place designated for collection for delivery by Department of Insurance intra-agency mail.

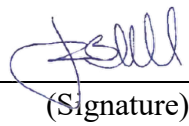
_____ **(By facsimile transmission)** on those identified parties in said action, by transmitting said document(s) from our office by facsimile machine Fax Number to facsimile machine number(s) shown below. Following the transmission, I received a "Transmission Report" from our fax machine indicating that the transmission had been transmitted without error.

X **(By Email)** on those identified parties in said action, in accordance with Code of Civil Procedure §1013, by emailing true copies thereof at the address set forth below.

SEE ATTACHED PARTY SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Oakland, California, on March 9, 2023.

F. CRISTOBAL
(Print Name)



(Signature)

PARTY SERVICE LIST

Name/Address	Method of Service
Pamela Pressley, Esq. Harvey Rosenfield, Esq. **CONSUMER WATCHDOG** 6330 San Vicente Boulevard, Suite 250 Los Angeles, CA 90048 Tel No.: (310) 392-0522 Fax No.: (310) 392-8874 pam@consumerwatchdog.org harvey@consumerwatchdog.org	Attorney(s) for Real Party in Interest via U.S. Mail/E-Mail
Daniel Wade Rate Enforcement Bureau **CALIFORNIA DEPARTMENT OF INSURANCE** 1901 Harrison Street, 4th Floor Oakland, CA 94612 Tel No.: (415) 538-4111 Fax No.: (510) 238-7830 Daniel.Wade@insurance.ca.gov	 via E-Mail

NON-PARTY

Jamie Katz, Esq. Staff Counsel & Public Advisor Office of the Public Advisor **CALIFORNIA DEPARTMENT OF INSURANCE** 1901 Harrison Street Oakland, CA 94612 Tel. No.: (415) 538-4180 FAX No.: (510) 238-7830 Jamie.Katz@insurance.ca.gov	 via E-Mail

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Request for Compensation of	) FILE NO. RFC-2021-003
CONSUMER WATCHDOG,	) **DECISION AWARDING**
	) **COMPENSATION**
Intervenor.	)
	) *In the Matter of the Rate Applications of*
	) *Farmers Insurance Exchange,*
	) *Fire Insurance Exchange, and Mid-*
	) *Century Insurance Company*
	) Rule Change Application Nos. 20-865,
	) 20-865-A, 20-865-B
	) Prior Approval File No. PA-2020-00006

Consumer Watchdog, a consumer advocacy group, intervened in a proceeding concerning three 2019 homeowners insurance eligibility rule change applications of Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company (collectively, "Farmers"). Consumer Watchdog a filed Request for Compensation seeking advocacy fees and expenses for its participation in the proceeding. Farmers has not opposed the request. For the reasons below, Consumer Watchdog's Request for Compensation is granted.

BACKGROUND

On or about March 13, 2020, Farmers filed Rule Change Application Nos. 19-3278, 19-3278-A and 19-3278-B ("Applications") with the Department of Insurance ("Department"), seeking approval of changes to Farmers' homeowners policy eligibility guidelines for wildfire prone properties.[1] The Department notified the public of the pending Applications on or about

[1] Declaration of Pamela Pressley in support of Consumer Watchdog's Request for Compensation, dated June 10, 2021 ("Pressley Decl."), ¶ 27.

March 27, 2020.[2]

Consumer Watchdog and its consulting actuary reviewed the Applications and formed the opinion that Farmers' proposed rule changes potentially violated Insurance Code section 1861.05(a).[3]

On May 11, 2020, Consumer Watchdog submitted to the Department a Petition for Hearing, Petition to Intervene, and Notice of Intent to Seek Compensation ("Petition"), challenging the Applications.[4] The Petition alleged that Farmers failed to prove that their proposed rule changes—which sought to use a new fire-risk modeling system to determine eligibility for homeowner insurance—did not result in rates that violated Insurance Code section 1861.05.[5] Specifically, the Petition asserted that Farmers' did not provide sufficient information to determine whether its proposed rule changes had a rate impact, and whether any such rate impact resulted in excessive, inadequate or unfairly discriminatory rates.[6] The Petition further argued that Farmers made apparently contradictory statements in a cover letter accompanying its Applications, namely that the proposed rule changes would increase the number of fire-prone properties meeting Farmers' risk management practices yet Farmers did not expect the changes would materially impact premiums or the overall mix of insured properties.[7] In addition, the Petition stated that Consumer Watchdog would show that Farmers violated Insurance Code section 1861.07 by failing to publicly file a complete version of the proposed changes to their eligibility guidelines.[8]

On July 30, 2020, the Commissioner granted Consumer Watchdog's Petition to intervene,

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[2] *Ibid.*
[3] Pressley Decl., ¶ 28.
[4] Pressley Decl., ¶ 32.
[5] Petition, ¶¶ 9-11; Pressley Decl., ¶ 33.
[6] Petition, ¶ 9; Pressley Decl., ¶¶ 33, 35.
[7] Petition, ¶ 9; Pressley Decl., ¶ 34.
[8] Petition, ¶ 10; Pressley Decl., ¶ 36.

finding that "the specific issues that CW seeks to address … are relevant to the ratemaking process."[9] The Commissioner specifically noted Consumer Watchdog's arguments concerning Farmers' contention that the proposed changes to its eligibility guidelines would have no rate impact, Farmers' alleged failure to publicly file complete changes to the guidelines, and Farmers' alleged failure to provide support that the proposed fire model is accurate and reliable.[10]

Between May 2020 and May 2021, Consumer Watchdog, Farmers and the Department exchanged ongoing communications concerning the subject matter of the Applications and the Petition.[11] During that time, Consumer Watchdog reviewed information provided by Farmers, submitted requests for additional information, and drafted multiple letters to Farmers and the Department that forth detailed commentary on the information supplied by Farmers.[12]

On May 7, 2021, Consumer Watchdog participated in a conference call with the Department, during which the Department stated it was satisfied that Farmers resolved the issues raised in Consumer Watchdog's Petition.[13]

On May 11, 2021, the Commissioner issued a decision denying Consumer Watchdog's petition for hearing.[14] The decision summarized the Department's position as follows: (1) Farmers' proposed rule changes would not impact current policyholders' rates; (2) Farmers publicly filed a complete version of their proposed changes to their eligibility guidelines; and (3) the Department had no concerns about the accuracy or reliability of Farmers' fire risk model.[15]

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[9] Ruling Granting Consumer Watchdog's Petition to Intervene, July 30, 2020, p. 3 ("July 2020 Ruling"); Pressley Decl., ¶ 50.
[10] July 2020 Ruling, p. 3; Pressley Decl., ¶ 50.
[11] Pressley Decl., ¶¶ 44-54.
[12] *Ibid.*
[13] Pressley Decl., ¶ 55.
[14] Decision Denying Petitioner's Petition for Hearing, May 11, 2021, No. PA-2020-00006 ("Denial Decision"); Pressley Decl., ¶ 56.
[15] Denial Decision, p. 3.

The decision concluded:

> The Department has considered all of the factors and issues which Petitioner raised and has thoroughly reviewed the Applications. The Department concluded that Applicant's rule filing is reasonable for purposes of this Application, as required by [Insurance Code] § 1861.05.[16]

On June 10, 2021, Consumer Watchdog filed a Request for Compensation with the Commissioner, pursuant to Insurance Code section 1861.10(b), seeking advocate fees for work performed by Consumer Watchdog employees Pamela Pressley, Harvey Rosenfield, Benjamin Powell, and Kaitlyn Gentile.[17] Ms. Pressley is an attorney with over 25 years of consumer advocacy and litigation experience.[18] Mr. Rosenfield is an attorney with over 40 years of insurance regulatory and litigation experience.[19] Mr. Powell is an attorney with four years of litigation experience.[20] Ms. Gentile is a paralegal with over 13 years of litigation experience.[21]

The Request for Compensation also seeks witness fees for actuarial analysis of the Applications performed by Consumer Watchdog's consulting actuary, Allan I. Schwartz, of AIS Risk Consultants, Inc.[22] Mr. Schwartz has over 40 years of professional actuarial experience.[23]

Consumer Watchdog seeks the following fees for work in connection with the Applications and for preparing the Request for Compensation: 48.7 hours of Ms. Pressley's time at $595 per hour, 5.4 hours of Mr. Rosenfield's time at $695 per hour, 22.6 hours of Mr. Powell's time at $350 per hour, 14.0 hours of Ms. Gentile's time at $200 per hour, and 14.0 hours of Mr. Schwartz's time at $835 per hour, for total advocate and witness fees of

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[16] *Ibid.*
[17] Request for Compensation, Exh. A.
[18] Pressley Decl, ¶ 9.
[19] *Id.* at ¶ 12.
[20] *Id.* at ¶ 16.
[21] *Id.* at ¶ 20.
[22] Request for Compensation, Exh. A; Declaration of Allan I. Schwartz in Support of Consumer Watchdog's Request for Compensation ("Schwartz Declaration"), Exh. 7.
[23] Pressley Decl., ¶ 26.

$55,129.50.[24] Consumer Watchdog supported the Request for Compensation with declarations by Ms. Pressley and Mr. Schwartz. Ms. Pressley's declaration attached a declaration by Richard Pearl, an expert on California attorneys' fees.[25]

Farmers did not submit a response to the Request for Compensation.

The Request for Compensation was assigned to Administrative Law Judge Clarke de Maigret (the "ALJ") for review.

APPLICABLE LAW

I. Prior Approval Framework

In 1988, California's voters approved Proposition 103, which added Article 10 "Reduction and Control of Insurance Rates"[26] ("Article 10") to Division 1, Part 2, Chapter 9 of the Insurance Code. Article 10 governs automobile, home, and other property-casualty insurance rates. It requires that the Commissioner approve the rates insurers charge prior to use, so as to prevent "excessive, inadequate, [or] unfairly discriminatory" rates.[27] Insurers wishing to change their rates must file complete rate applications with the Commissioner.[28] All application information must be available for public inspection.[29] Public hearings may be held on the applications.[30]

II. Compensation for Public Participation

To promote enforcement of the rate control laws, Insurance Code section 1861.10(a) authorizes consumers and their representatives to initiate and intervene in rate proceedings and to enforce Article 10's provisions. The Insurance Code and the intervenor regulations

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[24] Request for Compensation, Exh. A.
[25] Pressley Decl., Exh. 2.
[26] Ins. Code, § 1861.01 et seq.
[27] Ins. Code, §§ 1861.01(c), 1861.05(a).
[28] Ins. Code, §1861.05(b).
[29] Ins. Code, § 1861.07.
[30] Ins. Code, §1861.05(c).

("Regulations")[31] provide that intervenors must be compensated for their participation if various substantive and procedural requirements are met.

A. Substantive Requirements

Insurance Code section 1861.10(b) provides that the Commissioner "shall award reasonable advocacy and witness fees and expenses" to persons demonstrating that (1) they "represent the interests of consumers," and (2) they have "made a substantial contribution to the adoption of any order, regulation, or decision by the commissioner[.]" The Regulations contain substantially identical requirements.[32]

An intervenor "represents the interests of consumers" if it "represents the interests of individual insurance consumer[s], or the intervenor is a group organized for the purpose of consumer protection as demonstrated by, but is not limited to, a history of representing consumers in administrative, legislative or judicial proceedings."[33]

An intervenor makes a "substantial contribution" if 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 relevant, 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. A substantial contribution may be demonstrated without regard to whether a petition for hearing is granted or denied."[34]

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[31] Cal. Code Regs., tit. 10, §§ 2662.1—2662.8
[32] Cal. Code Regs., tit. 10, § 2662.5(a).
[33] Cal. Code Regs., tit. 10, § 2661.1(j).
[34] Cal. Code Regs., tit. 10, § 2661.1(k).

B. Procedural Requirements

The Regulations set forth various procedural requirements for claiming intervenor compensation. The intervenor must obtain the Commissioner's approval of a petition to intervene.[35] The intervenor must be found eligible to seek compensation by the Commissioner's Public Advisor.[36] And the intervenor must submit a request for an award of compensation within 30 days after the Commissioner's decision or action in the proceeding for which intervention was sought, or within 30 days after conclusion of the entire proceeding.[37] The request for compensation must be verified and include detailed descriptions of the services and expenditures, legible time and billing records, and a description of the intervenor's substantial contribution.[38]

C. Payment and Amount of Compensation Award

Where an intervenor's advocacy occurs in response to an insurer's rate application, the insurer must pay the intervenor's reasonable advocacy fees, witness fees and expenses.[39] Time spent preparing the intervenor's request for compensation may be included in those amounts.[40]

The intervenor's advocacy and witness fees must not exceed "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 for attorney advocates, non-attorney advocates, or experts with similar experience, skill and ability."[41]

DISCUSSION

Consumer Watchdog's Request for Compensation satisfies the substantive and

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[35] Cal. Code Regs., tit. 10, § 2662.3.
[36] *Ibid.*
[37] *Ibid.*
[38] *Ibid.*
[39] Ins. Code, § 1861.10(b).
[40] Cal. Code Regs., tit. 10, § 2661.1(d).
[41] Cal. Code Regs., tit. 10, § 2661.1(c).

procedural requirements for intervenor compensation, and its fees are reasonable. Its Request for Compensation must be granted.

I. Consumer Watchdog Represented the Interests of Consumers and Made a Substantial Contribution to the Commissioner's Decision.

Consumer Watchdog argues that it satisfied the requirements of Insurance Code section 1861.10, subdivision (b) and Regulations section 2662.5 to "represent[] the interests of consumers" and to make "a substantial contribution" to the Commissioner's decision the Applications.[42] Consumer Watchdog indisputably met the first requirement. The Commissioner has determined that "Consumer Watchdog represents the interests of consumers, and on those grounds, the Commissioner hereby finds Consumer Watchdog eligible to seek compensation in Department proceedings pursuant to [Insurance Code section] 1861.02 *et seq.*"[43]

Turning to the substantial contribution requirement, Consumer Watchdog's Petition asserted that (1) Farmers did not provide sufficient information to determine whether its proposed rule changes had a rate impact, and whether any such rate impact resulted in excessive, inadequate or unfairly discriminatory rates; (2) Farmers made apparently contradictory statements in a cover letter accompanying its Applications; and (3) Farmers failed to publicly file a complete version of the proposed changes to their eligibility guidelines. [44]

Those issues and arguments—which Consumer Watchdog advanced throughout the proceeding—were "separate and distinct from those emphasized by the Department of Insurance staff or any other party" [45] because only Consumer Watchdog raised them.[46] Consumer Watchdog's participation thus resulted in "more relevant, credible, and non-frivolous

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[42] Request for Compensation, pp. 1, 11-13.
[43] Finding of Consumer Watchdog's of Eligibility to Seek Compensation, Aug. 25, 2020, File No. IE-2020-0002, p. 4. Consumer Watchdog's eligibility is effective until July 2022.
[44] Petition, ¶¶ 9-10; Pressley Decl., ¶¶ 33-36.
[45] Cal. Code Regs., tit. 10, § 2662.3(a).
[46] See Denial Decision, p. 3 [summarizing Department's positions].

information being available for the Commissioner" to make his final decision on the Applications.[47] Accordingly, Consumer Watchdog satisfied the substantial contribution requirement.

II. Consumer Watchdog Met the Procedural Requirements for Compensation.

The Commissioner approved Consumer Watchdog's petition to intervene,[48] and the Public Advisor found Consumer Watchdog eligible to seek compensation.[49] Consumer Watchdog submitted a timely verified request for compensation on June 10, 2021, within 30 days after the Commissioner's May 11, 2021 final decision on the Applications.[50] It included detailed descriptions of the services and expenditures, legible time and billing records, and a description of Consumer Watchdog's substantial contribution.[51] Therefore, Consumer Watchdog satisfied the procedural requirements for compensation.

III. Consumer Watchdog's Requested Fees Are Reasonable and Must Be Paid by Farmers.

Consumer Watchdog billed at hourly rates of $595 for an attorney with over 25 years of consumer advocacy and litigation experience, $350 for an attorney with four years of litigation experience, and $200 for a paralegal with over 13 years of litigation experience.[52] These rates are consistent with the current prevailing private sector rates for advocates in Los Angeles with similar experience, skill and ability.[53]

Consumer Watchdog billed a total of 90.7 advocacy hours in connection with the proceeding on the Applications, including 76.7 hours of attorney time and 14.0 hours of

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[47] Cal. Code Regs., tit. 10, § 2662.3(a).
[48] July 2020 Ruling.
[49] Finding of Consumer Watchdog's of Eligibility to Seek Compensation, Aug. 25, 2020, File No. IE-2020-0002.
[50] Request for Compensation [attached Proof of Service].
[51] Request for Compensation, Exh, A; Pressley Decl., Exh. 1a.; Schwartz Decl., Exh. 7.
[52] Pressley Decl., ¶¶ 9, 12, 16, 20, Exh. 1a.
[53] See Pressley Decl., Exh. 2 [fee expert declaration].

paralegal time.[54] Those hours are not excessive, given the nature and quality of work Consumer Watchdog's advocates performed reviewing the Applications, preparing the Petition, engaging with the consulting actuary, communicating with Farmers and the Department over the course of a year, and preparing the Request for Compensation.

Mr. Schwartz's expert witness rate of $835 per hour, when adjusted for inflation, is consistent with rates charged by other similarly-experienced consulting actuaries in earlier prior approval cases.[55] His rates are also consistent with rates he charged clients in other matters.[56] There is no indication his charges exceed prevailing Los Angeles or San Francisco Bay Area rates for comparable services.

Consumer Watchdog seeks compensation for the 14.0 hours Mr. Schwartz spent performing actuarial analysis of the Applications.[57] That time is not excessive for the work performed.

For these reasons, the advocacy and expert fees Consumer Watchdog seeks are reasonable. Because Consumer Watchdog's advocacy was in response to Farmers applications, Farmers must pay the fees.[58]

CONCLUSIONS AND DETERMINATIONS

The Commissioner concludes and determines that Consumer Watchdog is entitled to advocacy and witness fees of $55,129.50 for work concerning the Applications, and that Farmers must pay the award, pursuant to Insurance Code section 1861.10(b) and the Regulations.

ORDER

1. Consumer Watchdog is hereby awarded $55,129.50 in advocacy and witness fees

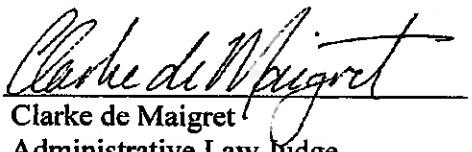
[54] Pressley Decl., Exh. 1a.
[55] Schwartz Declaration, ¶¶ 5-9.
[56] *Ibid.*
[57] Schwartz Decl., Exh. 7.
[58] Ins. Code, § 1861.10(b).

in connection with Farmers' Applications.

2. Farmers shall pay the award no later than 30 days after the date of this Decision and shall notify the Department's Office of the Public Advisor[59] upon making payment.

Date: October 6, 2021

RICARDO LARA
Insurance Commissioner

By: 
Clarke de Maigret
Administrative Law Judge

[59] Edward Wu, 300 South Spring Street, 12th Floor, Suite 12700, Los Angeles, CA 90013 or edward.wu@insurance.ca.gov.

PROOF OF SERVICE

Case Name/Number: In the Matter of the Request for Compensation of
CONSUMER WATCHDOG
File No. **RFC-2021-003**

I, Florinda Cristobal, declare that:

I am employed by the California Department of Insurance, Administrative Hearing Bureau, in the City of Oakland and County of Alameda. I am over the age of eighteen (18) years and not a party to this action. My business address is 1901 Harrison Street, 3rd Floor, Oakland, CA 94612.

I am readily familiar with the business practices of the California Department of Insurance for collecting and processing correspondence for mailing, electronic filing and electronic mail. On October 6, 2021, I served **DECISION AWARDING COMPENSATION** regarding the **Matter of the Request for Compensation of CONSUMER WATCHDOG.**

__X__ **(By U.S. Mail)** on those identified parties in said action, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items to be sent by mail, pursuant to Code of Civil Procedure Section 1013.

_____ **(By Intra-Agency Mail)** on those identified parties in said action, by placing this correspondence in a place designated for collection for delivery by Department of Insurance intra-agency mail.

_____ **(By facsimile transmission)** on those identified parties in said action, by transmitting said document(s) from our office by facsimile machine Fax Number to facsimile machine number(s) shown below. Following the transmission, I received a "Transmission Report" from our fax machine indicating that the transmission had been transmitted without error.

__X__ **(By Email)** on those identified parties in said action, in accordance with Code of Civil Procedure §1013, by emailing true copies thereof at the address set forth below.

SEE ATTACHED PARTY SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Oakland, California, on October 6, 2021.

_____ (Print Name)

_____ (Signature)

PARTY SERVICE LIST

Name/Address	Method of Service
Harvey Rosenfield, SBN 123082 Pamela Pressley, SBN 180362 Daniel L. Sternberg, SBN 329799 Benjamin Powell, SBN 311624 **CONSUMER WATCHDOG** 6330 San Vicente Boulevard, Suite 250 Los Angeles, CA 90048 Tel No.: (310) 392-0522 Fax No.: (310) 392-8874 harvey@consumerwatchdog.org pam@consumerwatchdog.org danny@consumerwatchdog.org ben@consumerwatchdog.org	via U.S. Mail/E-mail
Daniel Goodell, Asst. General Counsel Lisbeth Landsman-Smith Alec Stone Daniel Wade Rate Enforcement Bureau Legal Division, Rate Enforcement Bureau **CALIFORNIA DEPARTMENT OF INSURANCE** 1901 Harrison Street, 6TH Floor Oakland, CA 94612 Tel. No.: (415) 538-4111 FAX No.: (415) 904-5490 Daniel.Goodell@insuance.ca.gov Lisbeth.Landsman@insurance.ca.gov Alec.Stone@insurance.ca.gov Daniel.Wade@insurance.ca.gov	via Inter-office/E-mail

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BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Request for Compensation of	) FILE NO. RFC-2021-005
CONSUMER WATCHDOG,	) **DECISION AWARDING**
	) **COMPENSATION**
Intervenor.	)
	) *In the Matter of the Rate Application of*
	) *Homesite Insurance Company*
	) *of California*
	) Rate Application No. 20-100
	) Prior Approval File No. PA-2020-00003

Consumer Watchdog, a consumer advocacy group, intervened in a proceeding concerning a 2020 rate application of Homesite Insurance Company of California ("Homesite"). Consumer Watchdog a filed Request for Compensation seeking advocacy fees and expenses for its participation in the proceeding. Homesite has not opposed the request. For the reasons below, Consumer Watchdog's Request for Compensation is granted.

BACKGROUND

On or about January 3, 2020, Homesite filed Application No. 20-100 ("Application") with the Department of Insurance ("Department"), seeking approval of rate changes to a homeowners program and a condominium program.[1] The Department notified the public of the pending Application on or about January 17, 2020.[2]

Consumer Watchdog and its actuarial consultant reviewed the Application and formed

[1] Declaration of Pamela Pressley in support of Consumer Watchdog's Request for Compensation, dated September 3, 2021 ("Pressley Decl."), ¶ 27.
[2] *Ibid.*

the opinion that Homesites' proposed rule changes potentially violated the Insurance Code.[3]

On March 2, 2020 Consumer Watchdog submitted to the Department a Petition for Hearing, Petition to Intervene, and Notice of Intent to Seek Compensation ("Petition"), challenging the Application.[4] The Petition alleged: (a) Homesite had used only a single computer model for calculating fire following earthquake losses, for which no underlying support or documentation was provided, and Homesite had not shown that the use of the single model was the most actuarially sound or that the model was properly implemented;[5] (b) Homesite had not shown that the value of the selected catastrophe adjustment was reasonable to use during the rate period;[6] (c) Homesite's selected annual loss trends were unreasonably high;[7] (d) Homesite failed to show that all institutional advertising expenses had been reflected in the excluded expense provision;[8] and (e) Homesite had proposed various other changes that were not adequately supported.[9]

On March 9, 2020, Homesite filed an answer to the Petition.[10]

On April 30, 2020, the Commissioner served a ruling granting Consumer Watchdog's Petition to intervene, finding that "the specific issues that CW seeks to address … are relevant to the ratemaking process."[11] The Commissioner specifically noted Consumer Watchdog's allegations concerning "Improper use of complex catastrophe model; Failure to demonstrate that the value of the selected catastrophe adjustment is reasonable; Selected loss trends that are unreasonably high; Improper and or unsupported use of excluded expenses; and Proposed

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[3] Pressley Decl., ¶ 28.
[4] Pressley Decl., ¶ 29.
[5] Petition, ¶ 7(a); Pressley Decl., ¶ 30.
[6] Petition, ¶ 7(b); Pressley Decl., ¶ 31.
[7] Petition, ¶ 7(c); Pressley Decl., ¶ 32.
[8] Petition, ¶ 7(d); Pressley Decl., ¶ 33.
[9] Petition, ¶ 7(e); Pressley Decl., ¶ 34.
[10] Pressley Decl., ¶ 35.
[11] Ruling Granting Consumer Watchdog's Petition to Intervene, dated April 29, 2020, p. 3 ("April 2020 Ruling"); Pressley Decl., ¶ 32.

changes that have not been adequately supported as well as unreasonable rate increases for many insureds."[12]

On May 22, 2020, Homesite provided additional information and responses to the issues raised in the Petition.[13] Thereafter Consumer Watchdog sought further information concerning those matters and Homesite provided certain of the information requested.[14] The parties engaged in ongoing telephone and email discussions concerning the Application and related information through July 2021.[15]

On July 20, 2021, Consumer Watchdog, Homesite and the Department executed a final settlement stipulation resolving the issues raised concerning the Application.[16]

On July 21, 2021, the Commissioner approved the Application.[17]

Pursuant to the terms of the stipulation, Consumer Watchdog withdrew its Petition for hearing on July 30, 2021.[18] Consumer Watchdog subsequently requested, and the other parties agreed, that the deadline for filing its Request for Compensation be extended to September 3, 2021.[19]

On September 3, 2021, Consumer Watchdog filed a Request for Compensation with the Commissioner, pursuant to Insurance Code section 1861.10(b), seeking advocate fees for work performed by Consumer Watchdog employees Harvey Rosenfield, Pamela Pressley, Benjamin Powell, and Kaitlyn Gentile.[20] Mr. Rosenfield is an attorney with over 40 years of experience in

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[12] April 2020 Ruling, p. 2 (bullets omitted).
[13] Pressley Decl., ¶ 37; Consumer Watchdog's Request for Compensation, dated September 3, 2021 ("Request for Compensation"), Exh. B.
[14] Pressley Decl., ¶¶ 38-41.
[15] Pressley Decl., ¶¶ 38-50.
[16] Pressley Decl., ¶ 52.
[17] Pressley Decl., ¶ 54.
[18] Pressley Decl., ¶ 55.
[19] Request for Compensation, p. 3.
[20] Request for Compensation, Exh. A.

insurance regulatory and litigation matters.[21] Ms. Pressley is an attorney with over 25 years of consumer advocacy and litigation experience.[22] Mr. Powell is an attorney with four years of litigation experience.[23] Ms. Gentile is a paralegal with over 13 years of litigation experience.[24]

The Request for Compensation also seeks witness fees for actuarial analysis of the Application performed by Consumer Watchdog's consulting actuary, Allan I. Schwartz, and his associate, Katherine Tollar, of AIS Risk Consultants, Inc.[25] Mr. Schwartz has over 40 years of professional actuarial experience.[26] Ms. Tollar has over 30 years of experience as an actuarial assistant.[27]

Consumer Watchdog seeks the following fees for work in connection with the Application and for preparing the Request for Compensation: 4.9 hours of Mr. Rosenfield's time at $695 per hour, 60.6 hours of Ms. Pressley's time at $595 per hour, 22.1 hours of Mr. Powell's time at $350 per hour, 5.1 hours of Ms. Gentile's time at $200 per hour, 52.2 hours of Mr. Schwartz's time at $835 per hour, and 13.8 hours of Ms. Tollar's time at $380 per hour, for total advocate and witness fees of $97,048.50.[28] Consumer Watchdog supported the Request for Compensation with declarations by Ms. Pressley and Mr. Schwartz. Ms. Pressley's declaration attached a declaration by Richard Pearl, an expert on California attorneys' fees.[29]

Homesite did not submit a response to the Request for Compensation.

The Request for Compensation was assigned to Administrative Law Judge Clarke de Maigret (the "ALJ") for review.

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[21] Pressley Decl., ¶ 12.
[22] Pressley Decl., ¶ 9.
[23] *Id.* at ¶ 16.
[24] *Id.* at ¶ 20.
[25] Request for Compensation, Exh. A; Declaration of Allan I. Schwartz in Support of Consumer Watchdog's Request for Compensation ("Schwartz Declaration"), Exh. 7.
[26] Schwartz Decl., ¶ 1.
[27] Schwartz Decl., Exh. 6.
[28] Request for Compensation, Exh. A; Pressley Decl., Exh. 1a.
[29] Pressley Decl., Exh. 2.

APPLICABLE LAW

I. Prior Approval Framework

In 1988, California's voters approved Proposition 103, which added Article 10 "Reduction and Control of Insurance Rates"[30] ("Article 10") to Division 1, Part 2, Chapter 9 of the Insurance Code. Article 10 governs automobile, home, and other property-casualty insurance rates. It requires that the Commissioner approve the rates insurers charge prior to use, so as to prevent "excessive, inadequate, [or] unfairly discriminatory" rates.[31] Insurers wishing to change their rates must file complete rate applications with the Commissioner.[32] All application information must be available for public inspection.[33] Public hearings may be held on the applications.[34]

II. Compensation for Public Participation

To promote enforcement of the rate control laws, Insurance Code section 1861.10(a) authorizes consumers and their representatives to initiate and intervene in rate proceedings and to enforce Article 10's provisions. The Insurance Code and the intervenor regulations ("Regulations")[35] provide that intervenors must be compensated for their participation if various substantive and procedural requirements are met.

A. Substantive Requirements

Insurance Code section 1861.10(b) provides that the Commissioner "shall award reasonable advocacy and witness fees and expenses" to persons demonstrating that (1) they "represent the interests of consumers," and (2) they have "made a substantial contribution to the adoption of any order, regulation, or decision by the commissioner[.]" The Regulations contain

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[30] Ins. Code, § 1861.01 et seq.
[31] Ins. Code, §§ 1861.01(c), 1861.05(a).
[32] Ins. Code, §1861.05(b).
[33] Ins. Code, § 1861.07.
[34] Ins. Code, §1861.05(c).
[35] Cal. Code Regs., tit. 10, §§ 2662.1—2662.8

substantially identical requirements.[36]

An intervenor "represents the interests of consumers" if it "represents the interests of individual insurance consumer[s], or the intervenor is a group organized for the purpose of consumer protection as demonstrated by, but is not limited to, a history of representing consumers in administrative, legislative or judicial proceedings."[37]

An intervenor makes a "substantial contribution" if 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 relevant, 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. A substantial contribution may be demonstrated without regard to whether a petition for hearing is granted or denied."[38]

B. Procedural Requirements

The Regulations set forth various procedural requirements for claiming intervenor compensation. The intervenor must obtain the Commissioner's approval of a petition to intervene.[39] The intervenor must be found eligible to seek compensation by the Commissioner's Public Advisor.[40] And the intervenor must submit a request for an award of compensation within 30 days after the Commissioner's decision or action in the proceeding for which intervention was sought, or within 30 days after conclusion of the entire proceeding.[41] The request for compensation must be verified and include detailed descriptions of the services and

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[36] Cal. Code Regs., tit. 10, § 2662.5(a).
[37] Cal. Code Regs., tit. 10, § 2661.1(j).
[38] Cal. Code Regs., tit. 10, § 2661.1(k).
[39] Cal. Code Regs., tit. 10, § 2662.3.
[40] *Ibid.*
[41] *Ibid.*

expenditures, legible time and billing records, and a description of the intervenor's substantial contribution.[42]

C. Payment and Amount of Compensation Award

Where an intervenor's advocacy occurs in response to an insurer's rate application, the insurer must pay the intervenor's reasonable advocacy fees, witness fees and expenses.[43] Time spent preparing the intervenor's request for compensation may be included in those amounts.[44]

The intervenor's advocacy and witness fees must not exceed "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 for attorney advocates, non-attorney advocates, or experts with similar experience, skill and ability."[45]

DISCUSSION

Consumer Watchdog's Request for Compensation satisfies the substantive and procedural requirements for intervenor compensation, and its fees are reasonable. Its Request for Compensation must be granted.

I. Consumer Watchdog Represented the Interests of Consumers and Made a Substantial Contribution to the Commissioner's Decision.

Consumer Watchdog argues that it satisfied the requirements of Insurance Code section 1861.10, subdivision (b) and Regulations section 2662.5 to "represent[] the interests of consumers" and to make "a substantial contribution" to the Commissioner's decision the Application.[46] Consumer Watchdog indisputably met the first requirement. The Commissioner has determined that "Consumer Watchdog represents the interests of consumers, and on those grounds, the Commissioner hereby finds Consumer Watchdog eligible to seek compensation in

[42] *Ibid.*
[43] Ins. Code, § 1861.10(b).
[44] Cal. Code Regs., tit. 10, § 2661.1(d).
[45] Cal. Code Regs., tit. 10, § 2661.1(c).
[46] Request for Compensation, pp. 1, 11-13.

Department proceedings pursuant to [Insurance Code section] 1861.02 *et seq.*"[47]

Turning to the substantial contribution requirement, Consumer Watchdog's Petition asserted that Homesite used an improper catastrophe model, failed to demonstrate the reasonableness of the selected catastrophe adjustment, used improper loss trends, and engaged in improper or unsupported use of excluded expenses.[48]

Those issues and arguments were "separate and distinct from those emphasized by the Department of Insurance staff or any other party"[49] because only Consumer Watchdog raised them. Consumer Watchdog's participation thus resulted in "more relevant, credible, and non-frivolous information being available for the Commissioner" to make his final decision on the Application.[50] Accordingly, Consumer Watchdog satisfied the substantial contribution requirement.

II. Consumer Watchdog Met the Procedural Requirements for Compensation.

The Commissioner approved Consumer Watchdog's petition to intervene,[51] and the Public Advisor found Consumer Watchdog eligible to seek compensation.[52] Consumer Watchdog submitted a timely verified request for compensation on September 3, 2021, within the period stipulated by the other parties.[53] It included detailed descriptions of the services and expenditures, legible time and billing records, and a description of Consumer Watchdog's substantial contribution.[54] Therefore, Consumer Watchdog satisfied the procedural requirements for compensation.

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[47] Finding of Consumer Watchdog's of Eligibility to Seek Compensation, Aug. 25, 2020, File No. IE-2020-0002 ("Eligibility Finding"), p. 4. Consumer Watchdog's eligibility is effective until July 2022.
[48] Petition, ¶ 7; Pressley Decl., ¶¶ 30-34.
[49] Cal. Code Regs., tit. 10, § 2662.3(a).
[50] Cal. Code Regs., tit. 10, § 2662.3(a).
[51] April 2020 Ruling.
[52] Eligibility Finding, p. 4.
[53] Request for Compensation, p. 3.
[54] Request for Compensation, Exh. A; Pressley Decl., Exh. 1a.; Schwartz Decl., Exh. 7.

III. Consumer Watchdog's Requested Fees Are Reasonable and Must Be Paid by Homesite.

Consumer Watchdog billed at hourly rates of $695 for an attorney with over 40 years of insurance regulatory and litigation experience, $595 for an attorney with over 25 years of consumer advocacy and litigation experience, $350 for an attorney with four years of litigation experience, and $200 for a paralegal with over 13 years of litigation experience.[55] These rates are consistent with the current prevailing private sector rates for advocates in Los Angeles with similar experience, skill and ability.[56]

Consumer Watchdog billed a total of 92.7 advocacy hours in connection with the proceeding on the Application, including 87.6 hours of attorney time and 5.1 hours of paralegal time.[57] Those hours are not excessive, given the nature and quality of work Consumer Watchdog's advocates performed reviewing the Application, preparing the Petition, engaging with the consulting actuary, communicating with Homesite and the Department concerning the Application, negotiating the settlement stipulation, and preparing the Request for Compensation.

Mr. Schwartz's expert witness rate of $835 per hour, when adjusted for inflation, is consistent with rates charged by other similarly-experienced consulting actuaries in earlier prior approval cases.[58] His rates are also consistent with rates he charged clients in other matters.[59] There is no indication his charges, or the $380 per hour charges of his associate, Ms. Tollar, exceed prevailing Los Angeles or San Francisco Bay Area rates for comparable services.

Consumer Watchdog seeks compensation for the 52.2 hours Mr. Schwartz and the 13.8 hours Ms. Tollar spent performing actuarial analysis concerning the Application.[60] That time is

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[55] Pressley Decl., Exh. 1a; Request for Compensation, Exh. A.
[56] See Pressley Decl., Exh. 2 [fee expert declaration].
[57] Pressley Decl., Exh. 1a.
[58] Schwartz Declaration, ¶¶ 3-6.
[59] *Ibid.*
[60] Schwartz Decl., Exh. 7.

not excessive for the work performed.

For these reasons, the advocacy and expert fees Consumer Watchdog seeks are reasonable. Because Consumer Watchdog's advocacy was in response to Homesite's application, Homesite must pay the fees.[61]

CONCLUSIONS AND DETERMINATIONS

The Commissioner concludes and determines that Consumer Watchdog is entitled to advocacy and witness fees of $97,048.50 for work concerning the Application, and that Homesite must pay the award, pursuant to Insurance Code section 1861.10(b) and the Regulations.

ORDER

1. Consumer Watchdog is hereby awarded $97,048.50 in advocacy and witness fees in connection with Homesite's Application.

2. Homesite shall pay the award no later than 30 days after the date of this Decision and shall notify the Department's Office of the Public Advisor[62] upon making payment.

Date: February 14, 2022

RICARDO LARA
Insurance Commissioner

By: Clarke de Maigret
Clarke de Maigret
Administrative Law Judge

[61] Ins. Code, § 1861.10(b).
[62] Edward Wu, 300 South Spring Street, 12th Floor, Suite 12700, Los Angeles, CA 90013 or edward.wu@insurance.ca.gov.

PROOF OF SERVICE

Case Name/Number: In the Matter of the Request for Compensation of
CONSUMER WATCHDOG
File No. **RFC-2021-005**

I, Florinda Cristobal, declare that:

I am employed by the California Department of Insurance, Administrative Hearing Bureau, in the City of Oakland and County of Alameda. I am over the age of eighteen (18) years and not a party to this action. My business address is 1901 Harrison Street, 3rd Floor, Oakland, CA 94612.

I am readily familiar with the business practices of the California Department of Insurance for collecting and processing correspondence for mailing, electronic filing and electronic mail. On February 15, 2022, I served **DECISION AWARDING COMPENSATION** regarding the **Matter of the Request for Compensation of CONSUMER WATCHDOG.**

__X__ **(By U.S. Mail)** on those identified parties in said action, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items to be sent by mail, pursuant to Code of Civil Procedure Section 1013.

__X__ **(By Intra-Agency Mail)** on those identified parties in said action, by placing this correspondence in a place designated for collection for delivery by Department of Insurance intra-agency mail.

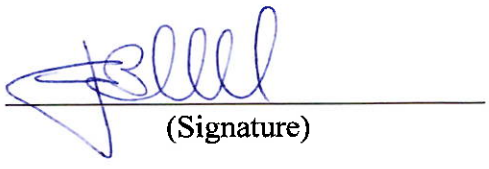
_____ **(By facsimile transmission)** on those identified parties in said action, by transmitting said document(s) from our office by facsimile machine Fax Number to facsimile machine number(s) shown below. Following the transmission, I received a "Transmission Report" from our fax machine indicating that the transmission had been transmitted without error.

__X__ **(By Email)** on those identified parties in said action, in accordance with Code of Civil Procedure §1013, by emailing true copies thereof at the address set forth below.

SEE ATTACHED PARTY SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Oakland, California, on February 15, 2022.

FLORINDA CRISTOBAL
(Print Name)


(Signature)

PARTY SERVICE LIST

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Harvey Rosenfield, SBN 123082 Pamela Pressley, SBN 180362 Benjamin Powell, SBN 311624 **CONSUMER WATCHDOG** 6330 San Vicente Boulevard, Suite 250 Los Angeles, CA 90048 Tel No.: (310) 392-0522 Fax No.: (310) 392-8874 harvey@consumerwatchdog.org pam@consumerwatchdog.org ben@consumerwatchdog.org	via U.S. Mail/E-mail
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NON-PARTY

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BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Request for Compensation of	) FILE NO. RFC-2021-004
CONSUMER WATCHDOG,	) **DECISION AWARDING**
	) **COMPENSATION**
Intervenor.	)
	) *In the Matter of*
	) *the New Program Applications of*
	) *Farmers Insurance Exchange*
	) *and Fire Insurance Exchange*
	) New Program Application Nos. 20-444
	) and 20-444-B
	) Prior Approval File No. PA-2020-00004

Consumer Watchdog, a consumer advocacy group, intervened in a proceeding concerning 2020 rate applications of Farmers Insurance Exchange and Fire Insurance Exchange (collectively, "Farmers"). Consumer Watchdog a filed Request for Compensation seeking advocacy fees and expenses for its participation in the proceeding. Farmers has not opposed the request. For the reasons below, Consumer Watchdog's Request for Compensation is granted.

BACKGROUND

On or about January 24, 2020, Farmers filed Application Nos. 20-444 and 20-444-B ("Applications") with the Department of Insurance ("Department"), seeking approval of two new products called Farmers Smart Plan Renters Policy ("SPR") and Farmers Smart Plan Condominium Policy ("SPC") that would update Farmers' legacy renters and condominium programs.[1] The Department notified the public of the pending Applications on or about February

[1] Declaration of Pamela Pressley in support of Consumer Watchdog's Request for Compensation, dated August 27, 2021 ("Pressley Decl."), ¶ 27.

14, 2020.[2]

Consumer Watchdog and its actuarial consultant reviewed the Applications and formed the opinion that Farmers' use of unsupported "FireLine Score Factors" potentially violated the Insurance Code.[3]

On March 30, 2020 Consumer Watchdog submitted to the Department a Petition for Hearing, Petition to Intervene, and Notice of Intent to Seek Compensation ("Petition"), challenging the Applications.[4] The Petition alleged that Farmers had failed to sufficiently justify the FireLine Score Factors in their SPC and SPR rate manuals, and that such failure potentially resulted in unfairly discriminatory rates and premiums in violation of Insurance Code section 1861.05.[5] The Petition also alleged that the Applications referenced certain adjustments to base rates used in the SPC and SPR programs without showing that those adjustments would not result in excessive or unfairly discriminatory rates.[6]

On May 4, 2020, the Commissioner granted Consumer Watchdog's Petition to Intervene, finding that "the specific issues that CW seeks to address … are relevant to the ratemaking process."[7] The Commissioner specifically noted Consumer Watchdog's allegations concerning potentially excessive and/or discriminatory rates resulting from unsupported use of FireLine Score Factors.[8]

Over a year later, on June 1, 2021, the parties held a teleconference discussion of the issues raised in Consumer Watchdog's Petition.[9] During that discussion, Consumer Watchdog

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[2] *Ibid.*
[3] Pressley Decl., ¶ 28.
[4] Pressley Decl., ¶ 29.
[5] Pressley Decl., ¶ 30.
[6] Pressley Decl., ¶ 31.
[7] Ruling Granting Consumer Watchdog's Petition to Intervene, May 4, 2020, p. 3 ("May 2020 Ruling"); Pressley Decl., ¶ 32.
[8] May 2020 Ruling, pp. 2-3; Pressley Decl., ¶ 33.
[9] Pressley Decl., ¶ 35.

requested documentation to support the FireLine Score Factors and rate changes.[10] Farmers responded to those requests shortly thereafter.[11]

Between June 9 and June 23, 2021, Consumer Watchdog, its actuarial consultant, the Department and Farmers participated in numerous discussions and email exchanges concerning the issues raised in the Petition and information provided by Farmers in response to Consumer Watchdog's requests.[12]

On July 14, 2021 the parties executed a settlement stipulation, resolving all issues between them concerning the Applications, including the FireLine Score factors and rate impact issues raised by the Petition.[13]

On July 30, 2021, the Commissioner approved the Applications.[14]

On August 9, 2021, Consumer Watchdog withdrew its Petition for hearing, in accordance with the Stipulation.[15]

On August 27, 2021, Consumer Watchdog filed a Request for Compensation with the Commissioner, pursuant to Insurance Code section 1861.10(b), seeking advocate fees for work performed by Consumer Watchdog employees Harvey Rosenfield, Pamela Pressley, Benjamin Powell, and Kaitlyn Gentile.[16] Mr. Rosenfield is an attorney with over 40 years of experience in insurance regulatory and litigation matters.[17] Ms. Pressley is an attorney with over 25 years of consumer advocacy and litigation experience.[18] Mr. Powell is an attorney with four years of

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[10] *Ibid.*
[11] Pressley Decl., ¶ 36.
[12] Pressley Decl., ¶¶ 37-43
[13] Pressley Decl., ¶ 44.
[14] Pressley Decl., ¶ 46.
[15] Pressley Decl., ¶ 47.
[16] Consumer Watchdog's Request for Compensation, dated August 27, 2021 ("Request for Compensation"), Exh. A.
[17] Pressley Decl., ¶ 12.
[18] Pressley Decl., ¶ 9.

litigation experience.[19] Ms. Gentile is a paralegal with over 13 years of litigation experience.[20]

The Request for Compensation also seeks witness fees for actuarial analysis of the Applications performed by Consumer Watchdog's consulting actuary, Allan I. Schwartz, and his associate, Katherine Tollar, of AIS Risk Consultants, Inc.[21] Mr. Schwartz has over 40 years of professional actuarial experience.[22] Ms. Tollar has over 30 years of experience as an actuarial assistant.[23]

Consumer Watchdog seeks the following fees for work in connection with the Applications and for preparing the Request for Compensation: 0.9 hours of Mr. Rosenfield's time at $695 per hour, 37.7 hours of Ms. Pressley's time at $595 per hour, 9.2 hours of Mr. Powell's time at $350 per hour, 6.5 hours of Ms. Gentile's time at $200 per hour, 16.0 hours of Mr. Schwartz's time at $835 per hour, and 3.4 hours of Ms. Tollar's time at $380 per hour, for total advocate and witness fees of $42,428.50.[24] Consumer Watchdog supported the Request for Compensation with declarations by Ms. Pressley and Mr. Schwartz. Ms. Pressley's declaration attached a declaration by Richard Pearl, an expert on California attorneys' fees.[25]

Farmers did not submit a response to the Request for Compensation.

The Request for Compensation was assigned to Administrative Law Judge Clarke de Maigret (the "ALJ") for review.

APPLICABLE LAW

I. Prior Approval Framework

In 1988, California's voters approved Proposition 103, which added Article 10

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[19] *Id.* at ¶ 16.
[20] *Id.* at ¶ 20.
[21] Request for Compensation, Exh. A; Declaration of Allan I. Schwartz in Support of Consumer Watchdog's Request for Compensation ("Schwartz Declaration"), Exh. 7.
[22] Schwartz Decl., ¶ 1.
[23] Schwartz Decl., Exh. 6.
[24] Request for Compensation, Exh. A.
[25] Pressley Decl., Exh. 2.

"Reduction and Control of Insurance Rates"[26] ("Article 10") to Division 1, Part 2, Chapter 9 of the Insurance Code. Article 10 governs automobile, home, and other property-casualty insurance rates. It requires that the Commissioner approve the rates insurers charge prior to use, so as to prevent "excessive, inadequate, [or] unfairly discriminatory" rates.[27] Insurers wishing to change their rates must file complete rate applications with the Commissioner.[28] All application information must be available for public inspection.[29] Public hearings may be held on the applications.[30]

II. Compensation for Public Participation

To promote enforcement of the rate control laws, Insurance Code section 1861.10(a) authorizes consumers and their representatives to initiate and intervene in rate proceedings and to enforce Article 10's provisions. The Insurance Code and the intervenor regulations ("Regulations")[31] provide that intervenors must be compensated for their participation if various substantive and procedural requirements are met.

A. Substantive Requirements

Insurance Code section 1861.10(b) provides that the Commissioner "shall award reasonable advocacy and witness fees and expenses" to persons demonstrating that (1) they "represent the interests of consumers," and (2) they have "made a substantial contribution to the adoption of any order, regulation, or decision by the commissioner[.]" The Regulations contain substantially identical requirements.[32]

An intervenor "represents the interests of consumers" if it "represents the interests of

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[26] Ins. Code, § 1861.01 et seq.
[27] Ins. Code, §§ 1861.01(c), 1861.05(a).
[28] Ins. Code, §1861.05(b).
[29] Ins. Code, § 1861.07.
[30] Ins. Code, §1861.05(c).
[31] Cal. Code Regs., tit. 10, §§ 2662.1—2662.8
[32] Cal. Code Regs., tit. 10, § 2662.5(a).

individual insurance consumer[s], or the intervenor is a group organized for the purpose of consumer protection as demonstrated by, but is not limited to, a history of representing consumers in administrative, legislative or judicial proceedings."[33]

An intervenor makes a "substantial contribution" if 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 relevant, 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. A substantial contribution may be demonstrated without regard to whether a petition for hearing is granted or denied."[34]

B. Procedural Requirements

The Regulations set forth various procedural requirements for claiming intervenor compensation. The intervenor must obtain the Commissioner's approval of a petition to intervene.[35] The intervenor must be found eligible to seek compensation by the Commissioner's Public Advisor.[36] And the intervenor must submit a request for an award of compensation within 30 days after the Commissioner's decision or action in the proceeding for which intervention was sought, or within 30 days after conclusion of the entire proceeding.[37] The request for compensation must be verified and include detailed descriptions of the services and expenditures, legible time and billing records, and a description of the intervenor's substantial

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[33] Cal. Code Regs., tit. 10, § 2661.1(j).
[34] Cal. Code Regs., tit. 10, § 2661.1(k).
[35] Cal. Code Regs., tit. 10, § 2662.3.
[36] *Ibid.*
[37] *Ibid.*

contribution.[38]

C. Payment and Amount of Compensation Award

Where an intervenor's advocacy occurs in response to an insurer's rate application, the insurer must pay the intervenor's reasonable advocacy fees, witness fees and expenses.[39] Time spent preparing the intervenor's request for compensation may be included in those amounts.[40]

The intervenor's advocacy and witness fees must not exceed "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 for attorney advocates, non-attorney advocates, or experts with similar experience, skill and ability."[41]

DISCUSSION

Consumer Watchdog's Request for Compensation satisfies the substantive and procedural requirements for intervenor compensation, and its fees are reasonable. Its Request for Compensation must be granted.

I. Consumer Watchdog Represented the Interests of Consumers and Made a Substantial Contribution to the Commissioner's Decision.

Consumer Watchdog argues that it satisfied the requirements of Insurance Code section 1861.10, subdivision (b) and Regulations section 2662.5 to "represent[] the interests of consumers" and to make "a substantial contribution" to the Commissioner's decision the Applications.[42] Consumer Watchdog indisputably met the first requirement. The Commissioner has determined that "Consumer Watchdog represents the interests of consumers, and on those grounds, the Commissioner hereby finds Consumer Watchdog eligible to seek compensation in

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[38] *Ibid.*
[39] Ins. Code, § 1861.10(b).
[40] Cal. Code Regs., tit. 10, § 2661.1(d).
[41] Cal. Code Regs., tit. 10, § 2661.1(c).
[42] Request for Compensation, pp. 1, 11-13.

Department proceedings pursuant to [Insurance Code section] 1861.02 *et seq.*"[43]

Turning to the substantial contribution requirement, Consumer Watchdog's Petition asserted that Farmers failed to sufficiently justify the FireLine Score Factors in its rate manuals and failed to show that adjustments to base rates used in the SPC and SPR programs would not result in excessive or unfairly discriminatory rates. [44]

Those issues and arguments—which Consumer Watchdog advanced throughout the proceeding—were "separate and distinct from those emphasized by the Department of Insurance staff or any other party" [45] because only Consumer Watchdog raised them. Consumer Watchdog's participation thus resulted in "more relevant, credible, and non-frivolous information being available for the Commissioner" to make his final decision on the Applications.[46] Accordingly, Consumer Watchdog satisfied the substantial contribution requirement.

II. Consumer Watchdog Met the Procedural Requirements for Compensation.

The Commissioner approved Consumer Watchdog's petition to intervene,[47] and the Public Advisor found Consumer Watchdog eligible to seek compensation.[48] Consumer Watchdog submitted a timely verified request for compensation on August 27, 2021, within 30 days after the Commissioner's July 30, 2021 final decision on the Applications.[49] It included detailed descriptions of the services and expenditures, legible time and billing records, and a description of Consumer Watchdog's substantial contribution.[50] Therefore, Consumer Watchdog

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[43] Finding of Consumer Watchdog's of Eligibility to Seek Compensation, Aug. 25, 2020, File No. IE-2020-0002 ("Eligibility Finding"), p. 4. Consumer Watchdog's eligibility is effective until July 2022.
[44] Petition, ¶¶ 7-8; Pressley Decl., ¶¶ 30-31.
[45] Cal. Code Regs., tit. 10, § 2662.3(a).
[46] Cal. Code Regs., tit. 10, § 2662.3(a).
[47] May 2020 Ruling.
[48] Eligibility Finding, p. 4.
[49] Request for Compensation [attached Proof of Service].
[50] Request for Compensation, Exh, A; Pressley Decl., Exh. 1a.; Schwartz Decl., Exh. 7.

satisfied the procedural requirements for compensation.

III. Consumer Watchdog's Requested Fees Are Reasonable and Must Be Paid by Farmers.

Consumer Watchdog billed at hourly rates of $695 for an attorney with over 40 years of insurance regulatory and litigation experience, $595 for an attorney with over 25 years of consumer advocacy and litigation experience, $350 for an attorney with four years of litigation experience, and $200 for a paralegal with over 13 years of litigation experience.[51] These rates are consistent with the current prevailing private sector rates for advocates in Los Angeles with similar experience, skill and ability.[52]

Consumer Watchdog billed a total of 54.3 advocacy hours in connection with the proceeding on the Applications, including 47.8 hours of attorney time and 6.5 hours of paralegal time.[53] Those hours are not excessive, given the nature and quality of work Consumer Watchdog's advocates performed reviewing the Applications, preparing the Petition, engaging with the consulting actuary, communicating with Farmers and the Department concerning the Applications, and preparing the Request for Compensation.

Mr. Schwartz's expert witness rate of $835 per hour, when adjusted for inflation, is consistent with rates charged by other similarly-experienced consulting actuaries in earlier prior approval cases.[54] His rates are also consistent with rates he charged clients in other matters.[55] There is no indication his charges, or the $380 per hour charges of his associate, Ms. Tollar, exceed prevailing Los Angeles or San Francisco Bay Area rates for comparable services.

Consumer Watchdog seeks compensation for the 16.0 hours Mr. Schwartz and the 3.4

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[51] Pressley Decl., Exh. 1a; Request for Compensation, Exh. A.
[52] See Pressley Decl., Exh. 2 [fee expert declaration].
[53] Pressley Decl., Exh. 1a.
[54] Schwartz Declaration, ¶¶ 3-6.
[55] *Ibid.*

hours Ms. Tollar spent performing actuarial analysis concerning the Applications.[56] That time is not excessive for the work performed.

For these reasons, the advocacy and expert fees Consumer Watchdog seeks are reasonable. Because Consumer Watchdog's advocacy was in response to Farmers' applications, Farmers must pay the fees.[57]

CONCLUSIONS AND DETERMINATIONS

The Commissioner concludes and determines that Consumer Watchdog is entitled to advocacy and witness fees of $42,428.50 for work concerning the Applications, and that Farmers must pay the award, pursuant to Insurance Code section 1861.10(b) and the Regulations.

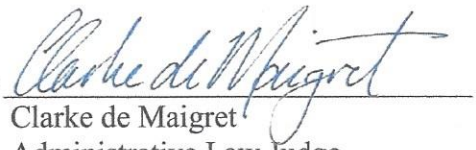
ORDER

1. Consumer Watchdog is hereby awarded $42,428.50 in advocacy and witness fees in connection with Farmers' Applications.

2. Farmers shall pay the award no later than 30 days after the date of this Decision and shall notify the Department's Office of the Public Advisor[58] upon making payment.

Date: February 16, 2022

RICARDO LARA
Insurance Commissioner

By: 
Clarke de Maigret
Administrative Law Judge

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[56] Schwartz Decl., Exh. 7.
[57] Ins. Code, § 1861.10(b).
[58] Edward Wu, 300 South Spring Street, 12th Floor, Suite 12700, Los Angeles, CA 90013 or edward.wu@insurance.ca.gov.

PROOF OF SERVICE

Case Name/Number: In the Matter of the Request for Compensation of
CONSUMER WATCHDOG
File No. **RFC-2021-004**

I, Camille E. Johnson, declare that:

I am employed by the California Department of Insurance, Administrative Hearing Bureau, in the City of Oakland and County of Alameda. I am over the age of eighteen (18) years and not a party to this action. My business address is 1901 Harrison Street, 3rd Floor, Oakland, CA 94612.

I am readily familiar with the business practices of the California Department of Insurance for collecting and processing correspondence for mailing, electronic filing and electronic mail. On February 16, 2022, I served **DECISION AWARDING COMPENSATION** regarding the **Matter of the Request for Compensation of CONSUMER WATCHDOG.**

___X___ **(By U.S. Mail)** on those identified parties in said action, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items to be sent by mail, pursuant to Code of Civil Procedure Section 1013.

___X___ **(By Intra-Agency Mail)** on those identified parties in said action, by placing this correspondence in a place designated for collection for delivery by Department of Insurance intra-agency mail.

_____ **(By Facsimile transmission)** on those identified parties in said action, by transmitting said document(s) from our office by facsimile machine to facsimile machine number(s) shown below. Following the transmission, I received a "Transmission Report" from our fax machine indicating that the transmission had been transmitted without error.

___X___ **(By Email)** on those identified parties in said action, in accordance with Code of Civil Procedure §1013, by emailing true copies thereof at the address set forth below.

SEE ATTACHED PARTY SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Oakland, California, on February 16, 2022.

February 16, 2022
DATE

C. E. JOHNSON

PARTY SERVICE LIST

Name/Address	Method of Service
Harvey Rosenfield, SBN 123082 Pamela Pressley, SBN 180362 Benjamin Powell, SBN 311624 **CONSUMER WATCHDOG** 6330 San Vicente Boulevard, Suite 250 Los Angeles, CA 90048 Tel No.: (310) 392-0522 Fax No.: (310) 392-8874 harvey@consumerwatchdog.org pam@consumerwatchdog.org ben@consumerwatchdog.org	via Email and U. S. Mail
Daniel Goodell, Asst. General Counsel Jennifer McCune Lisbeth Landsman-Smith Alec Stone Legal Division, Rate Enforcement Bureau **CALIFORNIA DEPARTMENT OF INSURANCE** 1901 Harrison Street, 6TH Floor Oakland, CA 94612 Tel. No.: (415) 538-4111 FAX No.: (415) 904-5490 Daniel.Goodell@insuance.ca.gov Jennifer.McCune@insurance.ca.gov Lisbeth.Landsman@insurance.ca.gov Alec.Stone@insurance.ca.gov Tina.Warren@insurance.ca.gov	via Email/Intra-agency Mail
Richard De La Mora Victoria McCarthy Alissa Vreman **Farmers Insurance Exchange** 6301 Owensmouth Avenue Woodland Hills, CA 91367 Tel. No.: (818) 865-0433 Richard.delamora@farmersinsurance.com Victoria.mccarthy@farmersinsurance.com Alissa.vreman@farmersinsurance.com	via Email and U. S. Mail

NON-PARTY

Jamie Katz
California Department of Insurance
Legal - Enforcement Bureau - Oakland
1901 Harrison Street
Oakland, CA 94612
Tel: (415) 538-4180
Fax: (510) 238-7830
Jamie.Katz@insurance.ca.gov

via Email

EXHIBIT 5

ALLAN I. SCHWARTZ
President
AIS Risk Consultants, Inc.
4400 Route 9 South
Freehold, New Jersey 07728
732-780-0330

EDUCATION

Cooper Union, B.S., Physics, 1975

PROFESSIONAL AFFILIATIONS

Casualty Actuarial Society, Fellow - 1981, Associate - 1979

American Academy of Actuaries, Member - 1979

Associate in Reinsurance - June 1998
(Received Reinsurance Association of America Award for Academic Excellence)

Associate in Claims - September 1998

Associate in Premium Auditing - May 1999

Associate in Underwriting - June 1999

Associate in Insurance Accounting and Finance - June 2002
(Received National Association of Mutual Insurance Companies Award for Academic Excellence)

Associate in Risk Management - September 2002

Associate in Personal Insurance – January 2008

Associate, Customer Service – March 2008 (With Honors)

Certified Rate of Return Analyst – April 2011

PUBLICATIONS

"Workers' Compensation and Investment Income" : Best's Review, Property / Casualty Insurance Edition, 10/82

"A Note on Calendar Year Loss Ratios" : Proceedings of the Casualty Actuarial Society, 11/82

"An Actuary's Analysis of the Security of a Self-Insured" : Business Insurance, 9/26/83

"Actuarial Issues to be Addressed in Pricing Excess of Loss Reinsurance" : Proceedings of the Los Angeles Chapter CPCU Technical Conference, 6/84 (Received Research Excellence Award from Farmers Insurance Group)

"An Actuarial Analysis of Self-Insurance" : The Self-Insurer, Volume 1, Issue 3, 1984

"Loss and Loss Expense Reserving" : The Self-Insurer, Volume 1, Issue 4, 1984

"The ABC's of Reinsurance" : The Self-Insurer, Volume 2, Issue 4, 1985

"Actuarial Implications of Claims-Made Policies" : The Journal of the Independent Reinsurance Underwriters Association, Volume I, Number 1, October 1985

"Considerations in the Regulatory Analysis of Workers' Compensation Rate Filings" : Best's Review, Property / Casualty Insurance Edition, 8/88

"Delays in Payment of Private Passenger Auto Premium Receipts / Commissions : Impact on Calculation of Investment Income", Journal on Insurance Regulation, Volume 7, No. 3, March 1989

"Various Studies Related to Workers' Compensation", State of California - Workers' Compensation Rate Study Commission, Volume V, March 1992

LECTURES PRESENTED

"Reserving Losses for Self-Insureds" & "Actuarial Sufficiency of Self-Insurance Programs" : Eleventh Workers' Compensation College of the IAIABC - 4/84

"Problems, Trends, and History of Self-Insurance" : 1984 IAIABC Central States Association Conference - 6/84

"Actuarial Issues to be Addressed in Pricing Excess of Loss Reinsurance" : Los Angeles CPCU Technical Conference - 6/84

"Types of Security Available for the Self-Insured Employer" : 1984 Mid-Year Meeting of the National Council of Self-Insurers - 9/84

"Actuarial Implications of Claims-Made Policies" : Fall 1985 Meeting of the Independent Reinsurance Underwriters Association - 10/85

"North Carolina Medical Malpractice Closed Claim Study" : Duke University - Conference on Developing Information Bases for Medical Malpractice Claim Studies - 5/87

"A Regulator's Perspective on Rate Filings" : Casualty Actuarial Society Seminar on Ratemaking - 3/88

"Understanding the Insurance Industry and Regulation" : Public Citizen's Taming the Insurance Giant Conference - 2/90

"Analyzing Insurance Company Rate Filings" : National Association of Attorneys General Insurance Committee Meeting - 4/90

"Where Does All The Money Go - Insurance Profitability" : Workers Compensation in New York - 5/95

WORK EXPERIENCE

AIS RISK CONSULTANTS, INC.
President - 11/84 to Present

Responsibilities include performing actuarial analyses for all lines of property/casualty insurance. Loss reserve and rate level studies for insurance companies, reinsurance companies, state insurance funds, self-insurers, captive insurers, brokerage firms and attorneys. Work also involves projection of payment patterns, excess insurance studies, production of management information systems and development of individual risk rating plans.

I have provided expert testimony in insurance rate proceedings in Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Maine, Massachusetts, Nevada, New Jersey, New Mexico, North Carolina, Oklahoma, Rhode Island, South Carolina, Texas, Vermont and Virginia.

I have worked on health insurance rate filings in California, Colorado, Massachusetts, New Jersey, New Mexico, Oregon and Vermont during the last several years. This involved the review of rate filings and the preparation of analyses which could be submitted to the state insurance regulatory agency. My work in health insurance includes providing actuarial assistance to the NAIC Consumer Representatives during the last several years dealing with various issues such as the Medical Loss Ratio calculation.

NEW JERSEY DEPARTMENT OF INSURANCE
Assistant Commissioner - 5/88 to 1/90

Supervised a staff of 20+ which regulated rates, rules and policy forms in New Jersey for property/casualty insurance to determine compliance with the applicable statutes and regulations. Also responsible for the statistical section for property/casualty insurance. This section gathers and analyzes data related to property/casualty insurance. Provided advice to the Insurance Commissioner and other senior staff members of the Insurance Department regarding the impact of proposed legislation, regulations and overall policy directives.

Provided recommendations in regard to the financial analysis and condition of insurers, including excess profits reports.

NORTH CAROLINA DEPARTMENT OF INSURANCE
Chief Actuary - 6/86 to 4/88

Responsible for all actuarial studies performed in the Department of Insurance covering property / casualty / life / health / accident insurance.

Work included the analysis of filings made by insurance companies to see that they are in compliance with the insurance laws and regulations of the State of North Carolina. Also interacted with the legal staff of the Insurance Department in drafting proposed insurance laws and regulations.

Responsible for the analysis of the loss and loss adjustment expense reserves established by insurance companies to meet the liabilities they have incurred in the past, but which will not be payable until some time in the future.

Involved in various special projects relating to the financial analysis of insurance operations. These included the review of reinsurance contracts, the financial analysis of the North Carolina State Property Fire Insurance Fund and a study of medical malpractice closed claims.

Was in charge of a staff of six, including four professional and two clerical people. Other duties involved the writing of computer programs, providing expert testimony at rate hearings and assisting the Insurance Commissioner prepare for legislative committees.

WOODWARD & FONDILLER
Senior Actuary - 8/77 to 11/84

Consulting property/casualty actuarial studies (see description under AIS Risk Consultants, Inc.)

NATIONAL COUNCIL ON COMPENSATION INSURANCE
Actuarial Trainee - 3/76 to 8/77

Performed ratemaking analyses and prepared rate filings for workers' compensation insurance. Regularly evaluated the impact of changes in workers' compensation benefits. Also assisted the Director of Research with special studies related to data collection, ratemaking procedures and benefit evaluations.

EXHIBIT 6

Katherine Tollar

Work Experience:

November 1999 to present : AIS Risk Consultants , Freehold, NJ

Actuarial Assistant

- Analysis of loss and loss adjustment expenses for companies self-insured for medical malpractice and workers' compensation.
- Analysis of trends and loss development for private passenger automobile, medical malpractice and workers' compensation.
- Research of insurance rating systems and applicable laws.

1990–1993 : Prudential Property and Casualty Insurance, Holmdel, NJ

Actuarial Assistant

- Rotational assignments in the areas of Reserves, Pricing and Product Development.
- Assignments included setting insurance rates for policies and estimating capital outflow from incoming claims.
- Supervised Group PCAT insurance area.

1994–1999 : St John Vianney High School, Holmdel, NJ

Mathematics Teacher

- Taught classes targeted at all levels of students.
- Designed and taught 2 new courses, Probability and Statistics, and BC Calculus.

Casualty Actuarial Society Examinations

Part 1 – Mathematical Foundations of Actuarial Science
Part 2- Financial Mathematics
Part 5 - Introduction to Property & Casualty Insurance and Ratemaking
VEE – Applied Statistical Methods
VEE – Economics
VEE – Finance

Professional Designations

- Associate in Commercial Underwriting April 2003
- Associate in Risk Management December 2004

Education

1978-1982 Purdue University West Lafayette, IN
B.S. in Mathematics Education.
1982-1985 Florida State University Tallahassee, FL
Graduate work in Mathematics totaling 30 credit hours.

EXHIBIT 7

Marianne E. Dwyer

Work Experience:

August 1990 to Present AIS Risk Consultants Freehold, NJ

Actuarial Assistant

- Compiling loss data data for private passenger automobile, medical malpractice and workers' compensation.
- Analysis of loss and loss adjustment expenses for companies self-insured medical malpractice and workers' compensation.
- Analysis of trends.
- Analysis of loss development.
- Research of insurance rating systems and applicable laws.

Casualty Actuarial Society Examinations

- Exam 1 – Mathematical Foundations of Actuarial Science
- Exam 2 – Interest Theory, Economics, and Finance
- Exam 3 – Actuarial Models
- Exam 4 – Actuarial Modeling

Honorary Affiliations

- Pi Mu Epsilon – National Honorary Mathematics Society
  – Past Vice President of Trenton State College Chapter
- Phi Kappa Phi – National Honorary Society
- Society of Industrial and Applied Mathematics

Education

1986-1990 Trenton State College (now The College of New Jersey) Trenton, NJ

- B.A., Mathematics.
- Graduated Summa Cum Laude.

EXHIBIT 8

AIS RISK CONSULTANTS, INC.
Consulting Actuaries · Insurance Advisors
4400 Route 9 South · Suite 1000 · Freehold, NJ 07728 · (732) 780-0330

Date: February 25, 2025

To: Pamela Pressley
Consumer Watchdog

From: Allan I. Schwartz

Re: Bill for Actuarial Analysis of
Catastrophe Modeling Rulemaking, REG-2023-00010

Name	Time	Hourly Rate	Time Charges
Allan Schwartz	14.5	$985	$14,282.50

Time Charges	**$14,282.50**

Time for Allan I. Schwartz

Actuarial Analysis of
Catastrophe Modeling Rulemaking, REG-2023-00010

Date	Description	Time
7/5/2023	MS Call with CWD (PP et al)	0.2
	Review CDI Notice, work on issues for workshop	0.9
7/6/2023	MS Call / e mail with CWD (PP et al)	1.1
	Work on issues for workshop	0.8
9/6/2023	Work on CAT Modeling Issues, Call with CWD (PP et al)	0.8
4/4/2024	Initial Review & analysis of: Text Of Regulation, Initial Statement Of Reasons, Notice Of Proposed Action And Notice Of Public Hearing	2.7
	Call with CWD (HR, CB, JF, BA)	1.2
4/15/2024	Review & analysis of: Text Of Regulation, Initial Statement Of Reasons, Notice Of Proposed Action And Notice Of Public Hearing; write comments, e mail with CWD (HR, CB, JF, BA)	1.4
4/19/2024	Work on comments	1.2
4/22/2024	Work on comments, e mails with CWD	2.5
4/23/2024	Calls / e mails with CWD (HR, CB, PP, BA)	0.8
	Finalize comments to CDI	0.9
Total		14.5

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 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 South San Vicente Boulevard, Suite 250, Los Angeles, California 90048, and I am employed in the city and county where this service is occurring.

On February 28, 2025, I caused service of true and correct copies of the document entitled

DECLARATION OF ALLAN I. SCHWARTZ 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 FAX SERVICE, by facsimile transmission this date to the FAX number stated to the person(s) named.

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

3. If marked U.S. MAIL or OVERNIGHT or HAND DELIVERED, 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.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 28, 2025 at Los Angeles, California.

Kaitlyn Gentile

Service List

Nikki McKennedy
Sara Ahn
Rate Enforcement Bureau
California Department of Insurance
1901 Harrison Street, 6th Floor
Oakland, CA 94612
Tel. (415) 538-4500
Fax (510) 238-7830
Nikki.McKennedy@insurance.ca.gov
Sara.Ahn@insurance.ca.gov

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

Margaret Hosel
Public Advisor
Tina Warren
Office of the Public Advisor
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Tel. (916) 492-3705
Fax (510) 238-7830
Margaret.Hosel@insurance.ca.gov
Tina.Warren@insurance.ca.gov

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☐ HAND DELIVERED
☒ EMAIL