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BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA

In the Matter of  
THE CALIFORNIA FAIR PLAN ASSOCIATION,  
  
Respondent.

AMENDED ORDER NO. 2021-2

WHEREAS, the California FAIR Plan Association (“FAIR Plan”) is an association of all admitted insurers licensed to write and engaged in writing *Basic Property Insurance* in California, governed by Chapter 9 of Part 1, Division 2 of the California Insurance Code,<sup>1</sup> sections 10090 et seq. (“Chapter 9”);

WHEREAS, pursuant to section 10095, subdivision (g), administration of the FAIR Plan is subject to the California Insurance Commissioner’s (“Commissioner”) supervision;

WHEREAS, pursuant to section 10090, the FAIR Plan’s purposes are:

- (a) to assure stability in the property insurance market for property located in the State of California;
  - (b) to assure the availability of **basic property insurance** as defined by [Chapter 9];
  - (c) to encourage maximum use, in obtaining **basic property insurance**, of the normal insurance market provided by admitted insurers and licensed surplus line brokers; and
  - (d) to provide for the equitable distribution among admitted insurers of the responsibility for insuring qualified property for which **basic property insurance** cannot be obtained through the normal insurance market by the establishment of a FAIR Plan...;
- (Emphasis added.)

WHEREAS, the Commissioner issued Order 2019-2, directing the FAIR Plan to, *inter alia*, no later than June 1, 2021, offer an ISO HO-3 or a policy with coverages equivalent thereto, and to submit a Plan of Operation consistent with the Order pursuant to section 10095, subdivision (g);

WHEREAS, the Commissioner issued Order 2019-3, promulgating a Plan of Operation pursuant to section 10095, subdivision (f), because the FAIR Plan failed to submit a Plan of Operation consistent with Order 2019-2 as required by section subdivision (f) of section 10095;

<sup>1</sup> All statutory citations are to Chapter 9 of Part 1, Division 2 of the California Insurance Code, section 10090 *et seq.*

1 WHEREAS, at the time Orders 2019-2 and 2019-3 were issued, section 10091, subdivision (c)  
2 provided that **basic property insurance** means:

3 “Basic property insurance” means insurance against direct loss to real or tangible personal  
4 property at a fixed location in those geographic or urban areas designated by the commissioner,  
5 from perils insured under the standard fire policy and extended coverage endorsement and  
6 vandalism and malicious mischief **and such other insurance coverages as may be added with  
7 respect to such property by the industry placement facility with the approval of the  
8 commissioner or by the commissioner**, but shall not include insurance on automobile or farm  
9 risks. (Emphasis added.)<sup>2</sup>

10 WHEREAS, on December 13, 2019, the FAIR Plan filed a petition for writ of mandate in Los  
11 Angeles Superior Court (Case No. 19STCP05434, Hon. Mary H. Strobel, Department 82) challenging the  
12 authority of the Commissioner to issue Orders 2019-2 and 2019-3;

13 WHEREAS, on July 12, 2021 the Los Angeles Superior Court issued an Order (attached hereto as  
14 Exhibit A, the “Court Order”) granting in part and denying in part the FAIR Plan’s petition for writ of  
15 mandate challenging the legality of Orders 2019-2 and 2019-3;

16 WHEREAS, the Commissioner expressly incorporates herein the findings and conclusions in the  
17 Court Order attached as Exhibit A and all evidence submitted or relied upon by the Commissioner in case  
18 No. 19STCP05434;

19 WHEREAS, on September 20, 2021, the Commissioner served the FAIR Plan with Order 2021-1  
20 (attached hereto as Exhibit B) which vacated, in part, Orders 2019-2 and 2019-3;

21 WHEREAS, the Court Order provides that the Commissioner has the authority under section  
22 10091, subdivision (c), to require the FAIR Plan to insure against perils to the insured property not named  
23 in the statute and against indirect losses related to the insured property;

24 WHEREAS, requiring the FAIR Plan to expand its dwelling fire policy offerings to include the  
25 additional coverages ordered hereby is necessary to carry out the purposes of Chapter 9, because, among  
26 other things: (1) the availability of an expanded FAIR Plan homeowners policy addresses market  
27 deficiencies by making additional homeowners coverages more affordable and available in wildfire-  
28 exposed areas in California; and (2) requiring FAIR Plan to provide an expanded policy will be more  
consistent with consumers’ expectations, thereby increasing stability in the property insurance market.

**NOW THEREFORE, IT IS ORDERED:**

1. Consistent with the Court Order, the FAIR Plan shall, pursuant to section 10095,  
subdivision (f), submit no later than thirty (30) days of the date of this Order, an  
amendment to its current Plan of Operation to provide that in addition to the Basic  
Property Insurance offered pursuant to section 10091, subdivision (c) and Paragraph C of

<sup>2</sup> Subsequent to the issuance of Orders 2019-2 and 2019-3, on July 23, 2021 Governor Newsom signed SB 11 (Rubio) into law which changed the definition of Basic Property Insurance in section 10091, subdivision (c), regarding certain of FAIR Plan’s commercial lines policies.

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Section I of Division I of the Plan, the FAIR Plan shall also offer and sell as **basic property insurance** as defined by section 10091, subdivision (c), a “Homeowners’ Policy,” that insures against, at a minimum, the following additional perils to the insured property not currently covered under the FAIR Plan’s dwelling fire policy: accidental discharge or overflow of water or steam, premises liability; incidental worker’s compensation to the extent that such coverage is with respect to such property; theft; falling objects; weight of ice, snow, or sleet; freezing; and loss of use, including both additional living expenses and fair rental value.

2. The FAIR Plan shall submit for the Commissioner’s approval, a rate and form filing for the Homeowners’ Policy no later than April 7, 2022.
3. Orders 2019-2, 2019-3, and 2021-2 are superseded to the extent provided herein, or to the extent those Orders are in conflict with this Order; and
4. This Order is effective immediately.

**IT IS SO ORDERED.**

Executed this 19<sup>th</sup> day of November, 2021

California Insurance Commissioner



RICARDO LARA