NIKKI S. MCKENNEDY (SBN 184269)
DANIEL WADE (SBN 296958)
DUNCAN E. MONTGOMERY (SBN 176138)
CALIFORNIA DEPARTMENT OF INSURANCE
300 Capitol Mall, 16th Floor
Sacramento, CA 95814
Telephone: 916-492-3512
Email: nikki.mckennedy@insurance.ca.gov
daniel.wade@insurance.ca.gov
duncan.montgomery@insurance.ca.gov

Attorneys for the California Department of Insurance

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Rates, Rating Plans, or Rating Systems of SPINNAKER INSURANCE COMPANY, Respondent.	**File No. NC-2025-00025** **NOTICE OF NONCOMPLIANCE** **[Ins. Code § 1858 *et seq.*]**

TO: SPINNAKER INSURANCE COMPANY

NOTICE OF NONCOMPLIANCE

PURSUANT TO CALIFORNIA INSURANCE CODE SECTION 1858.1:

THE CALIFORNIA DEPARTMENT OF INSURANCE ("Department") NOTIFIES YOU that the Insurance Commissioner of the State of California ("Commissioner") has good cause to believe that the rating plans, rating systems, rates and underwriting guidelines of SPINNAKER INSURANCE COMPANY (hereafter "Respondent"), violate various provisions of California law, including but not limited to California Insurance Code sections 1861.05, subsection (b), and 1861.01, subsection (c), as well as Title 10 of the California Code of Regulations (hereafter "Regulation") sections 2360.3, 2360.4 and 2644.9. Pursuant to Insurance Code section 1858.1, this Notice sets forth the manner and extent of noncompliance. The Department is informed and believes, and thereon alleges, the following:

/ / / /

BACKGROUND FACTS

1. Respondent is, and was at all relevant times, an insurer licensed to transact the business of insurance in the State of California.

2. Respondent transacts the business of insurance in California on risks or lines subject to the prior approval provisions of the California Insurance Code and Regulations, in particular Insurance Code section 1861.05 and Regulation section 2644.9.

3. In or around December 2023, Respondent submitted a filing with the Department (CDI File #24-29), which it named the "Harborway Insurance Program – Businessowners" (hereinafter "Harborway Program") to implement wildfire mitigation credits required by Regulation 2644.9.

4. Harborway is also the name of Respondent's managing general agent ("MGA") which the Department understands managed Respondent's businessowners' rating plan, including the Harborway Program. As such, Respondent remains liable for the actions of its MGA. (Insurance Code section 769.85.)

5. On or around July 23, 2024, the Department approved CDI File #24-29, which requires Respondent to offer wildfire mitigation credits to its policyholders.

6. In January 2025, Respondent submitted a rule and form filing (CDI File #25-8), in which Respondent made various revisions to the Harborway Program. However, CDI File #25-8 did not address or otherwise request any changes to Respondent's wildfire mitigation requirement previously approved in its rating plan (CDI File #24-29).

7. In May 2025, while reviewing Respondent's pending file application (CDI File #25-8), the Department requested certain information from Respondent, specifically, samplings of its then-current policyholders rating with wildfire mitigation credits. Despite repeated requests, Respondent failed to provide this requested information.

8. The Department subsequently discovered that Respondent, in fact, had failed to implement the wildfire mitigation credits as mandated under its approved rating plan (CDI File #24-29).

SPECIFIC ALLEGATIONS

ALLEGATION NUMBER 1: VIOLATIONS OF INSURANCE CODE SECTIONS 1861.01(c) and 1861.05(b)

9. Insurance Code sections 1861.01, subsection (c) and 1861.05, subsection (b), require that an insurer obtain the Commissioner's prior approval of property and casualty insurance rates before using them. Specifically, Insurance Code section 1861.01(c) provides "insurance rates subject to this chapter must be approved by the commissioner prior to their use." Insurance Code section 1861.05, subsection (b), provides in relevant part that "Every insurer which desires to change any rate shall file a complete rate application with the commissioner." Insurance Code section 1861.05, subsection (a), provides in relevant part, "No rate shall be approved or remain in effect which is . . . in violation of this chapter."

10. Respondent failed to comply with Insurance Code sections 1861.01, subsection (c) and 1861.05, subsection (b), by using rates not approved by the commissioner. Specifically, Respondent's approved rating plan (CDI File #24-29) requires Respondent to offer wildfire mitigation credits to its policyholders. But Respondent has failed to offer such mitigation credits, and thus, Respondent was using rates which did not include wildfire mitigation credits. Respondent's failure to incorporate mitigation credits into its rates charged to policyholders, meant that Respondent was using rates not approved by the commissioner, in violation of Insurance Code sections 1861.01, subsection (c), and 1861.05, subsection (b).

11. Respondent's failure to obtain prior approval of insurance rates prior to using them also means that Respondent implemented unapproved rates which were excessive, and which has required Respondent to issue refunds to policyholders.

12. All of these noncompliant acts are subject to monetary penalties pursuant to Insurance Code sections 1858.3 and 1858.07. The Department does not currently know the number of noncompliant acts. That will be determined at hearing.

ALLEGATION NUMBER 2: VIOLATION OF INSURANCE REGULATION SECTION 2644.9(a)

13. Regulation section 2644.9(a) requires insurers to consider mitigation factors related to wildfire risks when determining rates. If any such rating plan is approved and thereafter replaced or modified, the insurer must file a new rate application before implementing or modifying the rating plan.

14. Specifically, Section 2644.9 provides, in relevant part, that "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."

15. Respondent failed to comply with Regulation section 2644.9 by failing to file a new rate application once Respondent sought to replace its previously-approved rating plan (CDI File #24-29) requiring Respondent to offer wildfire mitigation credits to its policyholders. By not offering the wildfire mitigation credits nor filing a new application to reflect the change in its rating plan, Respondent was in violation of Regulation section 2644.9.

16. All of these noncompliant acts are subject to monetary penalties pursuant to Insurance Code sections 1858.3 and 1858.07. The Department does not currently know the number of noncompliant acts. That will be determined at hearing.

/ / / /

/ / / /

ALLEGATION NUMBER 3: VIOLATION OF INSURANCE REGULATION SECTIONS 2360.3 and 2360.4

17. Insurance Code section 1861.05, subsection (a), and Regulation sections 2360.3 and 2360.4 require that an insurer determine and offer to each insured the lowest premium for which the insured qualifies.

18. Specifically, Regulation section 2360.3 provides, in relevant part, that insurers must charge their insureds the lowest premium for which each insured qualifies. Moreover, at each policy renewal, the insurer must adjust the premium to reflect the lowest premium possible at that time. Regulation section 2360.4 provides, in relevant part, that insurers are responsible for determining the lowest premium for which their insureds qualify. Even where the insurer delegates this responsibility to an agent, the insurer remains ultimately responsible for the agent's actions. (*See also* Insurance Code section 769.85 (acts of MGA considered acts of insurer on whose behalf the MGA is acting).)

19. Respondent failed to comply with Regulation sections 2360.3 and 2360.4 by failing to determine and/or offer each insured the lowest possible premium for which each insured qualified. Under its approved rating plan (CDI File #24-29), Respondent was required to offer wildfire mitigation credits to its policyholders. However, by failing to offer mitigation credits to policyholders, Respondent necessarily failed to determine and offer its policyholders the lowest possible premiums for which each qualified with the required wildfire mitigation credits.

20. All of these noncompliant acts are subject to monetary penalties pursuant to Insurance Code sections 1858.3 and 1858.07. The Department does not currently know the number of noncompliant acts. That determination will be made at hearing.

RELIEF REQUESTED

THE DEPARTMENT NOTIFIES RESPONDENT that, to the extent Respondent's unlawful practices are ongoing at the time of delivery of this Notice, Respondent must correct its noncompliance within ten (10) days of receipt of this Notice. For each allegation listed above, Respondent must provide proof of system-wide correction, or other response permitted by CIC section 1858.1, within ten (10) days of receipt of this notice.

THE DEPARTMENT FURTHER NOTIFIES RESPONDENT that if Respondent fails to make an adequate or timely response, the Department will set a public hearing pursuant to CIC sections 1858.2 and 1858.3. If, at the conclusion of the hearing, the Commissioner finds that the facts are as alleged above and constitute violations of the Insurance Code and/or Code of Regulations, as set forth, he may issue an order for payment of money penalties and any other corrective action as he may deem appropriate.

THE DEPARTMENT FURTHER NOTIFIES RESPONDENT of all of the following:

- If the noncompliance referred to above constitutes willful acts involving the use of rates, rating plans, and/or rating systems in violation of Chapter 9, Part 2, Division 1 of the Insurance Code, the Department will seek civil penalties pursuant to CIC section 1858.07 in an amount up to $10,000.00 for each act;
- In the alternative, if the Commissioner does not find those acts involving the use of rates, rating plans, and/or rating systems in violation of Chapter 9, Part 2, Division 1 of the Insurance Code to be willful violations of that chapter, the Department will seek civil penalties in an amount up to $5,000.00 for each act pursuant to CIC section 1858.07;
- The Department may amend this Notice to set forth additional willful and/or non-willful noncompliant acts in violation of Chapter 9, Part 2, Division 1, of the Insurance Code and to seek additional penalties in an amount up to $5,000 to $10,000.00 for each act;
- If the noncompliance referred to above constitutes a willful failure to comply with a final order of the Commissioner under Chapter 9, Part 2, Division 1 of the Insurance Code, the Department may seek additional civil penalties pursuant to Insurance Code Section 1859.1 in an amount not exceeding $250,000.00 for the failure;
- In the alternative, if the Commissioner does not find the noncompliance referred to above to constitute a willful failure to comply with a final order of the Commissioner under Chapter 9, Part 2, Division 1 of the Insurance Code, the Department may seek additional civil penalties pursuant to Insurance Code section 1859.1 in an amount not exceeding $50,000.00 for the failure;
- The Department may amend this Notice to set forth additional willful and/or non-willful failure to comply with a final order of the Commissioner under Chapter 9, Part 2, Division

1, of the Insurance Code and to seek additional penalties in an amount up to $50,000 to $250,000.00 for the failure;

- In addition to the foregoing monetary penalties, following a hearing regarding the foregoing noncompliant acts, the Commissioner shall seek any and all relief available pursuant to Insurance Code section 1858.3, subdivision (a), including any and all appropriate corrective actions including without limitation refunds with interest to policyholders who may have been charged excessive rates; and
- In further addition to monetary penalties and other appropriate relief, the Commissioner may, pursuant to Insurance Code Section 1858.4, suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in that order, which fails to comply within the time limited by that order or any extension thereof which the commissioner may grant, with an order of the commissioner lawfully made by him or her pursuant to Insurance Code Sections 1858.3 and 1858.6

THE DEPARTMENT FURTHER NOTIFIES RESPONDENT that, the Department may amend this Notice to set forth additional willful and/or non-willful noncompliant acts in violation of Chapter 9, Part 2, Division 1, of the Insurance Code and to seek additional penalties and/or require additional corrective actions as appropriate.

Dated: June 10, 2026

CALIFORNIA DEPARTMENT OF INSURANCE

By Daniel Wade
Daniel Wade
Staff Counsel