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2 CALIFORNIA DEPARTMENT OF INSURANCE
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8 **BEFORE THE INSURANCE COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**

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11 In the Matter of the Rates, Rating Plans, or
Rating Systems of

12 KEMPER INDEPENDENCE
13 INSURANCE COMPANY,

14 Respondent.

File No. NC-2022-00003

NOTICE OF NONCOMPLIANCE
[Ins. Code § 1858 et seq.]

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16 TO: KEMPER INDEPENDENCE INSURANCE COMPANY

17 **NOTICE OF NONCOMPLIANCE**

18 **PURSUANT TO CALIFORNIA INSURANCE CODE SECTION 1858.1:**

19 THE CALIFORNIA DEPARTMENT OF INSURANCE (“Department”) NOTIFIES
20 YOU that the Insurance Commissioner of the State of California (“Commissioner”) has good
21 cause to believe that the rating plans, rating systems, rates and underwriting guidelines of the
22 KEMPER INDEPENDENCE INSURANCE COMPANY (hereafter “Respondent”), violate
23 various provisions of California law, including but not limited to California Insurance Code
24 sections 1861.01, subdivision (c), and 1861.05 and Title 10, California Code of Regulations
25 (hereafter “CCR”) sections 2360.2, 2360.3 and 2360.4. Pursuant to Insurance Code section
26 1858.1, this Notice sets forth the manner and extent of noncompliance. The Department is
27 informed and believes, and thereon alleges, the following:
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1 **BACKGROUND FACTS**

2 1. Respondent is, and was at all relevant times, an insurer licensed to transact the business
3 of insurance in the State of California, including but not limited to homeowners classes of
4 insurance discussed below.

5 2. Respondent transacts the business of insurance in California on risks or lines subject to
6 the provisions of the California Insurance Code and the California Code of Regulations.

7 3. Respondent introduced a wildfire surcharge through its homeowners multi-peril program
8 (CDI File No. 15-4071) submitted on April 29, 2015 for both new and renewal business. CDI
9 approved this filing on September 1, 2015.

10 4. Respondent implemented an increased wildfire surcharge based on an unapproved re-
11 mapping of FireLine score to wildfire risk category. As a result of this unapproved change, CDI
12 believes that Respondent violated the Commissioner’s prior approval authority, which may have
13 resulted in Respondent charging policyholders a higher rate than the rate approved on September
14 1, 2015 in CDI File No. 15-4071.

15 **SPECIFIC ALLEGATIONS**

16 **ALLEGATION NO. 1: VIOLATION OF INSURANCE CODE SECTIONS 1861.01(c)**
17 **AND 1861.05(b)**

18 1. Insurance Code sections 1861.01(c) and 1861.05(b) require that an insurer obtain prior
19 approval of insurance rates before using them.

20 2. Respondent violated the Commissioner’s prior approval authority by failing to obtain the
21 Commissioner’s prior approval before changing the rate previously approved by the
22 Commissioner on September 1, 2015 in CDI File No. 15-4071.

23 3. Respondent’s failure to obtain prior approval of insurance rates prior to using them
24 violated CIC sections 1861.01(c) and 1861.05(b) and resulted in rates that were excessive,
25 inadequate, and/or unfairly discriminatory

26 4. All of these noncompliant acts are subject to monetary and other penalties pursuant to
27 Insurance Code sections 1858.07, 1858.3, and 1859.1. The Department does not currently know
28 the number of noncompliant acts. That will be determined at hearing.

1 **ALLEGATION NO. 2: VIOLATION OF INSURANCE CODE SECTION 1861.05(a)**
2 **AND CCR SECTIONS 2360.3 AND 2360.4**

3 5. Insurance Code section 1861.05(a) and CCR sections 2360.3 and 2360.4 require that an
4 insurer determine and offer to each insured the lowest premium for which the insured qualifies.

5 6. By failing to obtain the Commissioner's prior approval before changing the rate
6 previously approved by the Commissioner on September 1, 2015 in CDI File No. 15-4071,
7 Respondent may have charged rates that were excessive or unfairly discriminatory, and may
8 have failed to determine and/or offer to each insured the lowest premium for which the insured
9 qualified.

10 7. Respondent's charging of excessive rates and failure to determine and/or offer to each
11 insured the lowest premium for which the insured qualified violated Insurance Code section
12 1861.05(a) and CCR sections 2360.3 and 2360.4.

13 8. All of these noncompliant acts are subject to monetary penalties pursuant to Insurance
14 Code sections 1858.07, 1858.3, and 1859.1. The Department does not currently know the
15 number of noncompliant acts. That will be determined at hearing.

16 **ALLEGATION NO. 3: VIOLATION OF CIC § 1861.05(a) AND CCR § 2360.2**

17 9. CIC section 1861.05(a) and CCR section 2360.2 require that an insurer adhere to filed and
18 approved eligibility guidelines to determine the appropriate rating plan for each insured.

19 10. Respondent failed to adhere to filed eligibility guidelines approved on September 1, 2015
20 in CDI File No. 15-4071.

21 11. Respondent's failure to adhere to filed and approved eligibility guidelines violated CIC
22 section 1861.05(a) and CCR section 2360.2 and created a presumption that Respondent applied
23 rates that were excessive, inadequate, and/or unfairly discriminatory.

24 12. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
25 sections 1858.07, 1858.3, and 1859.1. The Department does not currently know the number of
26 noncompliant acts. That will be determined at hearing.

27 **RELIEF REQUESTED**

28 THE DEPARTMENT NOTIFIES RESPONDENT that, to the extent Respondent's

1 unlawful practices are ongoing at the time of delivery of this Notice, Respondent must correct
2 its noncompliance within ten (10) days of receipt of this Notice. For each allegation listed
3 above, Respondent must provide proof of system-wide correction, or other response permitted
4 by Insurance Code section 1858.1, within ten (10) days of receipt of this notice.

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

11 THE DEPARTMENT FURTHER NOTIFIES RESPONDENT that if the noncompliance
12 referred to above constitutes willful acts involving the use of rates, rating plans, and/or rating
13 systems in violation of Chapter 9, Part 2, Division 1 of the Insurance Code, the Department will
14 seek civil penalties pursuant to Insurance Code section 1858.07 in the amount of \$10,000.00 for
15 each act.

16 The Department may amend this Notice to set forth additional willful noncompliant acts
17 in violation of Chapter 9, Part 2, Division 1, of the Insurance Code and to seek additional
18 penalties in the amount of \$10,000.00 for each act.

19 THE DEPARTMENT FURTHER NOTIFIES RESPONDENT that, in the alternative, if
20 the Commissioner does not find those acts involving the use of rates, rating plans, and/or rating
21 systems in violation of Chapter 9, Part 2, Division 1 of the Insurance Code to be willful
22 violations of that chapter, the Department will seek civil penalties in the amount of \$5,000.00
23 for each act pursuant to Insurance Code section 1858.07.

24 The Department may amend this Notice to set forth additional non-willful noncompliant
25 acts in violation of Chapter 9, Part 2, Division 1, of the Insurance Code and seek additional
26 penalties in the amount of \$5,000.00 for each act.

27 THE DEPARTMENT FURTHER NOTIFIES RESPONDENT that if the noncompliance
28 referred to above constitutes a willful failure to comply with a final order of the Commissioner

1 under Chapter 9, Part 2, Division 1 of the Insurance Code, the Department will seek civil
2 penalties pursuant to Insurance Code section 1859.1 in the amount of \$250,000.00 for each act.

3 The Department may amend this Notice to set forth additional willful noncompliant acts
4 in violation of Chapter 9, Part 2, Division 1, of the Insurance Code and to seek additional
5 penalties in the amount of \$250,000.00 for each act.

6 THE DEPARTMENT FURTHER NOTIFIES RESPONDENT that, in the alternative, if
7 the Commissioner does not find the noncompliance referred to above to constitute a willful
8 failure to comply with a final order of the Commissioner under Chapter 9, Part 2, Division 1 of
9 the Insurance Code, the Department will seek civil penalties pursuant to Insurance Code section
10 1859.1 in the amount of \$50,000.00 for each act.

11 THE DEPARTMENT FURTHER NOTIFIES RESPONDENT that, in addition to
12 penalties, the Commissioner shall pursuant to Insurance Code section 1858.4 suspend or revoke,
13 in whole or in part, the license of any rating organization or the certificate of authority of any
14 insurer with respect to the class or classes of insurance specified in that order, which fails to
15 comply within the time limited by that order or any extension thereof which the commissioner
16 may grant, with an order of the commissioner lawfully made by him or her pursuant to Section
17 1858.3 and effective pursuant to Section 1858.6.

18 The Department may amend this Notice to set forth additional willful noncompliant acts
19 in violation of Chapter 9, Part 2, Division 1, of the Insurance Code and to seek additional
20 penalties in the amount of \$50,000.00 for each act.

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Dated: March 21, 2023

CALIFORNIA DEPARTMENT OF INSURANCE

By *Nikki McKennedy*
Alec Stone
Nikki McKennedy
Attorneys for the California Department of Insurance

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PROOF OF SERVICE
In the Matter of the Rates, Rating Plans or Rating Systems of
Kemper Independence Insurance Company, Respondent.
CDI File No. NC-2022-00003

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 1901 Harrison Street, 4th Floor, Oakland, CA 94612. On March 21, 2023, I served the following document(s):

NOTICE OF NONCOMPLIANCE

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.

Cecilia Padua

Cecilia Padua

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SERVICE LIST
In the Matter of the Rates, Rating Plans or Rating Systems of
Kemper Independence Insurance Company, Respondent.
CDI File No. NC-2022-00003

<u>Name/Address</u>	<u>Phone/Fax Numbers</u>	<u>Method of Service</u>
Chris Longeway, Esq. Vice President & General Counsel, P&C Kemper Corporate Services Megan Mulvihill, Esq. Attorney(s) for Respondent KEMPER INDEPENDENCE INSURANCE COMPANY 200 E. Randolph St., Suite 3300 Chicago, IL 60601 clongeway@kemper.com mmulvihill@kemper.com	Tel: (312) 589-3298 C#: (773) 551-6825	Via EMAIL

NON PARTY

Kenneth Allen Deputy Commissioner Rate Regulation Branch CALIFORNIA DEPARTMENT OF INSURANCE 300 South Spring Street, 14 th Floor Los Angeles, CA 90013 Ken.allen@insurance.ca.gov	Tel: (213) 346-6783 Fax: (213) 897-9051	Via EMAIL
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