SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 834

25STCP01367 June 30, 2026
CONSUMER WATCHDOG, A NON-PROFIT ORGANIZATION vs RICARDO LARA, et al. 9:30 AM

Judge: Honorable Tiana J. Murillo
Judicial Assistant: Diana Castro-Martinez
Courtroom Assistant: Carmen Del Rio

CSR: Jorge P. Dominguez, CSR # 12523
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Petitioner(s): Ryan Anthony Mellino and by: Will Pletcher

For Respondent(s): John C. Keith

NATURE OF PROCEEDINGS: Hearing on Petition for Writ of Mandate

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956, Jorge P. Dominguez, CSR # 12523, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The Court's tentative ruling is posted online for the parties to review.

The matter is called called for hearing.

After reading and considering all moving documents, and hearing oral argument, the Court takes the matter under submission.

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Having taken the matter under submission, the Court now rules as follows:

The Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief filed by Consumer Watchdog on 04/14/2025 is Denied.

I. BACKGROUND

This dispute arises from the California Insurance Commissioner's regulation of the Fair Access to Insurance Requirements (FAIR) Plan, Insurance Code section 10090 et seq. (the Fair Plan Statutes).

The FAIR Plan ("Plan") is "an involuntary association of all property insurers within California." (*Ohio Casualty Ins. Co. v. Garamendi* (2006) 137 Cal.App.4th 64, 74 (*Ohio Casualty*); see also Ins. Code, § 10095(a) [membership in Plan "a condition of [insurer's] authority to transact ... insurance in this state"].) Per the statutory scheme first established in 1968, the "FAIR Plan Association" issues property insurance policies on behalf of its members upon direct application from insurance professionals or insureds. (*Ohio Casualty*, *supra*, at p 74.) Each Plan member "is considered to be a direct insurer for its share of the Plan's writings," and each member "participate[s] in the FAIR Plan's profits and losses according to the amount of business they [wrote] in the state two years earlier." (*Ibid.*) The purpose and effect of the Plan is to provide a coverage vehicle for properties that would otherwise be too risky or expensive or insure, and to spread the risk of that coverage equitably between all insurers in California.

At issue in this petition are two Bulletins, numbered 2024-8 and 2025-4, issued by Insurance Commissioner Ricardo Lara on September 3, 2024 and February 11, 2025, respectively.

Bulletin 2024-8, dated September 3, 2024, describes itself as a "notice of the procedure through which the FAIR Plan's member insurers may request the Insurance Commissioner's prior approval under Prop. 103 to seek recoupment from their policyholders of any FAIR Plan assessments in the highly unlikely event that the FAIR Plan levies an assessment[.]" (P.RJN, Exh. A, p. 2.)

Bulletin 2025-4, dated February 11, 2025, was issued after the "highly unlikely event" of a FAIR Plan assessment came to pass after the Southern California wildfires in January 2025. The second Bulletin provides "updated guidance" on the procedure announced in Bulletin 2024-8, following the Commissioner's approval of "the first [FAIR Plan] assessment in over 30 years." (P.RJN, Exh. B, p. 2.) For purposes of the instant petition, Bulletins 2024-8 and 2025-4 raise identical legal concerns and are subject to the same arguments.

On April 14, 2025, petitioner Consumer Watchdog, a non-profit organization (Petitioner or CW) filed this action against respondents Ricardo Lara, in his capacity as Insurance Commissioner (Commissioner), and the California Department of Insurance (Department) (together "Respondents") to challenge the legality of Bulletins 2024-8 and 2025-4 (the Bulletins).

The operative initiating Petition asserted three causes of action. In all three, Petitioner prayed for an administrative writ issued pursuant to Code of Civil Procedure section 1085 and

for declaratory injunctive relief under the Government Code (for the first cause of action) or the Code of Civil Procedure (for the second and third).

The first cause of action, based on Respondent's alleged violation of the Administrative Procedure Act (Gov. Code, § 11340.5), relied on Petitioner's contention that "Bulletins 2024-8 and 2025-4 are 'regulations' as defined by the APA," and "[b]ecause the Bulletins meet the APA definition of 'regulation,' but were not promulgated in accordance with the APA, the Bulletins are invalid ... ." (Pet., ¶¶ 58-59.)

The second cause of action depended on an alleged violation of Insurance Code section 10090 et seq. ("the FAIR Plan Statutes"). Petitioner alleged the FAIR Plan Statutes "give Respondent authority over the Plan of Operations and general supervision of the FAIR Plan[, but they] neither expressly nor impliedly grant Respondent the authority to directly regulate the FAIR Plan's member insurers[.]" (*Id.*, at ¶ 69.) According to Petitioner, the Bulletins are invalid because they purport to exercise regulatory authority that Respondent does not have over individual FAIR Plan member insurers. Under the heading of its second cause of action, Petitioner also alleges "the Bulletins purport to authorize insurers to pass-through FAIR Plan assessment costs to their policyholders, which is neither authorized nor even contemplated by the FAIR Plan statutes." (*Id.*, ¶ 72.)

Petitioner's third cause of action relies on a purported violation of Insurance Code section 10095(c), which requires FAIR Plan members to share profits and losses equally amongst themselves. Petitioner contends that the Bulletins, by authorizing members to pass FAIR Plan assessments along to their policyholders, disrupts the proportional profit- and loss-sharing required by Insurance Code section 10095(c).

On July 22, 2025, the Court sustained Respondents' demurrer to Petitioner's first and second causes of action, without leave to amend.

As to the third cause of action, Respondents demurred on the basis that "the Petition (and its exhibits) reflect[ed] on their face that Petitioner [ ] failed to exhaust all available administrative remedies." (07-22-2025 Order, p. 15.) The Court rejected this argument, so the third cause of action survived.

Petitioner's third cause of action, praying for an administrative writ and declaratory and injunctive relief based on Respondents' alleged violation of Insurance Code section 10095(c), is now before the Court for hearing on the merits.

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II. LEGAL STANDARD

A party may seek to set aside an agency decision by petitioning for either a writ of administrative mandamus (Code Civ. Proc., § 1094.5) or of traditional mandamus (Code Civ. Proc., § 1085). For traditional mandamus, "[a] writ of mandate 'may be issued by any court ... to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station....' (Code Civ. Proc., § 1085, subd. (a).)" (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 700.)

> " ' "A traditional writ of mandate under [Code of Civil Procedure] section 1085 is a method of compelling the performance of a legal, usually ministerial duty[.]" ' ... 'Generally, a writ will lie when there is no plain, speedy, and adequate alternative remedy; the respondent has a duty to perform; and the petitioner has a clear and beneficial right to performance.' ... 'When there is review of an administrative decision pursuant to Code of Civil Procedure section 1085, courts apply the following standard of review: " ' "[J]udicial review is limited to an examination of the proceedings before the [agency] to determine whether [its] action has been arbitrary, capricious, or entirely lacking in evidentiary support, or whether [it] has failed to follow the procedure and give the notices required by law." ' [Citations.]" ' ... ."

(*Pomona Police Officers' Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578, 583-584, internal citations omitted.)

"The trial court and appellate court perform the same function in a traditional mandamus action. [Citations.] ... [N]onadjudicatory acts [by agencies] 'are accorded the most deferential level of judicial scrutiny.' [Citation.] Unless otherwise provided by law, 'the petitioner always bears the burden of proof in a mandate proceeding brought under Code of Civil Procedure section 1085.' [Citation.] (*Khan v. Los Angeles City Employees' Retirement System* (2010) 187 Cal.App.4th 98, 105-106.)

III. REQUESTS FOR JUDICIAL NOTICE

Petitioner requests judicial notice of five exhibits: (1) the Department's current "Prior Approval Rate Application Filing Instructions;" (2) certain proposed, but not adopted, legislation during the 2023-2024 Legislative Session; (3) certain proposed legislation "prepared by Respondents in 2023;" (4) an opinion of a prior Insurance Commissioner on referral from the San Diego Superior Court in April 2006; and (5) a copy of the Insurance Commissioner's responses to public comments in Department rulemaking proceedings.

The Court grants Requests Numbers 1, 2, and 4, as to the existence of the documents, but not as to the truth of their contents. The Court denies Requests Nos. 3 and 5; Petitioner has not established the exhibits in question are materials properly subject to judicial notice.

IV. DISCUSSION

1. Petitioner may not re-litigate Respondents' authority under Proposition 103.

As a threshold matter, Petitioner devotes a great deal of its opening and reply papers to arguing the Bulletins are not authorized under Proposition 103. (See Op. Br., 14:1-19:20; Reply Br., 10:3-11:28.) The Court settled this matter in its ruling on Respondents' demurrer to Petitioner's first cause of action. (See 07-22-2025 Order, p. 13 ["the Bulletins are within Govt. Code section 11340.9(g)'s exception to the APA rulemaking requirements"], p. 15 ["The Commissioner had authority under Prop 103 for the pass-throughs in the Bulletin"].)

The time has passed for Petitioner to seek reconsideration of the Court's ruling on Respondents' demurrer. Petitioner's suggestion in its Reply that it "accepts Respondents' invitation to amend" its Petition is unavailing. (Reply Br., 10:3, formatting omitted.) The Court ruled out this option when it sustained Respondents' demurrer without leave to amend. Respondents cannot authorize amendment by unilateral invitation, nor is the Court persuaded that Respondents made such an invitation.

Petitioner contends it may re-argue the matter of Respondents' authority because (1) Respondents have raised their Proposition 103 authority as an affirmative defense and (2) the demurrer "decided narrower questions than Respondents now suggest, and Petitioner preserves any broader reading for appellate review." (See Reply Br., 10:3-11:28.)

As to the first point, the analysis in the Court's ruling on Respondents' demurrer does not substantively change if the authority is treated as an affirmative defense. As to the second point,

the Court disagrees that the issues here are broader. Petitioner distinguishes its arguments here from its arguments in opposition to Respondents' demurrer by asserting that Petitioner now argues, for the first time, (1) "whether the 'non-rate charge that affects the price of insurance' category of charges ... is coherent under *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216" and (2) "whether the surcharges can lawfully exist outside Section 1861.05's prior approval rate review process." (Reply Br., 10:23-26.)

Both these questions were disposed of at the demurrer stage. (See 07-22-2025 Order, at p. 6 ["[a] rate proceeding ... falls within the ambit of section 1861.10(a)"], p. 10 ["Respondents correctly reply ... that it is sufficient that a regulation concerns a non-rate charge that affects the price of insurance"].)[1] Thus, Petitioner's attempt to reframe the Proposition 103 challenge as a newly presented question is unavailing. Petitioner cites no authority requiring a trial court to reopen or expand the scope of surviving claims under the current procedural circumstances.

The Court therefore rejects all of Petitioner's arguments that the Bulletins are unauthorized by Proposition 103 or not issued according to appropriate procedures, including its argument that Respondents may not authorize a "non-rate charge that affects the price of insurance." This disposes of the bulk of Petitioner's brief, because most of the brief discusses the Commissioner's powers under Proposition 103 rather than the proper interpretation of section 10095(c).

2. <u>The Bulletins do not violate Insurance Code Section 10095(c).</u>

The sole issue remaining before the Court is whether the Bulletins violate the terms of Insurance Code section 10095(c). They do not.

Section 10095(c) reads, in relevant part:

> "Under the [FAIR Plan], an insurer shall participate in the writings, expenses, profits, and losses of the association in the proportion that its premiums written during the second preceding calendar year bear to the aggregate premiums written by all insurers in the program, excluding that portion of the premiums written attributable to the operation of the association. ... ."

Citing *Ohio Casualty Ins. Co. v. Garamendi* (2006) 137 Cal.App.4th 64 (*Ohio Casualty*), Petitioner contends that section 10095(c) reflects the Legislature's intention that FAIR Plan members should share profits, losses, and expenses in "symmetry;" and, because the Bulletins propose to permit insurers to recover assessments (i.e., expenses) from policyholders with no

reciprocal obligation to share profits, the Bulletins render the FAIR Plan an asymmetrical profit-generating program for insurers, contradicting the Legislature's intent. (See Pet. Br., 10:13-19; Reply Br., 2:1-7.)

Similarly, Petitioner argues that if the Commissioner exercises his discretion to permit insurers to pass through their costs to their policyholders only for certain insurers or only in certain amounts, then his discretion will disrupt the mandatory equitable profit- and risk-sharing under the FAIR Plan. (Op. Br., 10:13-19, citing Ins. Code, § 10095(c).)

In opposition, Respondents – quoting Petitioner's opening brief – contend section 10095(c) "solely governs FAIR Plan's internal affairs, i.e., relations between and among FAIR Plan and its members [i.e., insurers]." (Pet. Br., 13:19-20.) Respondents argue section 10095(c) is irrelevant to pass-through charges referred to in the Bulletins, because relationships between insurers and their policyholders fall outside the scope of section 10095(c). *Ohio Casualty* confirms the same; that case addressed certain insurers' obligations to share profits and losses within the FAIR Plan and among its member insurers. The case did not discuss insurers' relationships with policyholders, because the FAIR Plan Statutes are irrelevant to such relationships.

The Court agrees with Respondents' construal of *Ohio Casualty*. The *Ohio Casualty* decision addressed the length of insurers' continuing obligations to share losses *with other insurers* under the FAIR Plan after the appellant insurers ceased writing relevant insurance in the California market. (See *Ohio Casualty*, *supra*, 137 Cal.App.4th, at pp. 69-72.) The case does not support Petitioner's argument that section 10095(c) extends to the treatment of profits, losses, or expenses after they are already apportioned according to the FAIR Plan.

Absent controlling case law, Petitioner relies on canons of statutory construction to argue the Court should read the "proportional" language in section 10095(c) to require insurers to bear assessment costs without passing them on to policyholders. Specifically, Petitioner argues the Court should read the FAIR Plan alongside similar insurance "safety-net" programs – CIGA, CLHIGA, and CEA – each of which contains an express provision permitting insurers to pass assessments through. Because the FAIR Plan Statutes contain no such provision, Petitioners argue the Court should construe the omission as a substantive limitation on the powers of the Commissioner.

Put differently: Petitioner contends that even if Proposition 103 otherwise authorizes the Commissioner to impose pass-through charges, the absence of explicit textual authority in the

FAIR Plan Statutes should be construed as an affirmative limit on the Commissioner's authority under Proposition 103.Petitioner relies on *In re Jennings* (2004) 34 Cal.4th 254 (*Jennings*), *BullsEye Telecom, Inc. v. Public Utilities Com.* (2021) 66 Cal.App.5th 301 (*BullsEye*), *Goldsten v. California Unemployment Ins. Appeals Bd.* (2019) 34 Cal.App.5th 1006 (*Goldstein*), and *Medical Bd. of California v. Superior Court* (2001) 88 Cal.App.4th 1001 (*Medical Board*) for its proposal that the omission of express pass-through authority should be interpreted to forbid it.

First, all of these precedents operate on the assumption that there is some ambiguity in section 10095(c), such that the Court must resort to canons of statutory interpretation to derive its meaning. (See *Jennings*, *supra*, 34 Cal.4th, at p. 263 [court must "interpret [statute] in context with entire statute and scheme" when evaluating legislative intent]; *Medical Board*, *supra*, at p. 1013 ["canons of statutory construction ... guide our quest for legislative intent"].) But "[i]f the language of [a] statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary." (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 919; see also *Burden v. Snowden* (1992) 2 Cal.4th 556, 562 ["Where the words of the statute are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history"].) The Court may not delve into analogous policy schemes for comparisons unless section 10095(c) is ambiguous in the first place. Petitioner does not clearly identify an ambiguous term or provision that the Court should turn to legislative or statutory history to interpret.[2]

[1]If the Court assumed the statute were ambiguous in some respect and turned to statutory and legislative history, Petitioner's argument would nonetheless fail. Petitioner's case law discussing and applying the maxim of *in pari materia* interpretation is distinguishable.

Jennings, *supra*, is a criminal case discussing an ambiguity in a criminal statute—specifically, whether a statute that forbade a person to purchase alcoholic beverages for minors required "knowledge, intent, or some other mental state" for criminal liability. (*Jennings*, *supra*, at p. 262.) The statute described a crime but was silent on some of its elements, which had to be filled in with tools of statutory construction. Section 10095(c), in contrast, is an administrative statute dictating the terms of a joint reinsurance program. As Respondents point out in their opposition brief, *Jennings* is simply not comparable on its facts. It is useful here, at best, for its

general description of the maxim of *in pari materia* construction.

In *Goldstein*, *supra*, the Court of Appeal's statutory construction simply buttressed an argument dictated by the statute's plain meaning. (*Goldstein*, *supra*, at p. 1019.) Even if the statute's meaning had been ambiguous, the *Goldstein* court cited legislative history and several maxims of statutory construction to reach its result. (*Id.*, at pp. 1019-1023.) It also considered the interpretation of the responsible administrative agency (the Employment Development Department) in reaching its conclusions. (*Ibid*.) The *Goldstein* court also compared inclusions and omissions within the same statutory scheme governing unemployment benefits, not between different-but-analogous schemes as Petitioner contends the Court should do here. Perhaps most importantly, the *Goldstein* court did not insert a limitation into a statute where none was stated, as Petitioner proposes; the court refused to impose a limitation on unemployment benefits without basis in language, history, or intent.

BullsEye, *supra*, construed the terms "hearing" and "rehearing" as they appear in Public Utilities Code sections 1701 et seq. and 1731 et seq. The ambiguity between the terms is apparent on its face. The appellant in *BullsEye* argued a "rehearing" should substantially repeat "hearing" procedures, also obligating a regulator to conduct additional evidentiary hearings. (See *BullsEye*, *supra*, at pp. 312-313.) The appellee construed a "rehearing" as a more limited procedure governed by a different subdivision of Chapter 9 of the Public Utilities Code. (*Ibid.*) Because "hearing" and "rehearing" procedures were set forth in detail in different articles of the Code, the Court found each procedure was governed by its own article and declined to import hearing procedures into rehearing procedures. (*Id.*, at pp. 311-312.) As with *Goldstein*, the Court of Appeal compared provisions with near-identical purposes within the same statutory scheme, not the general structure of wholly different, perhaps-analogous relief programs. Also, similar to *Goldstein*, the court in *BullsEye* did not read a limitation into a regulator's powers where none existed; it declined to expand the procedural rights of the appellant by inserting new rights into the rehearing procedure.

Medical Board, *supra*, compared two statutes related to physician licensing and discipline. The statutes there plainly overlapped in subject: one related to professional licensing generally, and the other to physician licensing in particular. (*Medical Board*, *supra*, 88 Cal.App.4th, at pp. 1009-1012.) The statutes had also gone through staggered amendments close in time, such that changes to one informed the other. (*Ibid.*) The Court of Appeal reconciled the two, finding the more specific statute related to physician licensing could be enforced without violating the broader professional licensing law. (*Id.*, at p. 1016.) As with the other precedents, Petitioner urges the opposite result here: that the Court insert a limitation into 10095(c) that

prevents operation of Proposition 103, rather than reading it in a way that avoids such interference.

Each of Petitioner's cases is distinguishable. In each, the court resorted to statutory construction and legislative history only when the relevant statute's meaning was not plain; here, there is no relevant ambiguity in section 10095(c). In each of Petitioner's cases, where considering statutes *in pari materia*, the courts compared statutes more closely analogous than the programs Petitioner cites here for comparison to the FAIR Plan. And in each of the cases, the courts declined to impose procedures or limits that did not appear in the statute at issue; Petitioner proposes this Court should do the opposite.

Respondents' precedent, *Gomes v. Mendocino City Community Services Dist.* (2019) 35 Cal.App.5th 249 (*Gomes*), is more persuasive. There, the Court of Appeal declined to reason that a water district lacked authority to limit groundwater extraction based on an argument that other, similar statutes expressly conferred such power. (*Gomes*, *supra*, at p. 257.) In *Gomes*, the court determined the authority to extract was "necessarily include[d] in" other powers granted to the district (*ibid.*). The Court does not draw the same conclusion here that section 10095(c) "necessarily" empowers the Commissioner to impose assessments or permit pass-through charges; he derives his authority to impose those charges from Proposition 103. But on the matter of statutory interpretation, the appellant in *Gomes* made the same argument that Petitioner makes here, and the Court of Appeal rejected it.

The meaning of Section 10095(c) is plain: it governs how writings, profits, losses, and expenses must be allocated between FAIR Plan member insurers. Petitioner objects to the way the Commissioner permits insurers to handle assessments after they are levied. This does not fall within the plain language of section 10095(c). Nothing in that statutory text conditions an insurer's proportional share of FAIR Plan expenses on ultimately absorbing those costs rather than paying them initially. Section 10095(c) regulates the apportionment obligation itself, not the insurer's subsequent financial decisions or transactions with its policyholders.

If the Court accepted that pass-through charges could somehow be incorporated into the terms of section 10095(c), such that section 10095(c) were ambiguous, principles of statutory construction and legislative history still would not dictate a different result. Petitioner does not demonstrate the Court can impose a substantial limit on the Commissioner's powers authorized under Proposition 103 by inferring an affirmative limitation from an omission that is only apparent by comparison to other policy schemes. Therefore, the Commissioner's authority to issue the Bulletins, which exists under Proposition 103, does not violate section 10095(c).

3. The Court does not reach the question of standing.

Respondents also argue Petitioner lacks standing to argue the Bulletins violate section 10095(c) because the parties interested in the application of the statute are FAIR Plan member insurers, not the policyholders whom Petitioner purports to represent. In opposition, Petitioner argues (1) the FAIR Plan statutes are consumer protection statutes, and/or (2) Petitioner has public interest standing.

Respondents' point is well-taken. However, the matter of Petitioner's public interest standing, in particular, would require further briefing for the Court to make an informed ruling. Because Petitioner's claim fails on its merits, the Court need not and does not resolve the standing question.

IV. CONCLUSION

The petition for a writ of mandate is DENIED. Petitioner's prayers for declaratory and injunctive relief are DENIED.

Pursuant to Local Rule 3.231(n), Respondent shall prepare, serve, and ultimately file a proposed judgment.

DATED: June 30, 2026

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Hon. Tiana J. Murillo

Judge of the Superior Court

[1] In other words, whether framed as a "non-rate charge," a "price component," or similar terms, the core of Petitioner's argument remains the same: whether the pass-through mechanism is permitted under Proposition 103. The characterization of the fees used in the Bulletins as before the Court at the demurrer stage, and the Court concluded that the Commissioner acted within his Proposition 103 authority.

[2] Petitioner may mean to argue that the term "proportion" is the ambiguous one that it asks the Court to interpret. If so, it does not clearly propose its own interpretation of the term. Instead, it refers to "proportionality" repeatedly as a "requirement" that is part of the "statutory design" of the FAIR Plan. (Pet. Br., 10:11, 9:8.) It is not clear how Petitioner defines a requirement that is part of a statutory design, or how Petitioner contends such a requirement should be treated during statutory construction.

Certificate of Service is attached.