S240772

IN THE SUPREME COURT OF CALIFORNIA

MERCURY CASUALTY COMPANY
Petitioner/Plaintiff and Appellant,

v.

DAVE JONES, IN HIS OFFICIAL CAPACITY AS THE COMMISSIONER OF INSURANCE OF THE STATE OF CALIFORNIA,
Respondent/Defendant and Respondent,

CONSUMER WATCHDOG,
Intervenor and Respondent

PERSONAL INSURANCE FEDERATION OF CALIFORNIA, ET AL.,
Intervernors and Appellants

After a decision by The Court of Appeal, Third Appellate District
Case Nos. C077116, C078667

INTERVENOR CONSUMER WATCHDOG'S COMBINED ANSWER TO PETITIONS FOR REVIEW

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INTRODUCTION AND SUMMARY OF WHY REVIEW SHOULD BE DENIED

Since November 8, 1989, Proposition 103 has required insurance companies to apply for prior approval of their rates by the Insurance Commissioner to enforce the initiative's directive that insurance rates not be "excessive" or "inadequate" (Ins. Code §§ 1861.01(c), 1861.05). In 1989, this Court unanimously upheld the prior approval provisions of Proposition 103 against a facial constitutional challenge. (*Calfarm Ins. Co. v. Deukmejian* (*Calfarm*) (1989) 48 Cal.3d 805.) Five years later, the Court unanimously upheld the Proposition 103 rate regulations against constitutional attack and delineated the proper standard for determining whether a rate is confiscatory. (*20th Century Insurance Company v. Garamendi* (*20th Century*) (1994) 8 Cal.4th 216.) Now, more than two decades later, failing to block the initiative measure at the ballot box and in this Court, Mercury and the insurance industry lobbying groups[1] seek a judicial do-over.

Mercury and the Trades primarily ask this Court to grant review to overturn its decision in *20th Century* and adopt a constitutional standard that would gut the very rate review system that has saved California policyholders billions of dollars,[2] and under which the entire California property casualty insurance industry has thrived for decades.[3] Rehashing

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[1] Petitioners Mercury Casualty Company ("Mercury") and Personal Insurance Federation of California, Property Casualty Insurers Association of America (dba "Association of California Insurance Companies" in California), and National Association of Mutual Insurance Companies (the "Trades").

[2] Consumer Federation of America, What Works? A Review of Auto Insurance Rate Regulation in America (Nov. 2013) p. 20 <http://consumerfed.org/wp-content/uploads/2010/08/whatworks-report_nov2013_hunter-feltner-heller.pdf> (as of Apr. 7, 2017)

[3] According to a 2013 National Association of Insurance Commissioners' report, California insurers had an average return on net worth of 18.1% for

arguments that were uniformly rejected by the Commissioner, the Superior Court, and the Court of Appeal, Mercury and the Trades manufacture a conflict between the constitutional protections against confiscatory rates applied by this Court in *20th Century* on the one hand, and its decision five years earlier in *Calfarm* and more recent rent control decisions by this Court on the other hand. They argue, contrary to the applicable U.S. and California Supreme Court precedent, that *Calfarm* and this Court's rent control cases support their position that a "fair return" ***as measured by their own economists*** is the *only* factor to consider in a confiscation analysis and that these decisions conflict with *20th Century*. Then they bootstrap this phony conflict into a declaration that the law is unsettled.

Nothing, however, is unsettled and there is no conflict to resolve. Instead, in rejecting Mercury's requested "confiscation variance,"[4] the Commissioner, the Superior Court, and the Court of Appeal followed the well-settled constitutional jurisprudence of this Court and the U.S. Supreme Court, which requires a ***balancing*** of insurers' and consumers' interests in determining whether a rate is confiscatory and a showing that the ordered rate does not allow it to operate successfully. (*20th Century*, *supra*, 8 Cal.4th at 293-295; *Federal Power Com. v. Hope Natural Gas Co.* (*Hope*) (1944) 320 U.S. 591, 603, 605; Slip Op. 27, quoting *20th Century*.) This is the very analysis conducted by the *20th Century* Court, which discussed and elaborated on the same U.S. Supreme Court constitutional standards discussed and applied in its opinion in *Calfarm*. Under the *20th Century* balancing test, insurers have an ***interest*** in earning a "fair return," but that

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the homeowners line, and 10.7% for all lines combined, over the ten-year period from 2003-2012. (Joint Appendix ("JA") 8:2519-21.)

[4] Among other variances, the rate regulations allow insurers to prove in an evidentiary hearing that the maximum permitted rate under the regulatory formula would be "confiscatory as applied." (Cal. Code Regs., tit. 10 ("10 CCR"), § 2644.27(f)(9).)

interest is "not a right"; it is "'***only one of the variables in the constitutional calculus of reasonableness***.'" (*Ibid*., quoting *20th Century*, *supra*, 8 Cal.4th at 294, emphasis added, quoting *In Re Permian Basin Area Rate Cases* (*Permian Basin*) (1968) 390 U.S. 747, 769.) The more recent rent control cases on which petitioners rely confirm and apply the same *Hope* balancing test.

The Court of Appeal properly rejected the industry's constitutional conflict arguments as "smoke and mirrors" and "hocus pocus" (Slip Op. 31).

The claim that "there is a profound need for a new look at insurance rate regulation" (Trades Petition, 6-7) is a frank admission of the industry's dissatisfaction with California's consumer protections, which this Court has repeatedly upheld. As a legal matter, however, this claim rings hollow in light of the continued profitability of the insurance industry and the fact that the Commissioner determined that Mercury, already ranked eighth in California homeowners insurance market share,[5] would earn a $1.8 million after-tax profit under the ordered rate. (JA 1:195.) Moreover, the rate decrease that Mercury challenges here was in effect for approximately seven months in 2013 before the Commissioner approved a rate increase of 8.26% for Mercury's homeowners line, effective in December 2013. (JA 5:1288-1301.) Indeed, by every measure, Mercury's financial integrity remained intact during 2013: it maintained an A+ credit rating, had a surplus of $1.065 billion, and paid dividends to its shareholders of $120 million in 2013. (JA 8:2525.) In other words, Mercury (and the insurance industry) are doing just fine under the current system of insurance rate

[5] See Wells Decl. in Support of the Trades' Motion Requesting Judicial Notice, Exh. H, p. 1, filed with Court of Appeal on June 13, 2016.

regulation and this Court should reject the invitation to adopt a standard that would only lead to higher rates for consumers.

Mercury and the Trades also seek review to challenge the interpretation and constitutionality of the provision of the prior approval rate regulations that limits the amount of advertising expenditures by insurance companies that can be included in policyholders' premiums (10 CCR § 2644.10(f)) ("section 2644.10(f)").

Mercury, but not the Trades, claims the Court of Appeal misinterpreted section 2644.10(f) to prevent policyholders from having to pay for its advertising promoting the logo of its fictitious "Mercury Insurance Group," including at hockey rinks, baseball stadiums, and tennis tournaments. Construing the regulation in accordance with its plain meaning, the Court of Appeal properly rejected Mercury's arguments as "without merit." (Slip Op. 16-17.) Mercury offers no reason why this determination raises an unsettled issue of law warranting review. Indeed, Mercury devotes just over three pages to this issue in its petition, urging this Court to re-write the language of the regulation. Such arguments belong in a petition to amend the regulation, not in a petition for review to this Court.

The Trades, but not Mercury, seek review of the Court of Appeal's decision upholding section 2644.10(f) against their First Amendment facial challenge. They claim that insurers have a First Amendment right to make policyholders pay higher insurance premiums by including every dollar of advertising expenditures in the rate calculation. One of the long-settled purposes of Proposition 103, however, is to ensure only the reasonable costs of providing insurance are included in the rate. The Court of Appeal expressly relied on that purpose to find that the institutional advertising expense exclusion was narrowly tailored to fit that purpose. (Slip Op. 22-23.) This determination presents no unsettled question for review and is

consistent with this Court's jurisprudence on the Insurance Commissioner's ratemaking authority under Proposition 103 and every other state supreme court case that has considered this issue.

For these reasons, as discussed more fully below, Consumer Watchdog[6] respectfully submits that this Court should deny both petitions.

BACKGROUND AND HISTORY OF THE CASE

A. Proposition 103 and the Ratemaking Formulas Adopted by Regulation Established a Framework for the Prior Review and Approval of Rates Which Was Upheld as Constitutional by this Court.

The voters passed Proposition 103 in November 1988 to "protect consumers from arbitrary insurance rates and practices," "provide for an accountable Insurance Commissioner," and "ensure that insurance is fair, available, and affordable for all Californians." (*Donabedian v. Mercury Ins. Co.*, *supra*, 116 Cal.App.4th at 977, quoting Prop. 103, § 2 [uncodified preamble "Purpose"].) Proposition 103 "replace[d] the former system for regulating insurance rates (which relied primarily upon competition

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[6] Consumer Watchdog is a non-profit, non-partisan organization established in 1985. Its founder authored Proposition 103 and led the successful campaign for its passage by California voters. Consumer Watchdog has initiated or intervened in numerous rate proceedings before the California Department of Insurance ("Department"), including over 100 such proceedings in the last 15 years, resulting in savings to consumers of over $3.3 billion. Consumer Watchdog or its attorneys have participated in virtually every state court case upholding provisions of Proposition 103 and the Commissioner's regulations, including *Calfarm*, *supra*, 48 Cal.3d 805; *20th Century*, *supra*, 8 Cal.4th 216; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243; *State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029; *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473; *Spanish Speaking Citizens' Foundation v. Low* (2000) 85 Cal.App.4th 1179; *Donabedian v. Mercury Insurance Co.* (2004) 116 Cal.App.4th 968; *The Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354; and *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029.

between insurance companies) with a system in which the commissioner must approve such rates prior to their use." (*Amwest Surety Ins. Co. v. Wilson*, *supra*, 11 Cal.4th at 1259; see Ins. Code §§ 1861.01(c), 1861.05.)

1. The prior approval statute prohibits excessive rates.

Insurance Code section 1861.05(a) requires, in relevant part, that "[n]o rate shall be approved or remain in effect which is excessive, inadequate, unfairly discriminatory or otherwise in violation of this chapter." This Court unanimously upheld section 1861.05(a) against a facial constitutional attack by the insurance industry, holding that it "provides a constitutionally valid standard for rate adjustment...." (*Calfarm*, *supra*, 48 Cal.3d 805, 823.)

Under section 1861.05(b), insurers "***have the burden of proving that the requested rate change is justified and meets the requirements of this article***." (Ins. Code § 1861.05(b), emphasis added; see also 10 CCR § 2646.5 ["The insurer has the burden of proving, ***by a preponderance of the evidence, every fact necessary to show that its rate is not excessive***, inadequate, unfairly discriminatory, or otherwise in violation of chapter 9," emphasis added].)

2. The prior approval regulatory formula is designed to yield a reasonable rate that is neither confiscatory nor excessive.

In 1991, the Commissioner promulgated regulations to implement the prior approval standards under section 1861.05. (See 10 CCR §§ 2641.1-2644.27 ("Prior Approval Regulations").) The Prior Approval Regulations include a ratemaking formula for calculating the "maximum permitted earned premium" (10 CCR § 2644.2) ("Regulatory Formula"), which was used to calculate the ordered rate decrease that Mercury challenges here. A separate formula is used for calculating the "minimum

permitted earned premium." (10 CCR § 2644.3.)[7] The output of the maximum and minimum permitted premium rate calculations reflect the Commissioner's determination of the statutory boundaries of "excessive" and "inadequate" rates, such that any rate falling above the maximum permitted earned premium level would be considered excessive and any rate below the minimum permitted premium would be considered inadequate. (See *20th Century*, *supra*, 8 Cal.4th at 254.) In other words, any rate falling between the maximum and minimum earned premium rate levels demarcating the "excessive" and "inadequate" boundaries is a reasonable, non-confiscatory rate. As this Court explained in *Calfarm*, "[s]ince a confiscatory rate is necessarily an 'inadequate' rate under the statutory language, section 1861.05 requires rates within that range which can be described as fair and reasonable and prohibits approval or maintenance of confiscatory rates." (*Calfarm*, *supra*, 48 Cal.3d 805, 822-823.)

The Regulatory Formula includes a profit factor, which incorporates a return on equity defined as "the risk free rate of return plus 6%." (10 CCR §§ 2644.15(a) [defining profit factor], 2644.16(a) [defining rate of return].) As the *20th Century* Court held, ***the Regulatory Formula itself thus affords insurers the opportunity to earn a fair return***. (*20th Century*, *supra*, 8 Cal.4th at 251 ["The ratemaking formula is designed to yield a premium that the insurer should receive from its insureds in order to earn a sum amounting to (1) the reasonable cost of providing insurance and (2) the capital used and useful for providing insurance multiplied by a fair rate of return"].)

[7] The maximum and minimum permitted premium formulas differ only in the rate of return allowed under each. (*20th Century*, *supra*, 8 Cal.4th at 254.)

The Regulatory Formula also includes a provision for allowable expenses known as the "efficiency standard," which "represents the fixed and variable cost for a reasonably efficient insurer to provide insurance and to render good service to its customers." (10 CCR § 2644.12.) This Court expressly upheld the use of an efficiency standard to limit the expenses insurers are permitted to pass through to their policyholders. (*20th Century*, *supra*, 8 Cal.4th at 289.)

Moreover, the Regulatory Formula requires that expenses that are not related to the cost of providing insurance and do not benefit the policyholder, such as political contributions and lobbying expenses, be excluded from the rate calculation (see 10 CCR § 2644.10). Pertinent to Petitioners' challenge is the exclusion of "institutional advertising" expenses (10 CCR § 2644.10(f).) The regulation defines "institutional advertising as "advertising not aimed at obtaining business for a specific insurer and not providing consumers with information pertinent to the decision whether to buy the insurer's product." (10 CCR § 2644.10(f).) Displaying a company logo at sporting events is a prime example of institutional advertising that does not provide information about a specific product or service. (JA 1:169-170.)

3. <u>The prior approval regulations provide "safety valves" known as variances.</u>

The Prior Approval Regulations provide further constitutional "safety valves," which permit insurers to seek "variances" from certain components or the end result of the Regulatory Formula on 22 separate grounds. (See 10 CCR § 2644.27(f)(1)-(9); *20th Century*, *supra*, 8 Cal.4th at 313.) In this case, Mercury invoked the "confiscation variance" to allege that the rate calculated under the ***maximum permitted*** Regulatory Formula rate would be "confiscatory as applied." (10 CCR § 2644.27(f)(9).) Mercury claims it should have been permitted to charge a rate ***higher*** than

the uppermost "excessive" rate boundary, even though, as noted *supra*, the maximum and minimum permitted rate calculations demarcate the range of reasonable, non-confiscatory rates. The confiscation variance codifies "the constitutionally mandated variance articulated in *20th Century Insurance Co. v. Garamendi* (1994) 8 Cal.4th 216 which is an end result test applied to the enterprise as a whole." (*Ibid*.)

4. The prior approval regulations bar relitigation of the regulatory formula.

Finally, the Commissioner's regulations provide that, "[r]elitigation in a hearing on an individual insurer's rates of ***a matter already determined either by the[] regulations or by a generic determination*** is out of order and shall not be permitted." (See 10 CCR § 2646.4(c), emphasis added.) This is known as the "relitigation bar." In upholding the relitigation bar, this Court noted that a judge "does not entertain the question whether [a regulation's] underlying premises are sound. … Otherwise, standardless, ad hoc decisionmaking would result." (*20th Century*, *supra*, 8 Cal.4th at 311-312.)

B. After an Extensive Hearing Before an Administrative Law Judge, the Commissioner Ordered Mercury to Decrease its Overall Homeowners Rates by 5.4%.

Mercury filed a rate application with the Department in May 2009 seeking to increase its overall homeowners insurance rates by approximately 3.9%. (Slip Op. 5.) Consumer Watchdog petitioned for a hearing and was granted intervention in the rate proceeding. (Slip Op. 6.) The Commissioner noticed a hearing in May 2011. (*Ibid*.)

During the course of the evidentiary hearing before the administrative law judge ("ALJ"), Mercury was permitted to update its data; it then revised its requested rate increase to 8.8% and took the position that anything less would be confiscatory. (*Ibid*.) Mercury also claimed none of its ads were "institutional advertising;" thus it argued $0 of its

advertising budget should be excluded from the rate calculation under section 2644.10(f). (Slip Op. 7.)

Following a 12-day evidentiary hearing, and numerous rounds of direct and rebuttal testimony and briefing, the ALJ issued a comprehensive 130-page proposed decision, which thoroughly discussed and weighed the evidence on each disputed issue. (Slip Op 7.) The Commissioner adopted the proposed decision in full in February 2013. (*Ibid*.)

On the issue of confiscation, the Commissioner applied "the clear holding of *20th Century*" to determine that the "maximum indicated rate is not confiscatory" and would indeed result in Mercury earning "at least a $1.8 million profit from Mercury's California homeowner's line." (JA 1:195.)

On the issue of excluded institutional advertising expenses, the Commissioner found that none of Mercury's ads mentioned a "specific insurer," because "Mercury chose to advertise as the fictitious Mercury Insurance Group," and thus held that all of its advertising expenses should be disallowed from the rate calculation under section 2644.10(f). (JA 1:177.)

The Commissioner "conclude[d] that Mercury's proposed rate increase of 8.8% [wa]s excessive" and ordered Mercury to *decrease* its overall homeowners insurance rates by approximately 5.4% (consisting of an 8.18% rate decrease for its homeowners policies, a 4.32% rate increase for its renters policies, and a 29.44% rate increase for its condo policies). (Slip Op. 8.)

C. The Trial Court Properly Upheld the Commissioner's Decision.

Mercury petitioned the Superior Court to vacate the Commissioner's February 2013 Order on the grounds that the Commissioner did not properly interpret and apply the confiscation variance and the excluded

institutional advertising expense regulation. (JA 1:33-66.)

The Trades intervened, raising similar issues and additionally asserting a First Amendment facial challenge to the institutional advertising regulation, a claim never raised by Mercury. (JA 5:981-5:1005.)

Relying on the constitutional standards articulated by the California and U.S. Supreme Courts in *20th Century* and *Hope*, the Superior Court held that the Commissioner applied the correct legal standard in determining the ordered rate was not confiscatory. (JA 11:2835-38.) The court noted that the Commissioner "found, after applying the ratemaking formula, that Mercury would not suffer financial hardship; it would profit even with a proposed 8.18% decrease to its HO-3 rates." (JA 11:2837.)

The Superior Court further determined that Mercury failed to carry its evidentiary burden to demonstrate confiscation when it attempted to substitute its own expense data and economist's preferred rate of return for the values established by the Regulatory Formula. (JA 11:2834-35; 11:2838-39.)

The Superior Court also held the Commissioner's interpretation and application of section 2644.10(f) to exclude Mercury's institutional advertising expenses was consistent with the regulation's clear language and intent (JA 11:2840-2843) and that the regulation did not facially violate the First Amendment. (JA 12:3227-29.)

D. The Court of Appeal Unanimously Affirmed the Superior Court's Decision.

In unanimously affirming the Superior Court's judgment, the Court of Appeal quoted and discussed at length this Court's controlling decision in *20th Century* (Slip Op. 25-29), grounded on the due process balancing test set forth by the U.S. Supreme Court in *Hope* to uphold the Commissioner's determination that the ordered rate was not confiscatory as applied. (*Id*., 31.) The Court of Appeal also rejected the Trades' attempts to

create a conflict between this Court's decisions in *20th Century* and *Calfarm* (*Id*., 30-31).

The Court of Appeal dismissed the Trades' argument that *20th Century* was limited to the context of rate rollbacks, noting that nothing in this Court's discussion of the constitutional standards "suggests that it would apply only to a retrospective price control rather than a prospective price control. Again, the Trades' argument is smoke and mirrors -- nothing more." (Slip Op., 31.)

As to the exclusion of institutional advertising expenses from the rate calculation, the Court of Appeal upheld the Superior Court's decision finding that the Commissioner properly applied the regulation to Mercury's ads. (*Id.*, 10-17.) The Court of Appeal rejected each of Mercury's statutory construction arguments, relying on the plain language of the regulation. (*Ibid*.) It also rejected the Trades' facial challenge to the institutional advertising expense exclusion, finding that it survived strict scrutiny under the First Amendment. (*Id.*, 20-23.)

DISCUSSION

I. THERE IS NO CONFLICT BETWEEN THIS COURT'S DECISIONS, NOR ANY UNSETTLED QUESTION OF LAW REGARDING THE CONSTITIONAL STANDARDS APPLIED TO DETERMINE WHETHER A RATE IS CONFISCATORY.

Petitioners insist review is necessary "to clarify … the proper test for determining whether a maximum permitted insurance rate is confiscatory as applied" (Mercury Petition, 10) and claim that the Court of Appeal's decision presents an issue "the insurance industry has been waiting over two decades to ask this Court." (Trades Petition, 4.) Mercury and the Trades attempt to create a conflict where none exists between *20th Century* and *Calfarm*, U.S. Supreme Court precedent, and this Court's rent control jurisprudence. The Court of Appeal rejected each of these arguments and properly relied upon this Court's thorough analysis of the applicable

confiscation standard in *20th Century* (Slip Op. 25-31), which in turn is grounded in the constitutional principles set forth by this Court in *Calfarm* and the bedrock constitutional principles articulated in a line of U.S. Supreme Court decisions dating back to 1944. The more recent rent control decisions by this Court confirm, rather than conflict with, the analysis set forth in *20th Century* and make clear that the constitution does not entitle insurers to a return deemed more "fair" by their economists than allowed under the Regulatory Formula.

A. The Court of Appeal Followed this Court's Precedential Decision in *20th Century*, Which is Grounded on the Well-Established Constitutional Standards Articulated by the U.S. Supreme Court in *Hope*.

The Court of Appeal began its analysis by discussing and quoting at length the confiscation standards articulated by this Court in *20th Century*. (See Slip Op. 25-29, quoting *20th Century*, *supra*, 8 Cal.4th at 292-297.) As this Court explained, when a regulation is challenged as being confiscatory as applied, "***the question is whether***, in the particular case, ***its terms set a rate that is unjust and unreasonable and hence confiscatory***." (*20th Century supra*, 8 Cal.4th at 318, emphasis added.) The Court went on to state, "[j]udicial inquiry as to whether or not a rate is just and reasonable is also limited." (*Ibid.*) Indeed, such an inquiry by the court is "at an end" "[i]f the total effect of the rate order cannot be said to be unjust and unreasonable… The fact that the method employed to reach that result may contain infirmities is not then important." (*Ibid.*, quoting *Hope*, *supra*, 320 U.S. at 602; see also *id.* at 292-293; see also *Duquesne Light Co. v. Barasch* (*Duquesne Light*) (1989) 488 U.S. 299, 310 [affirming *Hope*].)

As this Court further elucidated in *20th Century*, ***whether a rate "is unjust and unreasonable in its consequences and therefore confiscatory depends on a balancing of the interests of [the insurer] and its insureds***." (*20th Century supra*, 8 Cal.4th at 325, emphasis added; see also *id*. at 293-

295; *Hope*, *supra*, 320 U.S. at 603 ["[T]he fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumer interests"].)

In applying the *Hope* balancing test, the *20th Century* Court noted that consumers have an interest in "freedom from exploitation." (*20th Century*, *supra*, 8 Cal.4th at 325.) On the other hand, the insurer has an "interest" in "a 'return to the equity owner' that is 'commensurate with returns on investments in other enterprises having corresponding risks' and 'sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.'" (*Id.* at 325-326, emphasis added, citing and quoting *Hope*, *supra*, 320 U.S. at 603 [discussing the "investor interest" in "the financial integrity of the company whose rates are being regulated"].) The Court emphasized that this insurer "interest, however, is just that: it is an *interest*, not a *right*" and is "'only one of the variables in the constitutional calculus of reasonableness.'" (*Id*. at 326, emphasis in original, citing *Permian Basin*, *supra*, 390 U.S. 747, 769.) The Court held that an insurer "has no constitutional right to a profit" and "[i]ndeed, it has no constitutional right even against a loss." (*Id*. at 294, 326.)

"In attempting to balance producer and consumer interests, one may of course arrive at a rate that disappoints one or even both parties. But a striking of the balance to the producer's detriment does not necessarily work confiscation. Indeed, it can *threaten* confiscation only when it prevents the producer from 'operating successfully.'" (*20th Century*, *supra*, 8 Cal.4th at 295, emphasis in original; accord *Galland v. City of Clovis* (*Galland*) (2001) 24 Cal.4th 1003, 1026 ["[W]ithin this broad zone, the rate regulator is balancing the interests of investors, [], with the interests of consumers, [] in order to achieve a rent level that will on the one hand maintain the affordability of the mobilehome park and on the other hand allow the landlord to continue to operate successfully"], citing *Kavanau v.*

Santa Monica Rent Control Bd. (*Kavanau*) (1997) 16 Cal.4th 761, 778-779.)

The *20th Century* Court further explained:

> The *Hope* court itself expressly held that "[r]ates which enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed certainly cannot be condemned as invalid, ***even though they might produce only a meager return***...." (*Power Comm'n v. Hope Gas Co., supra,* 320 U.S. at p. 605, [].) A year later, the court restated this holding in even simpler terms in a unanimous opinion by Justice Jackson: "a company [cannot] complain if the return which was allowed made it possible for the company to operate successfully." (*Market Street R. Co. v. Comm'n, supra,* 324 U.S. at p. 566, [].)

(*Id*. at 295, emphasis added.)

Accordingly, confiscation requires a showing by the insurer that "***the rate in question does not allow it to operate successfully***." (*Ibid.*, emphasis added; *Hope*, *supra*, 320 U.S. at 605.) "In a word, the inability to operate successfully is a necessary-***but not a sufficient***-condition of confiscation." (*20th Century*, *supra*, 8 Cal.4th at 296, emphasis added.)

The *20th Century* Court further explained that:

> "absent the sort of deep financial hardship described in *Hope*," [] "there is no taking...." (*Jersey Cent. Power & Light Co. v. F.E.R.C., supra,* 810 F.2d at p. 1181, fn. 3.) This follows from the fact that, under *Hope,* a regulated firm may claim that a rate is confiscatory only if the rate does not allow it to operate successfully. In such circumstances, the firm is not inaptly characterized as experiencing "deep financial hardship" as a result of the rate.

(*Ibid.*) Thus, the "deep financial hardship" standard, applied by the Commissioner, Superior Court and Court of Appeal, is the shorthand equivalent of the "inability to operate successfully" standard derived from *Hope* and its progeny, which was also relied on by this Court in *20th Century*, *Galland*, and *Kavanau*.

In sum, the Court of Appeal properly rejected Mercury and the Trades' invitation to revisit this long-established legal precedent, and held consistent with *20th Century* and *Hope* that there is no absolute right to the return that an insurer's economists consider to be more "fair" than the return allowed under the Regulatory Formula. Rather, a confiscation determination involves a case-by-case complex factual analysis. (See, e.g., *Kavanau*, *supra*, 16 Cal.4th at 776; *Santa Monica Beach, Ltd. v. Superior Court* (1999) 19 Cal.4th 952, 964.) That case-by-case analysis requires the balancing of the insurer's and the insured's interests. (*20th Century*, *supra*, 8 Cal.4th at 293-295.) Moreover, as this Court has made clear, specifically with respect to insurance rates, confiscation "does *not* arise": (1) "whenever a rate simply does not 'produce[] a profit which an investor could reasonably expect to earn in other businesses with comparable investment risks and which is sufficient to attract capital'" (*id.* at 297); or (2) when expenses are limited by an efficiency standard (*id.* at 289).

B. There is No Conflict Between the Standards Applied by this Court in *20th Century* and *Calfarm*.

Mercury's and the Trades' attempts to manufacture a conflict between this Court's opinions in *Calfarm* and *20th Century* fall flat and were properly rejected by the Court of Appeal. (See Slip Op. 30-31.) Since *Calfarm* dealt with a facial challenge to provisions of Proposition 103, it necessarily did not consider the issue later decided in *20th Century* of whether a rate determined under the Regulatory Formula promulgated in 1991 was confiscatory as applied. Accordingly, the *20th Century* Court began its analysis by "rehears[ing], and elaborate[ing] on, the principles set out in *Calfarm*." (*20th Century*, *supra*, 8 Cal.4th at 291; Slip Op. 31.) The *20th Century* decision discusses the same constitutional standards and U.S. Supreme Court cases for determining whether a price control is unconstitutional as set forth in *Calfarm*. (Compare, *20th Century*, *supra*, 8

Cal.4th at 291 [discussing the principles set forth by the U.S. Supreme Court in *Hope* and *Duquesne Light*; *Calfarm*, *supra*, 48 Cal.3d 805 at 816 [same].) Thus, there is no conflict.

Moreover, contrary to Mercury and the Trades' contentions, this Court's reference in *20th Century* to "deep financial hardship" as quoted by the Commissioner, the Superior Court, and the Court of Appeal is not the same as the "substantially threatened with insolvency" standard that was rejected for the calculation of rollbacks under section 1861.01 in *Calfarm*. Instead, the *20th Century* Court was equating "deep financial hardship" with the "inability to operate successfully" confiscation standard articulated in *Hope*. As this Court explained, "under *Hope*, a regulated firm may claim that a rate is confiscatory only if the rate does not allow it to operate successfully. In such circumstances, the firm is not inaptly characterized as experiencing 'deep financial hardship' as a result of the rate." (*20th Century*, *supra*, 8 Cal.4th at 296; *Hope*, *supra*, 320 U.S. at 605.) That is the standard applied by the Commissioner, the Superior Court, and the Court of Appeal. (JA 188-189; JA 11:2836; Slip Op. 28.) And that is the same *Hope* balancing test applied by this Court in *Kavanau* and *Galland*. (See section D, *infra*.)

C. *20th Century* and *Hope* Remain Good Law.

Despite Mercury's and the Trades' attempts to disavow it, *20th Century* is the only opinion of this Court to discuss the standards of confiscation as applied to rates calculated pursuant to the Proposition 103 Regulatory Formula, which it upheld, and it has not been overruled by any subsequent California or U.S. Supreme Court opinion. The U.S. Supreme Court's holdings in *Hope* and *Duquesne Light*, upon which the *20th Century* confiscation test is grounded, also remain bedrock constitutional law for determining confiscatory rates. (See, e.g., *Verizon Communications, Inc. v. F.C.C.* (2002) 535 U.S. 467, 482-487 and 523-527 [relying on *Hope*

and *Duquesne Light* in discussion of standards to determine confiscatory rates].)

Nothing in *Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, cited by the Trades, suggests otherwise. In that case, the U.S. Supreme Court repudiated a "substantially advances" standard for determining a regulatory taking, which is not the standard for determining confiscatory rates at issue here. (Slip Op. 30.) Thus "*Lingle* is of no assistance to the Trades here." (*Ibid*.) In fact, the *Lingle* Court explicitly stated that its holding in that case "does not require [the Court] to disturb any of [its] prior holdings." (*Lingle*, *supra*, 544 U.S. at 545.)

D. There is No Conflict Between *20th Century* and This Court's Rent Control Cases.

Throughout this case and in their petitions for review, Mercury and the Trades claim that a "fair return" is the exclusive factor that must be met to avoid a finding of confiscation. In rejecting precisely the same argument by the insurance industry over 22 years ago, this Court stated:

> One assumption seems to be that a regulated firm is entitled to its cost of capital. Although such a firm has an interest in this matter, it has no right. [citations omitted] The United States and California Constitutions make the point plain. As stated, a regulated firm has no constitutional right even against a loss. Manifestly, Proposition 103 is not to the contrary.

(*20th Century*, *supra*, 8 Cal.4th at 320-321, citing *Permian Basin Area Rate Cases, supra,* 390 U.S. at 769.)

In focusing narrowly on their theoretical interest in earning a "fair return" as measured by their own economists, Mercury and the Trades entirely fail to discuss the fuller analysis in this Court's rent control decisions on which they rely (see, e.g., Mercury Petition, 19-20; Trades Petition, 2, fn. 3). Those cases confirm rather than disavow the application of the *Hope* balancing test as discussed and applied by this Court in *20th*

Century to determine whether the "end result" of the ordered rates prevent the business from "operating successfully." (See *Kavanau, supra,* 16 Cal.4th 761 at 771-772, 778, citing and quoting *Hope*, *supra*, 320 U.S. at 603; *Galland, supra,* 24 Cal.4th 1003, 1021-1022 ["[R]egulators are permitted to adjust prices 'within a broad zone of reasonableness,' balancing the interests of landlords and tenants"]; see also *TG Oceanside, L.P. v. City of Oceanside* (*TG Oceanside*) (2007) 156 Cal.App.4th 1355, 1371-1372 ["In other words, rent regulation must not prevent an efficient enterprise from 'operating successfully,' but rent regulators are permitted to adjust prices 'within a broad zone of reasonableness,' balancing the interests of landlords and tenants"].)

For example, in *Kavanau*, this Court, quoting the same principles from *Hope* and *Permian Basin* on which the *20th Century* Court relied, stated:

> [T]he essential inquiry in due process cases involving price controls is whether the regulatory scheme's *result* is just and reasonable. [] The Court of Appeal did not expressly find that the 12 percent limit prevented Kavanau from " 'operating successfully.' " [] Rather, the 12 percent limit merely delayed Kavanau's rent increase. Regulated prices must fall within a "broad zone of reasonableness" to be constitutional [], and due process requires fundamentally a balancing of interests []. The 12 percent limit achieved this balance. It balanced landlords' interests in recouping their increased costs against tenants' interests in avoiding sudden, large rent increases.

(*Kavanau*, *supra*, 16 Cal.4th at 778-779, italics in original, citations omitted; accord *Galland*, *supra*, 24 Cal.4th at 1021-1022, 1026.)

Moreover, in *Galland*, this Court emphasized that within this balancing test, the investor's interest in a "fair rate of return" is not to be measured by an insurer's economist, as Mercury attempted in the underlying rate proceeding in this case, but rather is based on constitutional jurisprudence:

> Although the term "fair rate of return" borrows from the terminology of economics and finance, it is as used in this context a legal, constitutional term. It refers to a constitutional *minimum* within a broad zone of reasonableness. As explained above, within this broad zone, the rate regulator is balancing the interests of investors, [], with the interests of consumers, [], in order to achieve a rent level that will on the one hand maintain the affordability of the mobilehome park and on the other hand allow the landlord to continue to operate successfully. (*Kavanau*, *supra*,16 Cal.4th at pp. 778-779.) For those price-regulated investments that fall above the constitutional minimum, but are nonetheless disappointing to investor expectations, the solution is not constitutional litigation but, as with nonregulated investments, the liquidation of the investments and the transfer of capital to more lucrative enterprises.

(*Galland*, *supra*, 24 Cal.4th at 1026.) Following its reasoning in *Galland*, this Court should reject insurers' attempts to mount a constitutional attack every time they claim they will not achieve a "fair rate of return" as measured by their own economists. Otherwise, the very "standardless, ad hoc decisionmaking" eschewed by this Court in *20th Century* (8 Cal.4th at 312) will prevail, and strip the Commissioner of his authority to "tak[e] whatever steps are necessary to to reduce the job to manageable size reduce the job [of rate regulation] to manageable size" (*id*. at 280). The end result would be higher insurance premiums for consumers.

In summary, this Court's rent control decisions relied upon by Mecury and the Trades actually confirm that the Commissioner applied the appropriate standard for confiscation.

E. The Commissioner Properly Considered the Impact of the Rate Order on Mercury's Enterprise as a Whole.

Following this Court's holdings in *Calfarm* and *20th Century*, the Court of Appeal also correctly upheld the Commissioner and the Superior Court's application of the constitutional confiscation standard to Mercury's enterprise as a whole, rather than its homeowners line as advocated by

Petitioners. (Slip Op. 31-32.) Citing this Court's analysis in *20th* Century, the Commissioner's decision stated:

> [T]he California Supreme Court stated no less than three times that confiscation depends on the condition of the insurer as whole and not on the fortunes of any one or more of its lines.[] In so holding the Supreme Court stated the earned premium of 20th Century's earthquake line must not be viewed in isolation as an end result but instead as an intermediate step in evaluating the corporation's overall financial fitness.[]

(JA 1:199, footnotes omitted.)

The Commissioner further relied on this Court's reasoning in *20th Century*, which held:

> "[S]o long as rates as a whole afford [the regulated firm] just compensation for [its] over-all services to the public," they are not confiscatory. (*B. & O.R. Co. v. United States* (1953) 345 U.S. 146, 150 [].) That a particular rate may not cover the cost of a particular good or service does not work confiscation in and of itself. (See *id.* at pp. 147–150 [].) In other words, ***confiscation is judged with an eye toward the regulated firm as an enterprise***.

(*20th Century*, *supra*, 8 Cal.4th at 293, emphasis added; see also *id*. at 308-309 and 322 [same].) The *20th Century* Court noted that its opinion was consistent in this respect with its opinion in *Calfarm*:

> In *Calfarm*, we recognized that a court might subsequently be presented with a claim that Proposition 103's maximum rate for the rollback year "is confiscatory as to a particular insurer *and line of insurance.*" [citation omitted] Our recognition was factual: it concerns the nature of the complaint that an insurer might make. It was not normative: ***it does not mean that confiscation is judged other than with an eye toward the insurer as a whole***.

(*Id.* at 309, fn. 23, emphasis added.)

It is worth noting that even assuming, *arguendo*, that only Mercury's homeowners line should be tested for confiscation, the evidence was still overwhelmingly against any finding of confiscation. For example,

Mercury's profit for its California homeowners line alone was $57.5 million in 2010, the year following when Mercury first applied for a rate increase. (JA 1:191.) Moreover, the evidence showed that Mercury would still earn $1.8 million after-tax profit on its California homeowners line under the ordered rate. (JA 1:193, 195.) Mercury offered no credible evidence to establish its homeowners line would not continue to be profitable.

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In sum, the Court of Appeal accurately followed this Court's decisions, grounded in longstanding U.S. Supreme Court precedent, to correctly decide that Mercury was not entitled to a confiscation variance from the ordered rate decrease. There is no unsettled question of law for this Court to review.

II. PETITIONERS IDENTIFY NO UNSETTLED QUESTION OF LAW WITH RESPECT TO THE EXCLUSION OF MERCURY'S INSTITUTIONAL ADVERTISING EXPENSES FROM THE RATE CALCULATION.

Mercury claims the Court of Appeal erred when it upheld the Commissioner's and the Superior Court's interpretation and application of section 2644.10(f) to exclude its institutional advertising expenses from the rate calculation. (Mercury Petition, 26, 27.) Contrary to Mercury's contentions, the Court of Appeal correctly construed the regulation in accordance with its plain meaning. Even if Mercury's claims had any merit, it is axiomatic, however, that this Court does not grant review to simply correct mistakes in a Court of Appeal decision, and Mercury offers no other acceptable ground for review of the interpretation of section 2644.10(f) to

Mercury's advertising. (See Cal. Rules of Court, rule 8.500(b)(1); *People v. Davis* (1905) 147 Cal. 346, 348.)

The Trades, but not Mercury, seek review of the Court of Appeal's decision upholding section 2644.10(f) against the Trades' facial challenge.

Consistent with principles of statutory construction and First Amendment jurisprudence, the Court of Appeal rejected Mercury's arguments to uphold the Insurance Commissioner's interpretation and application of section 2644.10(f) and affirmed the Superior Court's denial of the Trades' facial challenge to the regulation. Neither Mercury nor the Trades provide a valid ground for review of these holdings.

A. The Court of Appeal Correctly Interpreted the Institutional Advertising Regulation, and Mercury's Arguments to the Contrary are Insufficient Grounds for Review.

Regulatory ratemaking formulae commonly exclude expenses that are unrelated to the cost of providing insurance and that provide no benefit to the consumer. Institutional advertising is one expense commonly excluded in ratemaking. In California, insurer "institutional advertising" is defined as:

> advertising not aimed at obtaining business for a ***specific insurer*** and not providing consumers with information pertinent to the decision whether to buy ***the insurer's*** product.

(10 CCR § 2644.10(f), emphasis.) The kind of advertising that falls within this definition is insurers' "'image' advertising which strives to enhance a company's reputation" and "does not promote a specific product or service but instead attempts to obtain favorable attention to the company as a whole." (Slip Op. 9.) Sports sponsorships – like Mercury's promotion of its "Mercury Insurance Group" logo at tennis tournaments are classic institutional advertising. (JA 1:170, 179.)

First, Mercury argues that the Court of Appeal should have interpreted the phrase "specific insurer" contrary to its plain meaning to instead mean a group of affiliated insurers. (Mercury Petition, 24-25.) Mercury advances this argument because, as Mercury concedes, its entire advertising budget promotes the Mercury Insurance Group as a whole rather than any specific insurer, such as appellant Mercury Casualty Company. (Slip Op. 11-13.) The Court of Appeal rejected Mercury's construction, finding "none of Mercury's arguments on this point is cognizable with respect to how the term 'specific insurer' should be interpreted under the various well-known canons of statutory interpretation." (*Id.*, 16.) As the Court of Appeal observed, Mercury's arguments are "*policy* arguments that should have been (and, indeed, may have been) directed at the commissioner when he promulgated section 2644.10(f) in the first place." (*Ibid*.) Rehashing the same policy arguments in its petition to this Court that were rejected by the Court of Appeal does not serve as an appropriate basis for granting review.

Second, Mercury contends that the Court of Appeal erred in rejecting its arguments that the Commissioner failed to consider whether Mercury's ads did "not provid[e] consumers with information pertinent to the decision whether to buy the insurer's product." As the Court of Appeal correctly concluded, however,

> section 2644.10(f) does not set forth two criteria that are to be separately analyzed and applied. Instead, the regulation sets forth a singular, unified definition of what qualifies as '[i]nstitutional advertising.' Having found that Mercury aims its entire advertising budget at promoting the Mercury Insurance Group as a whole and having concluded that the Mercury Insurance Group is not a specific insurer within the meaning of section 2644.10(f), the commissioner properly excluded all of Mercury's advertising expenses from the rate calculation pursuant to the regulation because Mercury's advertising was not aimed at obtaining business for a specific

> insurer and did not provide consumers with information pertinent to the decision whether to buy that insurer's product.

(Slip Op. 16.)

Again, Mercury fails to show how the Commissioner's application of this regulation to its advertising under the Mercury Insurance Group implicates an important question of law that necessitates this Court's review. If anything, the opposite is true here, given that Mercury's "interpretation is both narrow and impracticable, *and would render all advertising expenses chargeable to the ratepayers*; ***a fact Mercury concedes***." (Slip Op. 12, emphasis added.)

B. The Court of Appeal Correctly Determined That Section 2644.10(f) Does Not Violate the First Amendment.

The Trades attempt to paint a portrait of widespread and cataclysmic constitutional violations that will flow from the Court of Appeal's holding: "This Court's review is necessary to protect insurers from wholesale eradication of First Amendment rights in the California market." (Trades Petition, 9.) They contend that, by excluding institutional advertising expenses from the rates that policyholders must pay, the regulation "only" serves the "paternalistic" purpose of "deciding for consumers and insurers what messaging they should hear and present in relative to the insurance purchase." (Trades Petition, 36.) The Trades claim, in essence, that insurers have a constitutional right to have their policyholders pay for all of their advertising costs.

Contrary to the Trades hyperbolic claims, however, this Court has, for decades, upheld regulators' broad authority to exclude unreasonable and excessive costs unrelated to the cost of providing insurance such as institutional advertising because this falls squarely within regulators' ratemaking power. It did so in *20th Century*, *supra*, 8 Cal.4th 216 at 250, 289 (upholding Insurance Commissioner's broad authority to exclude

expenditures unrelated to cost of providing insurance, like institutional advertising expenses, political contributions, and lobbying expenses); and in *Pacific Tel. & Tel. Co. v. Public Utilities Com.* (1965) 62 Cal.2d 634 (upholding public utility regulator's exclusion of legislative advocacy fees). There is no reason to revisit this very same settled question of law under the guise of a First Amendment facial challenge.

Nevertheless, contrary to the Trades' claims, the Court of Appeal properly applied *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939 when holding that section 2644.10(f) survives strict scrutiny. (Slip Op. 22.)[8] As the Court of Appeal determined and the Trades conceded, the Insurance Commissioner has a "compelling governmental interest" under Proposition 103 "in prohibiting excessive [insurance] rates . . . by making sure 'that only "the reasonable costs of providing insurance" [are] included in the rates.'" (Slip Op. 23.) Expenditures on institutional advertising as it is defined under the regulation are unrelated to the reasonable cost of providing insurance as they provide no beneficial information to the consumer about the specific insurer's products. Thus, the Court of Appeal further determined "the regulation promotes the compelling government interest in ensuring that insurers like Mercury pass on to consumers through their insurance premiums only expenses for advertising that directly benefits consumers by providing them with information pertinent to the consumers' decision whether to buy a specific insurer's product." (*Ibid.*)

Finally, the Court of Appeal found that "section 2644.10(f) is narrowly tailored to serve that purpose" because it "does not ban insurers

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[8] To be clear, Consumer Watchdog maintains as it argued below that the regulation does not burden speech, or alternatively that the regulation affects commercial speech that survives intermediate scrutiny. Consumer Watchdog does not concede that the regulation is subject to strict scrutiny, only that the Court of Appeal applied that test in a proper manner to uphold the regulation.

like Mercury from engaging in advertising that does not directly benefit consumers" and instead "simply prohibits the insurer from passing the cost of such advertisements on to the consumer." (*Ibid.*)

The Trades fail to cite any conflicting case which has held that excluding from policyholders' rates those advertising not reasonably related to providing insurance (as opposed to a ban on certain types of advertising) violates the First Amendment. Indeed, state supreme courts that have considered whether rate regulations disallowing institutional advertising expenses violate the First Amendment have universally decided they do not, distinguishing them from a ban on types of advertising. (See *El Paso Elec. Co. v. New Mexico Public Service Com.* (1985) 103 N.M. 300, 304; *Appeal of Concord Natural Gas Corp.* (1981) 121 N.H. 685, 693; *Rochester Gas and Elec. Corp. v. Public Service Com. of the State of N.Y.* (1980) 51 N.Y.2d 823, 825.) It is beyond dispute that a *ban* on advertising cannot be justified by the regulator's interest in rate regulation because "the link between the advertising prohibition and [the company's] rate structure is, at most, tenuous." (*Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York* (1980) 447 U.S. 557, 569.) Here, however, the link between the regulation's exclusion of institutional advertising costs and the Commissioner's interest in preventing excessive rates could not be more direct: by reducing the allowable expenses in the ratemaking calculation, it directly lowers policyholders' premiums. Thus, not only does the regulation "not *ban* insurers like Mercury from engaging in" institutional advertising (Slip Op. 23), but insurers remain free to engage in any kind of advertising they choose; they just can't require their policyholders to pay for all of it. The regulation is thus "the least restrictive means available to promote the specific interest at issue" and therefore survives the Trades' First Amendment challenge. (*Ibid*.)

In short, the basis offered by the Trades for this Court's review of the Court of Appeal's rejection of its First Amendment arguments amounts to little more than overblown rhetoric. Even Mercury – the very insurer whose advertising expenses were disallowed – has never devoted so much as a single sentence of briefing to claim that its First Amendment rights might be implicated.[9]

CONCLUSION

The insurance industry "prays" that this Court grant review to resolve a non-existent conflict in its constitutional jurisprudence upholding Proposition 103. But nothing has significantly changed since this Court comprehensively addressed the constitutional parameters of Proposition 103's requirements in 1989 and the rate regulations in 1994 – except, perhaps, the composition of this Court. What the industry really hopes for is that this Court will ignore its predecessors' consistent and well-settled analytical framework and grant the industry relief from the voters' requirement that auto, home, and business insurance rates be fair and affordable.

Mercury failed to show that it would be unable to operate successfully under the rate decrease. The petitions raise no unsettled questions of law regarding the denial of a confiscation variance, nor is there any conflict in this Court's constitutional jurisprudence.

Petitioners also fail to show that there is any unsettled issue of law regarding the Court of Appeal's decision upholding the Commissioner's determination to exclude Mercury's institutional advertising expenses from

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[9] This is likely because Mercury's excluded advertising expenses accounted for an approximately 1.04% reduction to the efficiency standard. (Administrative Record ("AR") 2175.4, 8647.) The difference in the overall rate from reducing the expense ratio by approximately 1% is minimal and reinforces the fact that this is not an important issue warranting this Court's review.

the ordered rate. The Court of Appeal also properly determined that the regulation survives First Amendment scrutiny.

For all the foregoing reasons, Mercury's and the Trades' Petitions for Review should be denied.

Dated: April 10, 2017

Respectfully Submitted,

Harvey Rosenfield
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CONSUMER WATCHDOG

BY: 

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RULE 8.504(d)(1) CERTIFICATE OF COMPLIANCE

The text of this answer consists of 8,349 words as counted by the word-processing program used to generate the document.

Dated: April 10, 2017

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PROOF OF SERVICE

I, Samantha Skouras, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Consumer Watchdog, 2701 Ocean Park Blvd., Suite 112, Santa Monica, California 90405.

On April 10, 2017, I served the foregoing document:

INTERVENOR CONSUMER WATCHDOG'S COMBINED ANSWER TO PETITIONS FOR REVIEW

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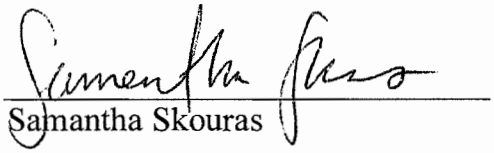
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed at Santa Monica, California on April 10, 2017.

By: 
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