BEFORE THE INSURANCE COMMISSIONER REC'D AUG 10 2007

OF THE STATE OF CALIFORNIA

In the Matter of the Rates, Rating Plans, or Rating Systems of **FARMERS INSURANCE EXCHANGE; FIRE INSURANCE EXCHANGE; MID-CENTURY INSURANCE COMPANY,** Respondents.	)	**FILE NO. NC03029253**

ORDER ADOPTING PROPOSED DECISION

The attached proposed decision of Administrative Law Judge David R. Harrison is adopted as the Insurance Commissioner's decision in the above-entitled matter. This order shall be effective September 10, 2007. Judicial review of the Insurance Commissioner's decision may be had pursuant to Insurance Code Section 1858.6. Persons authorized to accept service on behalf of the Insurance Commissioner are listed below:

William Gausewitz
Counsel to the Commissioner
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, California 95814

Staff Counsel Darrel Woo
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, California 95814

In addition, any party seeking judicial review of the Insurance Commissioner's decision shall lodge copies of the writ of administrative mandamus and the final judicial decision and order on the writ of administrative mandamus with the Administrative Hearing Bureau of the California Department of Insurance

Dated: August 8, 2007

STEVE POIZNER
Insurance Commissioner

By: Bill Gausewitz
WILLIAM GAUSEWITZ
Counsel to the Commissioner

DEPARTMENT OF INSURANCE
ADMINISTRATIVE HEARING BUREAU
45 Fremont Street, 22nd Floor
San Francisco, CA 94105
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BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Rates, Rating Plans, or Rating Systems of FARMERS INSURANCE EXCHANGE; FIRE INSURANCE EXCHANGE; MID-CENTURY INSURANCE COMPANY, Respondents.	**FILE NO. NC03029253**

PROPOSED DECISION

Introduction

This proposed decision adopts the attached Stipulation and Request for Order ("**Exhibit I**"), pursuant to California Code of Regulations, title 10, section 2614.1, subsection (a).[1]

In this noncompliance case, the California Department of Insurance ("CDI") challenges certain rating systems and practices Respondents used during the years 2002 and following in determining premiums, renewals and nonrenewals for California homeowners' insurance policies. The rating systems involved are:

(1) Respondent's Property Experience Rating Plan ("PERP"or "ERP"), which allowed nonrenewals, discounts, base rates, and surcharges to premium based on an insured's claims

[1] Subsection (a) of Section 2614.1 applies to Noncompliance Hearings and provides in pertinent part that the "administrative law judge shall …recommend to the Commissioner approval or disapproval of proposed stipulations and settlements …"

experience; and

(2) Respondents' Geographic Underwriting System ("GUS"), which assigned public protection class ("PPC") codes to properties based primarily on their proximity to fire hydrants.

The challenges to the PERP system alleged that Respondents violated Insurance Code section 1861.05, subsection (a), and sections 2360.2, 2360.3, 2360.4 and 2360.6 of title 10 of the California Code of Regulations by: (1) failing to implement the system consistently and accurately, resulting in discrimination against similarly situated policyholders (Ins. Code §1861.05); (2) failing to maintain adequate eligibility guidelines and underwriting records to justify premiums charged and/or decisions to non-renew policies (Cal.Code Regs., title 10, §§2360.2 and 2360.6); and (3) failing to see to it that each insured received the lowest premium for which the insured qualified (*id.* §§ 2360.3 and 2360.4).

The CDI challenges to the GUS system alleged that the system failed to assign PPC Codes to a number of properties, and, when this occurred, Respondents assigned the highest level (most expensive) PPC codes to these properties, leading to similarly situated policyholders' being charged dissimilar amounts for their coverage. Additionally, when a corrective program was undertaken to correct the coding errors, basic and accurate information from the prior system was not transferred to the new system, resulting in further errors.

Respondents filed a general denial of all charges, and raised various affirmative Defenses, including assertions that the Commissioner lacked jurisdiction to seek the relief claimed in the Notice of Noncompliance.[2]

Bryant W. Henley, Esq., Counsel for the Rate Enforcement Bureau, represented the California Department of Insurance ("CDI"). Steven H. Weinstein, Esq., Richard G. De

[2] NOTICE OF DEFENSE, filed June 21, 2005.

La Mora, Esq., and Spencer Y. Kook, Esq. of Barger & Wolen LLP represented Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company ("Respondents"). Mark A. Chavez, Esq. of Chavez & Gertler LLP, Harvey Rosenfeld, Esq. and Pamela Pressley, Esq., Staff Counsel for FTCR; and Jay Angoff, Esq., Of Counsel to Roger Brown & Associates represented the Foundation for Taxpayer and Consumer Rights ("FTCR" or "Intervenor").

Procedural History

In August 2003 the CDI issued a Notice of Noncompliance against Respondents pursuant to Insurance Code section 1858.1, based on the Department's 1998 and 2002 rating and underwriting examinations. The CDI amended the Notice in October 2003, but withdrew it in December 2003. On March 25, 2004 the CDI issued a new Notice of Noncompliance against Respondents. This new Notice was not filed with the Administrative Hearing Bureau until June 15, 2005. As filed, it was identical to the March 2004 notice, including the date of signature. Respondents filed timely Notice of Defense on June 21, 2005.

The assigned Administrative Law Judge David Harrison ("the ALJ"), called for an amended notice of noncompliance, which the CDI filed on June 27, 2005. Respondents' earlier-filed Notice of Defense of June 21, 2005 was treated as a reply to the amended Notice, without objection.

The ALJ granted FTCR's Petition to Participate as Intervenor on October 5, 2005, and FTCR actively participated in all phases of the proceedings.

All parties filed extensive briefs on the jurisdictional issues raised in Respondents' Notice of Defense. While these issues were pending, the principal case on which Respondents had relied[3] was decertified for publication, and, on November 9, 2005, the ALJ ordered the case to

[3] *American Insurance Assn v. Garamendi* (2005) 127 Cal. App. 4th 228.

proceed.

By mid-November 2006, the parties had filed all prefiled direct testimony and exhibits, and the ALJ had tentatively or finally ruled on all objections.

On November 22, 2006, the parties filed a joint request to vacate all future hearing dates and to set an early status conference for January 5, 2007, in order to pursue settlement discussions. The ALJ granted the request on November 27, 2006.

During the ensuing months, issues arose regarding the form of the settlement documents and whether certain related information should be maintained under seal. The parties resolved these differences and by May 18, 2007, they signed and filed an initial version of the Stipulation and Request for Order, along with supporting declarations. The ALJ reviewed the materials and, on June 20, 2007, ordered Respondents to provide additional declarations. On June 27, 2007, Respondents filed (1) a declaration executed by Rudy Trevino, Vice President and Chief Compliance Officer of the Farmers Group, Inc., verifying the truth of the assertions recited in the final Stipulation and Request for Order; and (2) a declaration executed by Stephen Weinstein, lead counsel for Respondents, elaborating on certain representations made in the Stipulation and Request for Order concerning changes made in Respondents' Geographic Underwriting System. ("GUS").

The parties amended the initial version of the Stipulation and Order and filed the final version (EXHIBIT I, attached) on June 27, 2007.

The proposed decision follows.

Discussion

1. Standard for Review

The proposed settlement resolves noncompliance proceedings brought by the CDI pursuant to Insurance Code section 1858.1. Effective January 19, 2007, the Insurance

Commissioner adopted extensive new regulations applicable to noncompliance proceedings, and the regulations now require (title 10, section 2614.1, subdivision (a) of the California Code of Regulations) that the administrative law judge "shall ... recommend to the Commissioner approval or disapproval of proposed stipulations and settlements..." Title 10, section 2614.20, subdivision (a) separately provides that "Parties may ... agree to settlement on a mutually acceptable outcome to a proceeding with or without resolving material issues." Title 10, section 2614.20, subdivision (b) requires, however, that the settling parties obtain an order from the Insurance Commissioner approving their settlement, and, immediately following the Commissioner's approval order, the parties must file with the Administrative Hearing Bureau a request to withdraw their original request for a hearing.

The Administrative Procedure Act permits an agency to formulate and issue a decision by settlement, pursuant to agreement of the parties, without conducting an adjudicative proceeding, and on any terms the parties determine are appropriate, so long as the terms are not contrary to statute or regulation, except that the settlement may include sanctions the agency would otherwise lack power to impose. (Government Code section 11415.60.) The general authority to settle a case has thus been granted, but neither the statutes nor the regulations explicitly set forth a standard for approving settlement of noncompliance proceedings brought under section 1858.1 of the Insurance Code.

In rate proceedings under the Insurance Code, the provisions of section 2656.2 of title 10, California Code of Regulations, are applicable to a stipulation for settlement. Subdivision (a) of section 2656.2 provides:

> The administrative law judge shall reject a proposed stipulation or settlement whenever, in his or her judgment, the stipulation or settlement is not in the public interest and is not, taken as a whole, fundamentally fair, adequate and reasonable.

This standard is also appropriate for noncompliance proceedings because of the interest in consumer protection underlying regulation of the insurance industry.

The courts have viewed the standard for rejection of a settlement in prior approval rate cases (Insurance Code section 2656.2) as substantially a restatement of the standards applied by courts when reviewing class action settlements and by the California Public Utilities Commission when reviewing settlements in rate cases similar to rate cases before the Department of Insurance. (See, *Officers for Justice v. Civil Service Commission of the City & County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625, cert.denied 459 U.S. 1217 (1983); *In Re PG&E (Diablo Canyon)* (1988) 30 Cal. P.U.C.2d 189, 222.)

In *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1801-1803, 56 Cal.Rptr.2d 483, a California court explained the purpose of a review of a settlement and the appropriate analysis:

> "'" [T]o prevent fraud, collusion or unfairness to the class, settlement or dismissal of a class action requires court approval."'" (*Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579, 165 Cal.Rptr. 1; see also *Marcarelli v. Cabell* (1976) 58 Cal.App.3d 51, 55, 129 Cal.Rptr. 509.) The court must determine the settlement is fair, adequate, and reasonable. (See *Officers for Justice v. Civil Service Com.* (9th Cir.1982) 688 F.2d 615, 625; Fed. Rules Civ. Proc., rule 23(e), 28 U.S.C.) The purpose of the requirement is "the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." (*Officers for Justice v. Civil Service Com.*, supra, 688 F.2d at p. 624.)
>
> . . . Assuming the burden is on the proponents, a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (Newberg & Conte, *supra*, § 11.41, pp. 11-91.)
>
> . . . "'So long as the record . . . is adequate to reach "an intelligent and objective opinion of the probabilities of success should the claim be litigated" and "form an educated estimate of the complexity, expense and likely duration of such litigation, and

> all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise," it is sufficient.' [Citations.] (*Ibid.*).

Determination of whether the settlement is fundamentally fair, adequate and reasonable involves balancing some or all of the following factors: 1) the relative strength of the Department's case that violations have occurred; 2) the risk, expense, complexity and likely duration of further litigation, with the attendant delay; 3) the amount of the settlement; 4) the benefits for consumers resulting from the settlement; 5) the amount of discovery done; 6) the state of the proceedings; 7) the experience and views of counsel and/or the parties' managers or experts; 8) the involvement of a governmental entity;[4] and 9) the reaction, if any, of consumers to the proposed settlement. (Cf. *Officers for Justice, supra,* 688 F.2d at p. 625; *Dunk v. Ford, supra,* 48 Cal.App.4th at p. 1801; *Protective Committee of Independent Stockholders v. Andersen* (1968) 390 U.S. 414, 424-425, 20 L.Ed2d 1, 88 Sup. Ct. 1157 (bankruptcy context).)

As the court stressed in *Officers for Justice,* review of the settlement should not be turned into a full hearing on the merits or a rehearsal for one. The court is not to reach ultimate conclusions on the contested issues of fact and law. *(Ibid.)*

2. Findings of Fact and Analysis

Initially, the ALJ must determine whether there is sufficient evidence to conclude that the settlement is fair and reasonable. In the analysis of the *Dunk v. Ford* court, investigation and discovery could be sufficient to allow counsel and the tribunal to act intelligently. In this proceeding, extensive documentary evidence and pre-filed testimony had been served and lodged, and the parties had engaged in broad informal exchanges of information before entering into the settlement.

In their declarations, CDI and FTCR express their satisfaction with the settlement, based

[4] In this regard, consideration should be given to the adequacy of the Department of Insurance's examination of the information submitted by the insurers and its application of governing statutes and regulations.

not only on Respondents' representations, but also on information (including exhibits and pre-filed testimony) reviewed during the course of the proceedings.

The facts set forth in the stipulation and the various supporting declarations have been admitted without objection. Those facts as recited are adopted as the findings herein. From this evidence it appears that, over the years of negotiation since these proceedings had their start in 2003, various corrective measures have been gradually agreed upon, and many have already been implemented. Further, the settlement contemplates continued monitoring of Respondents' performance as well as an early (fall quarter of 2007 or first quarter of 2008) CDI field investigation and examination.

The settlement bypasses a number of the jurisdictional issues raised by Respondents, with Respondents' implementing or agreeing to implement changes in their systems and procedures (1) establishing and applying clear non-renewal criteria; (2) treating various (formerly charged) events as not chargeable losses for premium calculation and renewal purposes; (3) treating claims subject to subrogation as not chargeable claims unless the insured is ultimately shown to be at fault; (4) eliminating claims with a paid loss of less than $500 as chargeable claims; (5) effecting changes in their computer systems to reduce the likelihood of errors in classifying the basis for a claim; (6) running significant training programs for claims representatives and other employees to assure greater accuracy in administering the plans; (7) ceasing to use default public protection codes and assuring that no policies are issued on properties that lack fire hydrant information.

In addition, Respondents have agreed (1) to conduct an internal analysis of their computer data to determine whether errors were made in treating a mere inquiry as a chargeable claim, or treating a single event as multiple claims for purposes of calculating premium; and (2) to refund premium to those who were overcharged as a result of such errors.

Monetarily, Respondents have refunded approximately $1.4 million in premium overcharges and have affirmed that these refunds were: (1) a total of $21,168 to all (392) policyholders who were overcharged because of errors in charging automated claims reserves as if they were losses; (2) a total of $34,170 to all (170) policyholders who were charged for a loss where the claim was ultimately 100% subrogated; and (3) a total of $1,363, 845 to all (5,327) policyholders who were overcharged due to being assigned incorrect public protection class codes. Respondents have also agreed to pay $2 million in penalties, plus costs incurred by the CDI in the proceedings.

The ALJ finds that substantially all issues raised in the Notice of Noncompliance and the Notice of Defense have been resolved, including issues concerning the authority and jurisdiction of the Commissioner to enforce the regulations on which the Notice of Noncompliance was based. The settlement thus achieves substantial benefit, not only for past and present, but also for future policyholders of Respondents who will benefit by the changes Respondents have adopted.

The other factors set forth in *Dunk v. Ford* as supporting a presumption of fairness are also present. The declarants assert that the negotiations were conducted at "arm's length." Counsel for the parties are known to the Administrative Hearing Bureau from prior cases, and the ALJ has no reason to believe that the settlement was achieved other than through arms-length negotiations conducted by experienced and sophisticated counsel.

Other policy reasons supporting settlements are also present here. Since the stipulation was offered to the administrative law judge preceding the evidentiary hearing, the settlement avoids the risk and expense of further litigation. Although pre-filed testimony had been received, the witness lists showed that trial would potentially entail taking live testimony from

more than 50 witnesses.[5] Deposition subpoenas were also being sought (and opposed) to take testimony from adverse witnesses, and the parties were exploring the best procedures for producing such testimony at the evidentiary hearing.

For all the reasons discussed above and based on the facts as set forth in this proposed decision and in the declarations submitted without objection, the settlement, taken as a whole, is fundamentally fair, adequate and reasonable.

Accordingly, the Administrative Law Judge accepts the attached Stipulation and Request for Order, and recommends its adoption to the Commissioner. The terms of the Stipulation and Request for Order are adopted as part of this Proposed Decision, and are incorporated by reference with the same force and effect as if they were set forth herein.

ORDER

For good cause shown, IT IS ORDERED that, pursuant to the terms of the Stipulation and Request for Order:

1) The Stipulation and Request for Order is approved.

2) The parties shall meet every term or obligation set forth in the Stipulation and Request for Order, all of which are incorporated by reference herein;

3) Nothing contained in this Order or in the Stipulation and Request for Order constitutes a limitation upon, or a waiver of, the rights and powers of the California Insurance Commissioner to enforce the California Insurance Code or the California Code of Regulations with respect to the transaction of insurance by Respondents, or any other matters, activities or transactions of Respondents that the Commissioner determines.

[5] Respondents' proposed witness list originally showed 79 potential witnesses. By order, the ALJ reduced this to 34. The FTCR list showed 9 consumer/complainant witnesses and 14 witnesses from Respondent's staff. CDI listed 7 potential witnesses.

4) The Commissioner retains jurisdiction to ensure that the parties comply with the provisions and terms of the stipulation and requested order, and to amend or supplement the stipulation and order by such additional written orders as the Commissioner may find reasonably necessary to ensure such compliance.

5) As required by title 10, section 2614.20, subsection (a) of the California Code of Regulations, the parties shall forthwith file with the Administrative Hearing Bureau a signed request to withdraw their request for hearing in this matter.

* * *

This proposed decision is submitted on the basis of the entire record in this proceeding, and I recommend its adoption as the decision of the Insurance Commissioner of the State of California.

DATED: July 20, 2007

David R. Harrison

DAVID R. HARRISON
Administrative Law Judge
California Department of Insurance

EXHIBIT 1

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Rates, Rating Plans, or Rating Systems of Farmers Insurance Exchange; Fire Insurance Exchange; Mid-Century Insurance Company, Respondents.	File No.: NC03029253 **STIPULATION AND REQUEST FOR ORDER**

Respondents Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company (collectively, "Respondents"), the California Department of Insurance (the "Department"), and Intervenor the Foundation for Taxpayer and Consumer Rights ("FTCR") stipulate as follows:

WHEREAS, Respondents are, and at all times relevant were, insurers licensed to conduct various classes of insurance in California and were conducting insurance business in California;

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WHEREAS, on March 25, 2004, the Department issued and served a Notice of Noncompliance pursuant to California Insurance Code section 1858.1, which pleading was amended and filed with the Department of Insurance Administrative Hearing Bureau on July 27, 2005 (hereinafter, the "Notice"), and which is incorporated herein by reference;

WHEREAS, FTCR's Petition to Participate as Intervenor in this proceeding was granted by the Administrative Law Judge on October 5, 2005, and whereas FTCR has participated actively in the proceedings since that time, including with respect to briefing, discovery, and hearings;

WHEREAS, Respondents have denied, and continue to deny, the allegations of the notice, believe that their conduct, at all times, was reasonable and in compliance with all applicable Insurance Code sections and regulations of the State of California, and maintain that no fine or penalty is due or owing;

WHEREAS, the Department and FTCR maintain that the allegations contained in the Notice of Noncompliance are true and constitute grounds for the Commissioner to impose civil penalties and issue to Respondents orders to cease and desist from engaging in those methods, acts, or practices found to be in violation of the provisions of the Insurance Code;

WHEREAS, the parties have discussed the issues raised in and the responses to (1) each of the Notices filed and served by the Department concerning the underwriting and rating of homeowners insurance in California, including Respondents' implementation and use of the Property Experience Rating Plan ("ERP") and Geographic Underwriting System ("GUS"); (2) the Department's field rating and underwriting examination conducted in 1998 and 2002; and (3) consumer complaints concerning the rating, underwriting and renewal (or non-renewal) of California policyholders under the ERP and GUS systems;

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WHEREAS, Respondents have advised the Department and FTCR that changes have been made in the ERP such that claims with only a reserve indicated are no longer considered chargeable losses under the ERP;

WHEREAS, Respondents have advised the Department and FTCR that they have provided refunds on all 392 policies where a reserve indicator issue resulted in a loss of a Claims Free Discount, which has resulted in a total of $21,168 being collectively refunded;

WHEREAS, Respondents agreed to modify ERP to exclude 100% subrogated claims from chargeability under ERP, and implemented this change effective June 2005;

WHEREAS, Respondents have advised the Department and FTCR that they will no longer consider claims that are potentially subject to subrogation to be chargeable losses under ERP, unless it is determined that the policyholder was at-fault, negligent or uncooperative;

WHEREAS, Respondents have advised the Department that they have refunded monies to all 170 policyholders who lost their Claims-Free discount or were surcharged due to having a claim that was chargeable under ERP, but was later 100% subrogated, which has resulted in $34,170 being collectively refunded ;

WHEREAS, Respondents have advised the Department that claims with a paid loss of less than $500 are no longer chargeable under ERP;

WHEREAS, Respondents notified the Department and FTCR that they have modified that portion of their computer system that tracks claims information for purposes of the ERP such that the causes of loss for a claim are no longer assigned by way of a numerical code, and instead are now chosen by the claims representative from a drop down language-based menu (i.e., "wind

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and hail"); and whereas all parties agree that this change is beneficial to policyholders and may avoid miscoding;

WHEREAS, Respondents have advised the Department and FTCR that they have conducted significant training of claims representatives and other employees in the procedures for processing of claims and rating of policies to ensure the accurate administration of the ERP;

WHEREAS, Respondents have advised the Department and FTCR that Respondents have identified all policyholders for whom renewal premiums were calculated based upon an incorrect Public Protection Class Code ("PPC code");

WHEREAS, Respondents have advised the Department and FTCR that they have refunded monies to all 1,945 policyholders for which hydrant information was not transferred to Respondents' new rating system, which has resulted in $573,371.26 being collectively refunded;

WHEREAS, Respondents have advised the Department and FTCR that they have refunded monies to all 3,382 policyholders, for whom a lower Public Protection Class code was appropriate after fire hydrant information was obtained, which has resulted in $790, 474 being collectively refunded;

WHEREAS, Respondents have advised the Department and FTCR that there no longer exists any claimed Public Protection Class code designation issues because there are no longer any insured properties lacking hydrant information and no default codes are used.

WHEREAS, Respondents have agreed to work with the Department's Field Rating and Underwriting Bureau to develop renewal risk eligibility guidelines that will clearly identify when

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losses or claims will be surcharged under the ERP but will not result in nonrenewal, and when risks will not be eligible for renewal;

WHEREAS, Respondents understand that any decision to non-renew a policy, where that decision represents an exception to Respondents' established nonrenewal guidelines should be an infrequent occurrence and must be fully documented within Respondents' underwriting file;

WHEREAS, Respondents understand the importance of ensuring the consistent application of Respondents' new renewal risk eligibility guidelines and understand that the Department's Field Rating and Underwriting Bureau, through the field rating exam process, will continue to monitor the application of such guidelines in practice;

WHEREAS, the parties believe that it is in the public interest to resolve all matters raised in the Notice and the 1998 and 2002 field rating and underwriting examinations, without the need for a formal hearing and further administrative action;

NOW, THEREFORE, with respect to the matters stated herein, the parties agree as follows:

1. Respondents waive their rights to a hearing and any and all rights that Respondents may be entitled to pursuant to Chapter 5, Part 1, Division 3, Title 2 of the California Government Code.

2. Respondents shall pay the sum of two million dollars ($ 2,000,000) as a monetary penalty, plus the costs incurred to date by the Department for its prosecution of this administrative action to the State of California within thirty (30) days of receipt of an invoice from the Department. Payment shall be mailed to the California Department of Insurance, Division of Accounting, 300 Capital Mall, 13th Floor, Sacramento, California 95814.

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3. Respondents agree to use rating and underwriting practices that comply with the Insurance Code and the Insurance Commissioner's regulations.

4. Respondents will continue to work with the Department's Field Rating and Underwriting Bureau to develop objective, specific renewal eligibility guidelines that are substantially related to the insured's loss exposure.

5. Respondents agree to maintain and, upon request, agree to provide the Department with detailed documentation in Respondents' files to justify any decision to nonrenew a policyholder.

6. Respondents agree to conduct an analysis of their computer data to determine (1) whether claims without payment, or inquiries made that never resulted in a claim or payment, have at any time subsequent to the implementation of the ERP resulted in, or continue to result in, a loss of a claims free discount or surcharge under the ERP, and (2) whether any policyholders have been incorrectly surcharged under ERP as a result of losses from a single event being treated by Respondents as two or more claims. Respondents do not agree and are not required to conduct a policy file by policy file or claim file by claim file review. Respondents agree that information they determine from this analysis will be contained in a detailed report that will identify those policyholders, if any, which have been surcharged or lost a claims free discount for the reasons stated in (1) and (2) above ("policy level detailed report").

7. If Respondents identify any policyholders through the policy level detail report referenced above in paragraph 6 who incorrectly lost a claims free discount or were surcharged under the ERP, for the reasons specified in paragraph 6 and if such policyholders have not previously been provided a refund, Respondents will provide a refund to each such policyholder in the amount by which he or she was overcharged for his or her premium.

8. The Department shall conduct a field rating and underwriting exam (the "Exam"), in the last quarter of 2007 or in the first quarter of 2008, regarding Respondents' continuing administration and use of the ERP for California Homeowners insurance policies, and whether the ERP is being administered accurately, and consistent with the ERP underwriting rules as filed with

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the Department, such that policyholders are being charged premiums that are accurate under the ERP guidelines vis-à-vis their claims history. Respondents will make the policy level detail report referenced above in paragraph 6 available to the Department during, but not limited to, the Exam.

9. Respondents do not admit that they violated any provision of the Insurance Code or the Insurance Commissioner's regulations. This Stipulation and Consent Order is not an admission of liability, wrongdoing or violation of the law, and no factual findings or legal conclusions have been made.

10. This Stipulation and Consent Order and the terms thereof represent a complete resolution and are dispositive of the issues raised in (1) the Notice and the hearing on the Notice pending before Administrative Law Judge Harrison; (2) the Department's 1998 and 2002 field rating and underwriting examinations, and (3) consumer complaints concerning the issues alleged in the Department's Notice, as amended on July 27, 2005, including complaints made up until the execution of this Stipulation and Consent Order. This Stipulation does not, however, relieve Respondents of the obligation to provide refunds to any policyholders identified pursuant to the policy level detail report referenced above in Paragraphs 6 and 7 who have not previously been provided a refund.

11. Respondents acknowledge that this Stipulation and Consent Order is a public record under Government Code section 11517(d) and Insurance Code section 1861.07, and that it and any orders issued pursuant thereto are open to public inspection pursuant to the California Public Records Act, California Government Code section 6250 et seq. In addition, pursuant to Insurance Code section 12968 the Stipulation and Consent Order and any orders issued pursuant thereto will be posted on the Department's public web site.

12. The parties request that the Administrative Law Judge adopt this stipulation as the proposed decision in this matter.

13. Respondents acknowledge that California Insurance Code section 12921 requires the Insurance Commissioner to personally approve the final settlement of this matter, and that both the

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settlement terms and conditions contained herein and the acceptance of those terms and conditions are contingent upon the Commissioner's personal approval.

14. Nothing contained in this Stipulation and Request for Order constitutes a limitation upon, or a waiver of, the rights and powers of the Commissioner to enforce the California Insurance Code or the California Code of Regulations with respect to the transaction of insurance by Respondents, except with respect to prior acts, practices, and matters settled or resolved by this Stipulation.

15. The Commissioner retains jurisdiction to ensure that Respondents comply with the provisions and terms of this Stipulation and Consent Order.

Dated: June __, 2007

FARMERS INSURANCE EXCHANGE

By: _____

Dated: June __, 2007

FIRE INSURANCE EXCHANGE

By: _____

Dated: June __, 2007

MID-CENTURY INSURANCE COMPANY

By: _____

Dated: June 25, 2007

CALIFORNIA DEPARTMENT OF INSURANCE

By: _____
Bryant W. Henley

Dated: June __, 2007

THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS

By: _____

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15. The Commissioner retains jurisdiction to ensure that Respondents comply with the provisions and terms of this Stipulation and Consent Order.

Dated: June 26, 2007

FARMERS INSURANCE EXCHANGE

By: _____

Dated: June 26, 2007

FIRE INSURANCE EXCHANGE

By: _____

Dated: June 26, 2007

MID-CENTURY INSURANCE COMPANY

By: _____

Dated: June 26, 2007

CALIFORNIA DEPARTMENT OF INSURANCE

By: _____

Dated: June 26, 2007

THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS

By: _____

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settlement terms and conditions contained herein and the acceptance of those terms and conditions are contingent upon the Commissioner's personal approval.

14. Nothing contained in this Stipulation and Request for Order constitutes a limitation upon, or a waiver of, the rights and powers of the Commissioner to enforce the California Insurance Code or the California Code of Regulations with respect to the transaction of insurance by Respondents, except with respect to prior acts, practices, and matters settled or resolved by this Stipulation.

15. The Commissioner retains jurisdiction to ensure that Respondents comply with the provisions and terms of this Stipulation and Consent Order.

FARMERS INSURANCE EXCHANGE

Dated: June __, 2007

By: _____

FIRE INSURANCE EXCHANGE

Dated: June __, 2007

By: _____

MID-CENTURY INSURANCE COMPANY

Dated: June __, 2007

By: _____

CALIFORNIA DEPARTMENT OF INSURANCE

Dated: June __, 2007

By: _____
Bryant W. Henley

THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS

Dated: June 26, 2007

By: Pamela Pressley

BARGER & WOLEN LLP
633 W. FIFTH ST.
FORTY-SEVENTH FLOOR
LOS ANGELES, CA 90071
(213) 680-2800

DECLARATION OF SERVICE BY MAIL (AND FAX)

Case Name/No.: **In the Matter of the Rates, Rating Plans, or Rating Systems of: FARMERS INSURANCE EXCHANGE; FIRE INSURANCE EXCHANGE; MID-CENTURY INSURANCE COMPANY FILE NO. NC03029253**

I, CARMENCITA O. MALBOG, declare that:

I am employed in the County of San Francisco, California. I am over the age of 18 years and not a party to this action. My business address is State of California, Department of Insurance, Administrative Hearing Bureau, 45 Fremont Street, 22nd Floor, San Francisco, California, 94105.

I am readily familiar with the business practices of the San Francisco Office of the California Department of Insurance for collection and processing of correspondence for mailing with the United States Postal Service. Said ordinary business practice is that correspondence is deposited with the United States Postal Service that same day in San Francisco, California.

[X] On August 9, 2007, following ordinary business practices, I caused a true and correct copy of the following document(s):

ORDER ADOPTING PROPOSED DECISION; PROPOSED DECISION

to be placed for collection and mailing at the office of the California Department of Insurance at 45 Fremont Street, San Francisco, California, with proper postage prepaid, in a sealed envelope(s) addressed as follows:

(SEE ATTACHED SERVICE LIST)

[ ] In addition, on _____, I also FAX'ed a copy of said document to all parties where indicated to the FAX number which is printed under each address on this Declaration.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Francisco, California, on August 9, 2007.

August 9, 2007
DATE

CARMENCITA O. MALBOG

PARTY SERVICE LIST
FILE NO.NC03029253

Steven H. Weinstein, Esq. Richard G. De La Mora, Esq. Spencer Y. Kook, Esq. **BARGER & WOLEN LLP** 633 West Fifth Street, 47th Floor Los Angeles, CA 90071 Tel. No.: (213) 680-2800 FAX No.: (213) 614-7399	Attorney(s) for Respondents **Certified Mail**
Bryant Henley, Esq. Kim Morimoto, Esq. Rate Enforcement Bureau **California Department of Insurance** 45 Fremont Street, 21st Floor San Francisco, CA 94105 Tel. No. : (415) 538-4111 FAX No. : (415) 904-5490	Attorney(s) for the Department of Insurance **Inter-Office Mail**
Harvey Rosenfield, Esq. Pamela Pressley, Esq. **THE FOUNDATION FOR TAXPAYER & CONSUMER RIGHTS** 1750 Ocean Park Blvd., Suite 200 Santa Monica, CA 90405 Tel. No.: (310) 392-0522 FAX No.: (310) 392-8874	Attorney(s) for The Foundation for Taxpayer & Consumer Rights **Certified Mail**
Mark A. Chavez, Esq. Kim E. Card, Esq. **CHAVEZ & GERTLER LLP** 42 Miller Avenue Mill Valley, CA 94941 Tel. No.: (415) 381-5599 FAX No.: (415) 381-5572	Attorney(s) for The Foundation for Taxpayer & Consumer Rights **Certified Mail**

PARTY SERVICE LIST CONT.
FILE NO.NC03029253

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