

1 Harvey Rosenfield, SBN 123082
2 Pamela Pressley, SBN 180362
3 THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS
4 1750 Ocean Park Blvd., Suite 200
5 Santa Monica, CA 90405
6 Tel. (310) 392-0522
7 Fax (310) 392-8874

8 Jay Angoff, Of Counsel
9 ROGER BROWN AND ASSOCIATES
10 216 East McCarty Street
11 Jefferson City, MO 65101-3313
12 Tel. (573) 634-8501
13 Fax (573) 634-7679

14 Mark A. Chavez, SBN 90858
15 Kim E. Card, SBN 147779
16 CHAVEZ & GERTLER LLP
17 42 Miller Ave.
18 Mill Valley, CA 94941
19 Tel. (415) 381-5599
20 Fax (415) 381-5572

21 Attorneys for THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS

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18 In the Matter of the Rates, Rating Plans, or) FILE NO.: NC03029253
19 Rating Systems of)
20 FARMERS INSURANCE EXCHANGE;) THE FOUNDATION FOR TAXPAYER
21 FIRE INSURANCE EXCHANGE; MID-) AND CONSUMER RIGHTS' PETITION TO
22 CENTURY INSURANCE COMPANY,) PARTICIPATE AND NOTICE OF INTENT
23 Respondents.) TO SEEK COMPENSATION
24) [Ins. Code §1861.10; Cal. Code Regs, tit. 10,
25) §§ 2661.2 and 2661.4]

26 THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS (FTCR) hereby petitions
27 to participate in the above-referenced proceeding before the California Department of Insurance (CDI)
28 and gives notice that it intends to seek compensation for its participation. This petition is based on the
facts as set forth herein and the accompanying verification of Pamela Pressley.

1 I.

2 PETITIONER

3 1. Petitioner, The Foundation for Taxpayer and Consumer Rights (FTCR), is a nonprofit,
4 nonpartisan public interest corporation organized to represent the interests of taxpayers and consumers.
5 A core focus of FTCR's advocacy is the representation of the interests of insurance consumers and
6 policyholders, particularly as they relate to the implementation and enforcement of Proposition 103, in
7 matters before the Legislature, the courts, and the CDI.

8 2. FTCR's founder authored Proposition 103 and led the successful campaign for its
9 enactment by California voters in 1988. FTCR's staff and the outside persons with whom it consults
10 include some of the nation's foremost consumer advocates and experts on insurance ratemaking matters.

11 3. FTCR has served as a public watchdog with regard to insurance rates and insurer rollback
12 liabilities under Proposition 103 by: monitoring rollback settlements and the status of the rollback
13 regulations, reviewing and challenging rate filings made by insurers seeking rate increases, participating
14 in hearings before the CDI, and educating the public concerning industry underwriting and rating
15 practices and their rights under Proposition 103 and other provisions of state law. FTCR has appeared
16 as amicus curiae in matters involving the interpretation and application of Proposition 103 and the
17 Insurance Code.

18 4. FTCR has intervened in several proceedings before the CDI related to the implementation
19 and enforcement of Proposition 103's reforms, including but not limited to: (i) REB-5184, regarding
20 State Farm's rollback liability; (ii) RH-318 and IH-93-3-REB, regarding regulations to implement
21 Insurance Code section 1861.02's provisions on rating factors for personal automobile insurance; (iii)
22 RH-339 and RH-341, regarding procedural rules for rate hearings and for intervention; (iv) PA-95-0057-
23 00 regarding Safeco's Earthquake Rate Application; (v) Consolidated hearing numbers PA-97-0077-00,
24 PA-97-007800, and PA-97-007900 regarding State Farm's, Allstate's and Farmers' automobile class
25 plans respectively; (vi) PA-97-0072, regarding the California Earthquake Authority's rate application;
26 (vii) RH-346, regarding regulations governing Advisory Organization Manuals; (viii) IH-97-0017-REB,
27 regarding prior approval regulations, and IH-0017-TF, Prior Approval Task Force; (ix) IH-97-0018-
28 REB; (x) RH-402 (initiated by FTCR), regarding regulations defining the optional automobile rating

1 factor of persistency and the conflict of certain rating factors with Ins. Code § 1861.02(c); (xi) RH-
2 01015532, regarding accident verification regulations; (xii) RH-01018834, regarding auto rating factors
3 weighting methodologies; (xiii) PA-02025379, regarding SCPIE's medical malpractice insurance rate
4 application; (xiv) RH-03026431, RH-03026432, and RH-05042665, regarding Low Cost Automobile
5 Insurance Rates and Coverages; (xv) PA-04036735, regarding the medical malpractice insurance rate
6 application of The Medical Protective Company; (xvi) PA04039736, regarding American Casualty's
7 medical malpractice rate application; (xvii) PA04041210, regarding Safeco's 2004 earthquake rate
8 application; and (xviii) PA05045074, regarding Medical Protective's 2005 medical malpractice
9 insurance rate application, among others.

10 5. In order to defend Proposition 103's protections for consumer policyholders, FTCR and
11 its attorneys have initiated or participated in virtually every lawsuit concerning Proposition 103's
12 constitutionality and scope.¹

13
14 II.

15 ELIGIBILITY TO SEEK COMPENSATION

16 6. On July 2, 2004, the Insurance Commissioner found FTCR eligible to seek compensation
17 in departmental proceedings, pursuant to California Code of Regulations, title 10, § 2662.2. Such
18 determinations are valid for two years. This determination succeeded prior determinations to the same
19 effect regarding FTCR's Proposition 103 Enforcement Project, issued by the CDI on June 20, 2002,
20 October 1, 1997, September 26, 1995, September 27, 1994, and September 13, 1993.

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25 ¹ For example, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805; *20th Century Ins. Co. v.*
26 *Garamendi* (1994) 8 Cal.4th 216; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243; *Proposition*
27 *103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App. 4th 1473; *Spanish Speaking Citizens'*
28 *Foundation, et al. v. Low* (2000) 85 Cal.App.4th 1179; *Donabedian v. Mercury Insurance Co.* (2004)
116 Cal.App.4th 968; *State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029;
The Foundation for Taxpayer and Consumer Rights v. Garamendi, et al. (2005) ____ Cal.App.4th ____
(2005 WL 2364918) (Cal.App. 2 Dist. Sep 27, 2005) (NO. B173987).

1 III.

2 INTEREST OF PETITIONER IN NC03029253

3 7. FTCR's interest in the above-captioned proceeding is, first, to ensure that Respondents'
4 [hereafter "Farmers"] homeowners insurance policyholders, as well as applicants for such policies, are
5 protected against the practices alleged in the CDI's First Amended Notice of Noncompliance dated July
6 27, 2005 ("Notice"). Homeowners insurance has been subject to severely destabilizing price increases
7 in recent years, and a tightening of the homeowners insurance market that has imposed substantial
8 burdens upon homeowners and the overall economy. For most homeowners, their home is their most
9 valuable asset. Consumers who are abused or overcharged by insurers as they attempt to protect their
10 most important asset are among FTCR's core constituency.

11 8. An equally critical interest of FTCR in this proceeding is the issue, raised by Farmers'
12 affirmative defenses, of whether the Commissioner has the authority to regulate Farmers' homeowners
13 insurance underwriting practices and its conduct in the marketplace. Farmers has asserted that the
14 Commissioner has no authority to undertake enforcement actions such as this against homeowners
15 insurance companies that fail to properly apply their own underwriting guidelines in violation of the
16 Insurance Code and the Commissioner's regulations. (Respondents' Opening Brief Regarding
17 Jurisdictional Issues.) Farmers' legal arguments attack the core of the Insurance Commissioner's
18 responsibilities to the public under the Insurance Code in general, and Proposition 103 in particular.
19 Thus, the interests of all California consumers and insurance policyholders are at stake in this
20 proceeding. The voters specifically envisioned that insurers would attempt to undermine Proposition
21 103 in administrative and judicial proceedings by seeking to limit its scope and reduce the authority it
22 provides to the Insurance Commissioner. That is why they authorized their representatives to intervene
23 in administrative and judicial matters such as this pursuant to Insurance Code section 1861.10(a). By
24 intervening in this proceeding, FTCR seeks to defend the authority of the Insurance Commissioner to
25 prohibit unlawful practices and to undertake enforcement actions in this and similar proceedings.

26 9. If intervention is granted, FTCR plans to submit briefing, oral argument, and testimony
27 (if necessary) on the issues raised in this proceeding, and participate fully in all aspects of discovery and
28 any evidentiary hearings.

1 IV.

2 POSITION OF PETITIONER

3 10. The CDI has alleged that similarly situated policyholders have received dissimilar
4 treatment. More specifically, Farmers is charged with failing to apply certain of its homeowners
5 insurance underwriting guidelines and rating factors in a consistent and uniform manner. The Notice
6 charges, among other allegations, that:

7 • Farmers violates its recently established Property Insurance Rating Plan (“PERP”) by
8 surcharging certain homeowners for claims that should not result in a surcharge under PERP.

9 • Farmers violates its recently established Geographic Underwriting System (“GUS”) by
10 overcharging certain homeowners based on faulty or arbitrary determinations of a property’s proximity
11 to a fire hydrant.

12 The Notice of Noncompliance suggests that a possible reason for Farmers’ failure to adhere to its
13 own underwriting guidelines and rating factors is that they are ambiguous and imprecise.

14 11. If these allegations against Farmers are proven true, Farmers has violated California law
15 as set forth in the Notice. Specifically, the allegations, if true, demonstrate that Farmers has violated
16 provisions of the Insurance Code, including but not limited to section 1861.05, enacted by Proposition
17 103, that prohibit unfairly discriminatory rates, premiums and practices, and that require insurers to
18 maintain records and guidelines. Based on the alleged practices, Farmers has also violated regulations
19 promulgated by the Commissioner pursuant to his statutory authority.

20 12. Farmers’ assertion that the Commissioner has no authority to bring this action under the
21 relevant statutes and regulations is incorrect as a matter of law. As FTICR will demonstrate, Farmers’
22 attempt to evade the jurisdiction and authority of the Commissioner and the Department of Insurance is
23 contrary to Proposition 103 and other provisions of the Insurance Code. It is FTICR’s position that the
24 case cited by Farmers for its argument that the Commissioner cannot bring this action – *American*
25 *Insurance Association v. Garamendi* (2005) 127 Cal.App.4th 228 – is, without any question, utterly
26 inapposite here. It is also FTICR’s position that were Farmers to succeed in this attempt to escape
27 accountability for its illegal conduct, all California homeowners insurance policyholders would be
28 placed at risk, and the express statutory protections enacted by the voters through Proposition 103 would

1 be effectively negated. Farmers' arguments are a baseless assault on the regulatory regime enacted by
2 the voters seventeen years ago when the substantive provisions of the insurer-friendly McBride-Grunsky
3 Insurance Regulatory Act of 1947, and its accompanying case law, were gutted and superseded by
4 Proposition 103.

5 13. FTCR reserves the right to address other relevant issues raised in this proceeding as it
6 develops.

7 V.

8 AUTHORITY FOR PETITION TO PARTICIPATE

9 14. The authority for this petition is Insurance Code section 1861.10(a), titled "Consumer
10 Participation," which grants "any person" the right to "initiate or intervene in any proceeding permitted
11 or established pursuant to this chapter [Chapter 9 of Part 2 of Division 1 of the Insurance Code],
12 challenge any action of the commissioner under this article [Article 10 of Chapter 9, enacted by
13 Proposition 103], and enforce any provision of this article." This proceeding is an enforcement action
14 brought by the CDI pursuant to Insurance Code section 1858.1, and hence is a proceeding both
15 "permitted" and "established" by Chapter 9. Moreover, like the Department, FTCR seeks to "enforce"
16 section 1861.05, enacted by Proposition 103, against Farmers. This petition is also authorized by
17 California Code of Regulations, title 10, § 2661.2.

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19 VI.

20 PARTICIPATION OF FTCR

21 15. FTCR verifies that, in accordance with California Code of Regulations, title 10, § 2661.4,
22 it will be able to attend and participate in this proceeding without unreasonably delaying this proceeding
23 or any other proceedings before the Insurance Commissioner.

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25 VII.

26 INTENT TO SEEK COMPENSATION

27 16. The Commissioner has awarded FTCR compensation for its reasonable advocacy and
28 witness fees and expenses in past departmental proceedings. Its intervenor eligibility status is current


1 and effective for two years from the most recent finding of eligibility issued by the Commissioner on
2 July 2, 2004.

3 17. FTCR's estimated budget in this proceeding is attached hereto as Exhibit A. FTCR has
4 based its estimated budget on several factors including: (1) the technical and legal expertise needed to
5 address these issues; (2) its current best estimate of the time needed to participate effectively in these
6 proceedings, taking into account the time already expended by FTCR staff and an estimate of time
7 needed to complete remaining tasks; and (3) past experience in similar rulemaking proceedings before
8 the CDI. The estimated budget is reasonable and the staffing level is appropriate, given the expertise
9 that FTCR brings to these proceedings when the issues involved are issues at the very core of its
10 organizational mission and strike at the very heart of Proposition 103 itself. The budget presented in the
11 attached Exhibit is a preliminary estimate, and FTCR reserves the right to amend its proposed budget as
12 its expenses become more certain, or in its request for final compensation. FTCR will give notice of
13 such modifications as soon as practicable after it discovers the need to revise its estimates, and shall
14 comply with the budget revision requirements in the relevant intervenor regulations.

15
16 WHEREFORE, petitioner respectfully requests that the Administrative Law Judge allow FTCR
17 to participate in the above-captioned proceeding, having all the rights and responsibilities accorded any
18 other party to the proceeding.

19 DATED: October 3, 2005

Respectfully submitted,
Harvey Rosenfield
Pamela Pressley
THE FOUNDATION FOR TAXPAYER AND
CONSUMER RIGHTS

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23 By: 
Pamela Pressley
Attorneys for THE FOUNDATION FOR TAXPAYER
AND CONSUMER RIGHTS